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PART I

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Title 3—The President

PROCLAMATION 4274

Proclamation Amending Part 3 of the Appendix to the Tariff Schedules of the United States With Respect to the Importation of Agricultural Commodities

By the President of the United States of America

A Proclamation

WHEREAS, pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624), limitations have been imposed by Presidential proclamations on the quantities of certain dairy products which may be imported into the United States in any quota year; and

WHEREAS the import restrictions proclaimed pursuant to section 22 are set forth in Part 3 of the Appendix to the Tariff Schedules of the United States; and

WHEREAS the Secretary of Agriculture has reported to me that he believed the import quota provided for in item 950.02 of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) on the articles described in TSUS item 115.50 (hereinafter referred to as "nonfat dry milk") may be increased or suspended without rendering or tending to render ineffective, or materially interfering with, the price support program now conducted by the Department of Agriculture for milk or reducing substantially the amount of products processed in the United States from domestic milk; and

WHEREAS, at my request, the United States Tariff Commission has made an investigation under the authority of section 22 of the Agricultural Adjustment Act to determine whether the import quota provided for in TSUS item 950.02 on nonfat dry milk may be increased or suspended without rendering or tending to render ineffective, or materially interfering with, the price support program now conducted by the

Department of Agriculture for milk or reducing substantially the amount of products processed in the United States from domestic milk; and

WHEREAS the United States Tariff Commission has submitted to me a report with respect to this matter and I need to study further this matter before making a determination as to final action to be taken; and

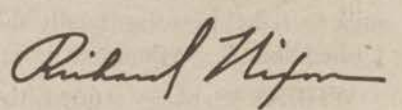
WHEREAS, pending a determination as to final action to be taken, I find and declare, on the basis of such investigation and report, that changed circumstances require modification of the import quota provided for in TSUS item 950.02 on nonfat dry milk during the period ending June 30, 1974, and that the entry of an additional quantity of 150,000,000 pounds of nonfat dry milk during such period will not render or tend to render ineffective, or materially interfere with, the price support program which is being undertaken by the Department of Agriculture for milk and will not reduce substantially the amount of products processed in the United States from domestic milk;

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, acting under and by virtue of the authority vested in me as President, and in conformity with the provisions of section 22 of the Agricultural Adjustment Act, as amended, and the Tariff Classification Act of 1962, do hereby proclaim that subdivision (vi) of headnote 3(a) of Part 3 of the Appendix to the Tariff Schedules of the United States is amended to read as follows:

"(vi) Notwithstanding any other provisions of this part, 150,000,000 pounds of the articles described in item 115.50 may be entered during the period beginning March 5, 1974, and ending June 30, 1974, in addition to the annual quota quantity specified for such article under item 950.02, and import licenses shall not be required for entering such additional quantities. The 150,000,000 pound additional quota quantity shall be allocated among supplying countries as follows:

Supplying Country	*Quantity in Pounds*
Australia	15,000,000
New Zealand	55,000,000
Other Countries	80,000,000

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



[FR Doc.74-5233 Filed 3-4-74;11:22 am]

Rules and Regulations

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

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

Title 7—Agriculture

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

PART 929—HANDLING OF CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Findings With Respect to a Grower Allotment Program

This document contains findings that a grower allotment program for cranberries in accordance with the provisions set forth in the marketing agreement, as amended, and Order No. 929, as amended (7 CFR Part 929), will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, and that the six crop years 1968–69 through 1973–74 constitute a representative period for computing growers' base quantities in accordance with such provisions.

The said marketing agreement and order (hereinafter referred to as the "order") regulate the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The provisions applicable to a grower allotment program were included in the order by an amendment effective August 16, 1968 (33 FR 11639). Such amendment provided for a 6-year period of preliminary regulation during which information concerning growers' sales would be collected. In accordance with such amendment, growers and handlers have furnished the Cranberry Marketing Committee, the administrative agency established pursuant to the order, information concerning individual grower sales during each of the crop years 1968 through 1973, and such other information as the committee needs to establish a base quantity for each grower. Except as otherwise provided in the order, such base quantity would be a quantity of cranberries equal to that obtained by multiplying the grower's established cranberry acreage as of February 1, 1974, established prior to August 16, 1968, by his average per acre sales made from that acreage during the two years, within the 6-year period during which his greatest sales were made.

During the 6-year period from 1968 through 1973 production trended upward, moving from 1.5 million barrels to 2.1 million with a peak of 2.3 million in 1971. This increase, as anticipated at the time the amendment was being considered, was due mainly to increased yields resulting from the adoption by growers of improved cultural and harvesting practices and to an increase in harvested acreage as nonbearing acreage matured and came into bearing. During the period harvested acreage increased from 21,235 to 22,800, and average per acre yields from 69.1 to 96.6 barrels. Sales also increased during the period but not in keeping with the increase in production. Consequently, carryover stocks increased and on September 1, 1973, amounted to 709,000 barrels compared with 385,000 barrels on the same date in 1968. Seasonal setaside regulations requiring handlers to withhold from normal marketing channels 10 and 12 percent were prescribed in the 1970 and 1971 seasons, respectively. In addition, the Department purchased cranberries as a surplus removal activity in three of the six years. Seasonal shrinkage and economic abandonment after harvest occurred each year, and was particularly heavy in the peak production year of 1971, when 456,000 barrels were abandoned in addition to an elimination of 267,000 barrels under the setaside regulation.

Production of cranberries during the 6-year period reflects a reasonably normal pattern with expected fluctuations in production due to weather factors, and manifested a trend in production consistent with increased bearing surface and improved cultural and harvesting practices. Marketing problems manifested in such period may recur.

It is impracticable and unnecessary to give preliminary notice, engage in public rulemaking procedure, and delay the date of these findings beyond March 1, 1974 (5 U.S.C. 553) because the data with respect to the 1973–74 crop year, which was essential to the findings, was not available until the latter part of February and the order in § 929.48(a) requires such findings by March 1, 1974. Interested persons have been aware of the likelihood of the issuance of the grower allotment program for the past six crop years, and growers and handlers, including processors, are familiar with the details of such program having submitted reports throughout such period in anticipation of such findings.

Therefore, it is hereby found that the six crop years 1968–69 through 1973–74 constitute a representative period, and the grower allotment program set forth in the order will tend to effectuate the declared policy of the act.

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

Dated: February 28, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.74-5058 Filed 3-4-74;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

Change in Foot-and-Mouth Disease Status of the Channel Islands

Statement of considerations. The purpose of this amendment is to delete the Channel Islands from the list of countries in § 94.1(a)(2) which are declared to be free of rinderpest and foot-and-mouth disease. This action which prohibits the importation of cattle, sheep, or other ruminants, or swine or fresh, chilled, or frozen meats of such animals into the United States from the Channel Islands is necessary to protect the livestock of the United States from the threat of introduction or dissemination of foot-and-mouth disease.

Accordingly, Part 94, Title 9, Code of Federal Regulations is hereby amended as follows:

§ 94.1 [Amended]

In § 94.1(a)(2), the name of the Channel Islands is deleted.

(Sec. 306, 46 Stat. 689, as amended (19 U.S.C. 1306) 37 FR 28464, 28477; 38 FR 19141)

Effective date. The foregoing amendment shall become effective February 27, 1974.

The prohibition imposed by this amendment must be made effective immediately to protect the livestock industry of the United States against the introduction of foot-and-mouth disease from foreign countries. 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 is 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 27th day of February 1974.

J. M. HEJL,
Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.74-4988 Filed 3-4-74;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Y]

PART 225—BANK HOLDING COMPANIES

Management Consulting Service

By notice of proposed rulemaking published in the FEDERAL REGISTER on July 13, 1973 (38 FR 18691), the Board of Governors proposed to add management consulting services to non-affiliated banks to the list of activities that it has determined under section 4(c)(8) of the Bank Holding Company Act to be closely related to banking or managing or controlling banks, by amending § 225.4(a) of the Board's Regulation Y.

Following consideration of the comments received, the Board has amended § 225.4(a), effective February 26, 1974, to add the new activity to its list of permitted activities, with certain modifications in language from that originally proposed in order to clarify the nature of permissible consulting activities.

An accompanying interpretation expresses the Board's views on certain questions which arose during the course of its consideration of this activity concerning the definition of certain terms in the proposal and the intended scope of the activity.

The text of the amendment to § 255.4(a) reads as follows:

§ 225.4 Nonbanking activities.

(a) *Activities closely related to banking or managing or controlling banks.* * * * The following activities have been determined by the Board to be so closely related to banking or managing or controlling banks as to be a proper incident thereto.

* * * * *

(12) Providing management consulting advice [1] to nonaffiliated banks: *Provided,* That, (i) neither the bank holding company nor any of its subsidiaries own or control, directly or indirectly, any equity securities in the client bank; (ii) no officer, director, or employee of the bank holding company or any of its subsidiaries serves as an officer, director or employee of the client bank; (iii) the advice is rendered on an explicit fee basis without regard to correspondent balances maintained by the client bank at any subsidiary bank of the bank holding company; and (iv) disclosure is made to each potential client bank of (*a*) the names of all banks which are affiliates of the consulting company, and (*b*) the names of all existing client banks located in the same market area(s) as the client bank.[2]

* * * * *

The Board has also adopted an interpretation relating to bank management consulting advice as set forth below:

§ 225.130 Activities closely related to banking.

(a) *Bank management consulting advice.* The Board's amendment of § 225.4(a), which adds bank management consulting advice to the list of closely related activities, describes in general terms the nature of such activity. This interpretation is intended to explain in greater detail certain of the terms in the amendment.

(b) It is expected that bank management consulting advice would include, but not be limited to, advice concerning: bank operations, systems and procedures; computer operations and mechanization; implementation of electronic funds transfer systems; site planning and evaluation; bank mergers and the establishment of new branches; operation and management of a trust department; international banking; foreign exchange transactions; purchasing policies and practices; cost analysis, capital adequacy and planning; auditing; accounting procedures; tax planning; investment advice (as authorized in § 225.4(a)(5)); credit policies and administration, including credit documentation, evaluation, and debt collection; product development, including specialized lending provisions; marketing operations, including research, market development and advertising programs; personnel operations, including recruiting, training, evaluation and compensation; and security measures and procedures.

(c) In permitting bank holding companies to provide management consulting advice to nonaffiliated "banks", the Board intends such advice to be given only to an institution that both accepts deposits that the depositor has a legal right to withdraw on demand and engages in the business of making commercial loans. It is also intended that such management consulting advice may be provided to the "operations subsidiaries" of a bank, since such subsidiaries perform functions that a bank is empowered to perform directly at locations at which the bank is authorized to engage in business (§ 250.141 of this chapter).

(d) Although a bank holding company providing management consulting advice is prohibited by the regulation from owning or controlling, directly or indirectly, any equity securities in a client bank, this limitation does not apply to shares of a client bank acquired, directly or indirectly, as a result of a default on a debt previously contracted. This limitation is also inapplicable to shares of a client bank acquired by a bank holding company, directly or indirectly, in a fiduciary capacity; *Provided,* That the bank holding company or its subsidiary does not have sole discretionary authority to vote such shares or shares held with sole voting rights constitute not more than five percent of the outstanding voting shares of a client bank.

By order of the Board of Governors, effective February 26, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-5023 Filed 3-4-74;8:45 am]

[1] In performing this activity bank holding companies are not authorized to perform tasks or operations or provide services to client banks either on a daily or continuing basis, except as shall be necessary to instruct the client bank on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.130).

[2] Applications to engage de novo in providing management consulting advice to nonaffiliated banks should be filed in accordance with the procedures of § 225.4(b)(2) rather than § 225.4(b)(1) of Regulation Y.

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 73-NE-28]

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

Alteration of Transition Area

On Page 821 of the FEDERAL REGISTER dated January 3, 1974, the Federal Aviation Administration published a notice of proposed rule making which would alter the Boston, Massachusetts, 700-foot Transition Area.

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

In view of the foregoing, the proposed regulations are hereby adopted effective 0901 G.m.t., April 25, 1974.

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

Issued in Burlington, Mass., on February 14, 1974.

FERRIS J. HOWLAND,
Director, New England Region.

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

That airspace extending upward from 700 feet above the surface bounded by a line beginning at: Latitude 42°53'00" N., Longitude 71°05'00" W., to Latitude 42°52'00" N., Longitude 71°02'45" W., to Latitude 42°-54'00" N., Longitude 71°00'15" W., to Lati-to Latitude 42°48'15" N., Longitude 70°-tude 42°49'45" N., Longitude 70°54'00" W., 55'30" W., to Latitude 42°43'00" N., Longitude 70°46'00" W., to Latitude 42°30'00" N., Longitude 70°48'00" W., to Latitude 42°-

14'00" N., Longitude 70°38'00" W., to Latitude 41°59'00" N., Longitude 70°48'00" W., to Latitude 41°59'00" N., Longitude 70°53'00" W., to Latitude 42°03'00" N., Longitude 71°10'00" W., to Latitude 42°13'00" N., Longitude 71°21'00" W., to Latitude 42°21'00" N., Longitude 71°25'00" W., to Latitude 42°22'00" N., Longitude 71°47'00" W., to Latitude 42°27'00" N., Longitude 71°55'00" W., to Latitude 42°53'00" N., Longitude 71°55'00" W., to Latitude 42°45'00" N., Longitude 71°38'25" W., to Latitude 42°43'00" N., Longitude 71°36'00" W., to Latitude 42°40'00" N., Longitude 71°35'00" W., to Latitude 42°38'00" N., Longitude 71°20'00" W., to Latitude 42°43'00" N., Longitude 71°15'00" W. to the point of beginning; and within 3.5 miles each side of the 154° bearing from the Stoughton, Mass., NDB, 42°07'10" N., 71°07'41" W., extending from the NDB to 10.5 miles southeast of the NDB.

[FR Doc.74-5097 Filed 3-4-74;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-837, Amdt. 24]

PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Liability Limitations

Part 221 of the Board's Economic Regulations (14 CFR Part 221) contains provisions which require certificated air carriers and foreign air carriers availing themselves of limitations on liability to passengers for death or personal injury, and for loss, damage to, or delay in the delivery of passenger baggage, under the Warsaw Convention, to give notice of such limitations in the form of ticket and sign notices.[1] The dollar limitations specified in these notices are intended to reflect the minimum liability requirements of the Convention, which are based on a gold standard. After the dollar was devalued in 1972,[2] the Board amended the subject provisions to restate the dollar limitations allowable under the Convention in view of the devaluation.[3] The amendments became effective December 18, 1972, but in order to permit carriers to use up ticket stocks already on hand, the Board provided that carriers need not reflect the new dollar limitations in their ticket notices until March 15, 1973.

Prior to that delayed effective date, the President took action directed toward a further devaluation of the dollar. The Board thereupon determined that, since enactment by Congress of this further devaluation would render the dollar limitations specified in ER-779 obsolete, no regulatory purpose would be served by requiring carriers to revise their ticket notices in compliance therewith, if they had not already done so. Accordingly, the effectiveness of ER-779, insofar as it required carriers to revise their passenger tickets, was stayed until further notice.[4]

Subsequently, but before the anticipated second devaluation of the dollar had occurred, the Board issued ER-801[5] in order to permit carriers to use ticket notices reflecting the anticipated devaluation, rather than dollar amounts specified in ER-779. On October 18, 1973, the second devaluation of the U.S. dollar was effected.[6]

By its most recent action directed toward accurately reflecting U.S. dollar devaluations in statements of liability limitations, the Board has ordered air carriers and foreign air carriers to revise their tariffs insofar as they set forth, in dollars, The Warsaw Convention liability limitations.[7] The dollar amounts which the Board has so ordered to be recited in the revised tariffs are the same as those which the Board, by ER-801, had permitted to be used for the notice purposes of §§ 221.175 and 221.176. Accordingly, we have now determined to amend our rules governing notice of liability limitations, in the manner contemplated by ER-779, but with the amounts specified therein revised so as to reflect the current value of the dollar, as now required to be recited in applicable tariffs.

In view of the above-recited history of the subject proceedings, the Board finds that notice and public procedure hereon is impracticable and unnecessary and would not be in the public interest.

Effective date of rule. Some carriers may now be using ticket stock reflecting the first dollar devaluation, which they had ordered in compliance with ER-779, before its effectiveness was stayed by ER-790. Others, relying on ER-790, may still be using ticket stock reflecting the predevaluation dollar. Still others may already be using ticket stock reflecting the dollar amounts prescribed herein, as permitted by ER-801. Accordingly, although we are making the within rule effective 30 days after its publication in the FEDERAL REGISTER, only sign notices affected by this amendment need be revised by that date. In order to alleviate the expense attendant upon ordering new ticket stock to replace ticket stock ordered in good faith reliance on Board action which was rendered obsolete by intervening legislative action, we shall allow carriers until May 15, 1974, to revise their ticket notices to reflect the dollar limitations prescribed herein.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 221 of the Economic Regulations (14 CFR Part 221) effective April 4, 1974, as follows:

1. Amend paragraph (a) of § 221.175, the paragraph as amended to read as follows:

§ 221.175 Special notice of limited liability for death or injury under the Warsaw Convention.

(a) In addition to the aforesaid requirements of this subpart, each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention and whose place of departure or place of destination is in the United States, the following statement in writing:

ADVICE TO INTERNATIONAL PASSENGERS ON LIMITATIONS OF LIABILITY

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to their entire journey including the portion entirely within the countries of departure and destination. The Convention governs and in most cases limits the liability of carriers to passengers for death or personal injury to approximately $10,000.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention. For further information please consult your airline or insurance company representative.

Provided, however, That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statement shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as 10-point modern type and in ink contrasting with the stock on: (1) Each ticket; (2) a piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or (3) the ticket envelope: *And provided further,* That a carrier which has heretofore been furnishing a statement including either the sum of "$8,290" or the sum of "$9,000," in place of the sum of "$10,000" in the text of the statement prescribed by this paragraph, may continue to use such statement until May 15, 1974.

* * * * *

2. Amend paragraphs (a) and (b) of § 221.176, the paragraphs as amended to read as follows:

§ 221.176 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

(a) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations on liability for loss of, damage to, or delay in delivery of baggage shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United

[1] Sections 221.175 (Special notice of limited liability for death or injury under the Warsaw Convention) and 221.176 (Notice of limited liability for baggage; alternative consolidated notice of liability limitations).

[2] The enacted devaluation became effective May 8, 1972. Pub. L. 92-268, March 31, 1972.

[3] ER-779, adopted November 14, 1972, 37 FR 24657.

[4] ER-790, February 27, 1973, 38 FR 5838. It was also provided that those carriers which had already revised their ticket stocks in compliance with ER-779 would not be considered to be in violation of the applicable regulations, if they used such revised stock.

[5] Adopted May 10, 1973, 39 FR 12802.

[6] Pub. L. 93-110, enacted September 21, 1973.

[7] Order 74-1-16, adopted January 3, 1974, 39 FR 1526.

States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers or accept baggage for checking, a sign which shall have printed thereon the following statement:

NOTICE OF LIMITED LIABILITY FOR BAGGAGE

Liability for loss, delay, or damage to baggage is limited as follows unless a higher value is declared and an extra charge is paid: (1) For most international travel (including domestic portions of international journeys) to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage; (2) for travel wholly between U.S. points, to $500 per passenger on most carriers. Special rules may apply to valuables. Consult your carrier for details.

Provided, however, That an air carrier or foreign air carrier which provides a higher limitation of liability for death or personal injury than that set forth in the Warsaw Convention and has signed a counterpart of the agreement approved by the Board by Order E-23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in full compliance with the posting requirements of this paragraph and of § 221.175(b):

ADVICE TO PASSENGERS ON LIMITATIONS OF LIABILITY

Airline liability for death or personal injury may be limited by the Warsaw Convention and tariff provisions in the case of travel to or from a foreign country.

Liability for loss, delay or damage to baggage is limited as follows unless a higher value is declared and an extra charge is paid: (1) For most international travel (including domestic portions of international journeys) to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage; (2) for travel wholly between U.S. points, to $500 per passenger for most carriers. Special rules may apply to valuable articles.

See the notice with your ticket or consult your airline or travel agent for further information.

Provided, further, That carriers may include in the notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to the baggage liability limitation for most international travel. Such statements shall be printed in bold-face type at least one-fourth of an inch high and shall be so located as to be clearly visible and clearly readable to the traveling public.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations of liability for loss of, damage to, or delay in delivery of, baggage shall include on each ticket issued in the United States or in a foreign country by it or its authorized agent, the following notice printed in at least 10-point type:

NOTICE OF BAGGAGE LIABILITY LIMITATIONS

Liability for loss, delay, or damage to baggage is limited as follows unless a higher value is declared in advance and additional charges are paid: (1) For most international travel (including domestic portions of international journeys) to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage; (2) for travel wholly between U.S. points, to $500 per passenger on most carriers (a few have lower limits). Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier.

Provided, however, That carriers may include in their ticket notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to the baggage liability limitation for most international travel; *And provided further,* That a carrier which has heretofore been issuing ticket notices including either the sums of "$7.50" and "$330," respectively (and the optional language of "$16.58" and "$7.50," respectively), or the sums of "$8.16" and "$360," respectively, (and the optional language of "$18.00" and "$8.16," respectively), in place of "$9.07" and "$400," respectively, in the statement prescribed by this paragraph (and in place of the optional language "$20.00" and "$9.07," respectively, permitted by the first proviso to this paragraph), may continue to use such statement until May 15, 1974.

* * * * *

(Secs. 204(a), 403, 416, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, and 771 as amended; (49 U.S.C. 1324, 1373, 1386))

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.74-5039 Filed 3-4-74;8:45 am]

Title 17—Commodity and Securities Exchange

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-8235, S7-461]

PART 270—RULES AND REGULATIONS UNDER THE INVESTMENT COMPANY ACT OF 1940

Sales of Redeemable Securities Without a Sales Load Following Redemption

On December 8, 1972, the Securities and Exchange Commission published notice (Investment Company Act Release No. 7555 [37 FR 26741]) that it had under consideration, pursuant to the authority granted the Commission by sections 6(c), 38(a), and 22(d) [15 U.S.C. 80a-6(c), 80a-37(a), 80a-22(d)] of the Investment Company Act of 1940 ("Act"), the adoption of Rule 22d-2 [17 CFR 270.22d-2] under section 22(d) of the Act to allow sales of redeemable shares of a registered investment company at prices which reflect the elimination of sales load under certain enumerated circumstances.

The period for public comment on the rule proposal having expired and the Commission having considered all the comments and suggestions received, the Commission has determined to adopt proposed Rule 22d-2, with certain modifications, in the form set forth below. Issuers electing to offer the reinvestment privilege permitted by the Rule are cautioned that no such offer should be made without appropriate disclosure in their prospectuses or supplements thereto filed pursuant to Rule 424(c) [17 CFR 230.424(c)] under the Securities Act of 1933.

Section 6(c) of the Act provides that the Commission by rule, regulation, or order may exempt any person or transaction or any class of persons or transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 38(a) of the Act authorizes the Commission to issue such rules as are necessary or appropriate to the exercise of the powers conferred upon the Commission in the Act.

Section 22(d) of the Act prohibits a registered investment company, its principal underwriter, or a dealer from selling any redeemable security issued by such registered investment company to any person except at a current public offering price described in the prospectus. Rule 22d-1 [17 CFR 270.22d-1] thereunder was adopted to codify certain administrative interpretations of section 22(d) and orders of exemption from its provisions pursuant to Section 6(c) of the Act which related to permissible variations in the sales load of redeemable securities.[1] Rule 22d-2 is adopted for the same purpose.

The Commission has previously granted applications for exemption from Section 22(d) of the Act and Rule 22d-1 thereunder which allowed shareholders who had redeemed shares of an investment company which normally charged a sales load a one-time privilege to reinvest at no load within 15 days of redemption in that investment company's shares in order to permit the rectification of mistaken redemptions.[2] Rule 22d-2 differs from applications granted previously, however, in that it will allow investment companies to make this privilege available for as long as 30 days after redemption. The Commission believes that 30 days may be a more appropriate maximum period of time than 15 in that it allows for processing and mailing delays and will also give shareholders additional time to determine whether redemption is the best means of satisfying their financial needs. A longer period, however, might lead investors to redeem their investments for purposes of speculation or to obtain a tax loss with the intention of reinvesting the proceeds after 30 days.[3]

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[1] Investment Company Act Release No. 2798, December 2, 1958 [23 F.R. 9603]. Paragraph (h) of Rule 22d-1 was subsequently amended. (Act Release No. 6347, February 8, 1971 [36 FR 2966].)

[2] *In the Matter of the Application of United Funds, Inc. et al.* (Act Release No. 7189, May 25, 1972); *In the Matter of Dreyfus Corp., et al.* (Act Release No. 7279, July 18, 1972).

[3] The Rule as adopted makes it clear in subsection (iii) that an investment company may elect to have a cutoff point for no-load reinvestment of less than 30 days.

The Rule as proposed and as now adopted provides that sales personnel shall receive no compensation of any kind based on the reinvestment. This provision is designed to ensure that redeeming shareholders are not subjected to intensive sales efforts under the guise of providing them with information necessary to correct a mistaken redemption. The 30 day limitation also is designed to curtail the possibility of such a sales effort. A further explanation of this restriction and some modification appear appropriate in light of comments received on the proposal of the rule.

The rule contemplates that the reinvestment privilege will be applicable to purchases of shares in the same investment company or another investment company which offers a no-load exchange privilege to shareholders of the fund whose shares were redeemed. In numerous investment company complexes, a small charge is assessed upon transfers from an investment company in the complex to another to cover the administrative expenses inherent in such exchanges. It appears appropriate to permit this charge where, in exercising his reinvestment privilege pursuant to Rule 22d–2, a shareholder elects to exercise his exchange privilege simultaneously. For this reason, the Rule, as adopted, defines the term "no-load exchange privilege" so that such a privilege may be subject to a nominal, specified administrative charge and other conditions uniformly applied to exchanges involving the investment companies in question.

The Commission has considered the issue of whether redemption and exercise of the Rule 22d–2 reinvestment privilege with respect to periodic payment or contractual plans for the purchase of investment company shares should apply to proceeds of the 45-day and 18-month refund rights under section 27 [15 U.S.C. 80a–27] of the Act.[4] An inequity might be created if contractual plans were permitted to utilize Rule 22d–2 to permit no-load reinvestment for persons who had exercised their section 27 rights. Since such persons would have received back all or a portion of their sales loads, to permit them to reinvest at no load would discriminate in their favor as compared with persons who had never redeemed at all; the former would have paid less sales load (perhaps none) for their investment than the latter. Conversely, if Rule 22d–2 were modified to provide for a reinstatement of such persons in a contractual plan with a repayment to the underwriters of sales charges previously refunded, an incentive would exist for a strong sales effort to persuade such persons to reinvest, which effort might, in effect, interfere with the free exercise of the redemption and section 27 privileges. For these reasons, the rule has been modified from the form in which it was originally proposed so that it will not be applicable to persons reinvesting monies they received from a contractual plan after an exercise of their Section 27 privilege. In all other cases where an investor is permitted to reinvest pursuant to Rule 22d–2 in a contractual plan, however, he should certainly be afforded the same credit for purposes of determining future sales loads as would have been accorded him had he never redeemed. Any other result would tend to frustrate the purpose of the rule to permit the correction of mistaken redemption.

Rule 22d–2 will permit a shareholder who has redeemed investment company shares to reinvest an amount not in excess of the proceeds of redemption in that company or in any other investment company which offers an exchange privilege at net asset value. The reinvestment privilege (a) must be offered pursuant to a uniform offer described in the prospectus; (b) may be exercised only once by an investor with respect to any particular investment company; and (c) must be exercised within 30 days of the redemption.

With regard to the one-time limitation on exercise of the Rule's reinvestment privilege:

(1) The Commission has deleted the provision in the Rule as proposed that a shareholder may not exercise his reinvestment privilege as to one investment company if he has exercised the same privilege previously with respect to another investment company security purchased from the same principal underwriter. This requirement has been deleted because of the inherent mechanical and administrative problems it may pose for the investment companies involved. However, investment companies may elect to apply this condition to their reinvestment privileges under the rule, subject, of course, to complete prospectus disclosure.

(2) The provision that shareholders may exercise the reinvestment privilege only once refers to reinvestments made at no-load pursuant to either Rule 22d–2 or an order of the Commission exempting investment company in question from section 22(d). It does not rule out exercise of the privilege by persons who have otherwise redeemed and reinvested paying the applicable sales load. Similarly, this rule does not abrogate provisions of periodic payment or contractual plans for the purchase of investment company shares whereby an investor may withdraw up to 90 percent of his investment and then return it after 90 days if he has not exercised that privilege previously during the year. Rule 22d–2 is intended to allow investors who have redeemed by mistake to rectify their mistakes without additional cost, while the contractual plan provisions just discussed are intended to permit investors to make withdrawals for emergency purposes from plan accounts which they have accumulated on a regular basis over some period of time and to reinvest up to the amount withdrawn without incurring further sales charges. That being the case, it is not necessary to conform Rule 22d–2 to such contractual plan provisions by requiring an investor who had redeemed by mistake to wait 90 days before he could correct his mistake, or requiring an investor in a contractual plan who had an immediate need for funds to reinvest such funds within 90 days of their withdrawal.

[4] Section 27 of the Act was amended as part of the Investment Company Act Amendments Act of 1970 [Pub. L. 91–547, 91st Cong., 84 Stat. 1424] so that a planholder who starts a periodic payment plan on or after June 14, 1971 has certain rights including (a) a 45 day right of withdrawal and refund *and* (b) either (i) a direct limit on the amounts which may be deducted for sales charges from payment during the early years of the plan *or* (ii) an indirect limit on such charges in the form of a right to receive a refund of a portion of the sales charges during the first 18 months of the plan.

COMMISSION ACTION

The Securities and Exchange Commission pursuant to the authority granted to it by sections 6(c), 22(d) and 38(a) of the Investment Company Act of 1940 hereby amends Part 270 of Chapter II of Title 17 of the Code of Federal Regulations by adding a new § 270.22d–2 reading as follows:

§ 270.22d–2 Sales of redeemable securities without a sales load following redemption.

(a) A registered investment company which is the issuer of redeemable securities, a principal underwriter of such securities, or a dealer therein shall be exempted from the provisions of section 22(d) of the Act to the extent necessary to permit the sale of such securities by such persons at prices which reflect the elimination of the sales load pursuant to a uniform offer described in the prospectus to any person who has redeemed shares in such company and, with the proceeds of that redemption, purchases shares of such company, or of another investment company which offers shareholders in such company a no-load exchange privilege: Provided, however, (1) that such sales does not exceed the amount of the redemption proceeds (or the nearest full share if fractional shares are not purchased); (2) that no such sale may be made to any shareholder who has exercised the reinvestment privilege previously with respect to any redeemable security issued by such company; (3) that such redemption did not involve a refund of sales charges pursuant to sections 27(d) or 27(f) of the Act; (4) that such sale is effected within 30 days after such redemption, or within such lesser time as is described in the prospectus; and (5) that sales personnel and dealers receive no compensation of any kind based on the reinvestment.

(b) "No-load exchange privilege" as used in this § 270.22d–2 shall mean a privilege whereby a shareholder of a registered investment company is permitted to redeem shares of such company and to use the proceeds of such redemption to purchase shares of another registered investment company without payment of a sales load; such an exchange privilege may be subject to a nominal, specified administrative charge

and other conditions uniformly applied to exchanges involving such investment companies."

(Secs. 6(c), 22(d), 38(a), 54 Stat. 800, 823, 841; (15 U.S.C. 80a-6(c), 80a-22(d), 80a-37(a)))

This rule shall become effective on March 29, 1974.

Dated: February 20, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-5013 Filed 3-4-74;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 27—CANNED FRUITS AND FRUIT JUICES

Canned Applesauce; Amendment of Standards of Identity and Fill of Container

In the matter of amending the definition and standards of identity (21 CFR 27.80) and fill of container (21 CFR 27.81) for canned applesauce: A notice of proposed rule making in the above identified matter was published in the FEDERAL REGISTER of May 10, 1973 (38 FR 12234) based upon a proposal by the Commissioner of Food and Drugs to amend the Food and Drug Administration standards for canned applesauce in consideration of the "Recommended International Standard for Canned Applesauce."

One comment was received in response to the proposal. The comment, which favored the proposal, was from the National Canners Association. It indicated that all comments received from its membership were favorable to the changes proposed in the standards.

It was brought to the attention of the Commissioner that, since he announced in the preamble of the proposal that the purpose of amending the Food and Drug Administration standard was to facilitate international trade by adopting as far as practicable provisions of the Codex standard, he may wish to consider deleting the limitation on the quantity of edible organic acids used in applesauce so as to agree with Codex. An investigation into the matter indicates that these organic acids are added to applesauce in minimal quantities during the season to adjust the Brix/acid ratio, and that the quantities added are self-limiting.

Therefore, the Commissioner concludes that under these circumstances, and since added edible organic acids will be declared on the label by their common name, it will facilitate international trade to delete the limitation on the quantity of organic acids used in canned applesauce.

In consideration of the comment received and other relevant information, the Commissioner concludes that it will promote honesty and fair dealing in the interest of consumers to amend the definition and standards of identity and fill of container for canned applesauce as set forth below.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055-1056, as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 371)) and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered,* That Part 27 of Title 21 of the Code of Federal Regulations be amended by revising §§ 27.80 and 27.81 to read as follows:

§ 27.80 Canned applesauce; identity; label statement of optional ingredients.

(a) *Definition.* Canned applesauce is the food prepared from comminuted or chopped apples (*Malus domestica* Borkhausen), which may or may not be peeled and cored, and which may have added thereto one or more of the optional ingredients specified in paragraph (b) of this section. The apple ingredient is heated and, in accordance with good manufacturing practices, bruised apple particles, peel, seed, core material, carpel tissue, and other coarse, hard, or extraneous materials are removed. The food is sealed in containers. It is so processed by heat, either before or after sealing, as to prevent spoilage. The soluble solids content, measured by refractometer and expressed as percent sucrose (degrees Brix) with correction for temperature to the equivalent at 20° C. (68° F.), is not less than 9 percent (exclusive of the solids of any added optional nutritive carbohydrate sweeteners) as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Edition, 1970, page 371, § 22.019, "Soluble Solids (By Refractometer) in Fresh and Canned Fruits, Jams, Marmalades, and Preserves—Official First Action"[1] without correction for water-insoluble solids, invert sugar, or other substances.

(b) *Optional ingredients.* The following safe and suitable optional ingredients may be used:

(1) Water.

(2) Apple juice.

(3) Salt.

(4) Any organic acid added for the purpose of acidification. (Organic acids generally recognized as having a preservative effect are not permitted in applesauce except as provided for in paragraph (b)(8) of this section.)

(5) Dry nutritive carbohydrate sweeteners.

(6) Spices.

(7) Natural and artificial flavoring.

(8) Either of the following:

(i) Erythorbic acid or ascorbic acid as an antioxidant preservative in an amount not to exceed 150 parts per million; or

(ii) Ascorbic acid (vitamin C) in a quantity such that the total vitamin C in each 113 g (4 ounces) by weight of the finished food amounts to 60 mg. This requirement will be deemed to have been met if a reasonable overage of the vitamin, within limits of good manufacturing practice, is present to insure that the required level is maintained throughout the expected shelf life of the food under customary conditions of distribution.

(9) Color additives in such quantity as to distinctly characterize the food unless such addition conceals damage or inferiority or makes the finished food appear better or of greater value than it is.

(c) *Nomenclature.* The name of the food is "applesauce." The name of the food shall include a declaration indicating the presence of any flavoring that characterizes the product as specified in § 1.12 of this chapter and a declaration of any spice that characterizes the product. If a nutritive sweetener as provided for in paragraph (b)(5) of this section is added and the soluble solids content of the finished food is not less than 16.5 percent as determined by the method referred to in paragraph (a) of this section, the name may include the word "sweetened." If no such sweetener is added, the name may include the word "unsweetened."

(d) *Label declaration.* Each of the optional ingredients shall be declared on the label as required by the applicable sections of Part 1 of this chapter. However, when ascorbic acid (vitamin C) is added as provided for in paragraph (b)(8)(ii) of this section, after the application of heat to the apples, preservative labeling requirements do not apply.

§ 27.81 Canned applesauce; fill of container; label statement of substandard fill.

(a) The standard of fill of container for canned applesauce is a fill of not less than 90 percent of the total capacity of the container, as determined by the general method for fill of containers prescribed in § 10.6(b) of this chapter; except that in the case of glass containers having a total capacity of 192 ml (6½ fluid ounces) or less, the fill is not less than 85 percent.

(b) Sampling and acceptance procedure: A lot will be deemed to fall below the standard of fill when the number of "defectives" exceeds the acceptance number "c" in the sampling plans prescribed in paragraph (b)(2) of this section.

(1) Definitions of terms to be used in the sampling plans in paragraph (b)(2) of this section are as follows:

(i) *Lot.* A collection of primary containers or units of the same size, type, and style manufactured or packed under similar conditions and handled as a single unit of trade.

(ii) *Lot size.* The number of primary containers or units in the lot.

(iii) *Sample size "n."* The total number of sample units drawn for examination from a lot as indicated in paragraph (b)(2) of this section.

(iv) *Sample unit.* A container, the entire contents of a container, a portion of the contents of a container, or a com-

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

posite mixture of product from small containers that is sufficient for examination or testing as a single unit.

(v) *Defective.* A container that falls below the requirement for minimum fill prescribed in paragraph (a) of this section is considered a "defective."

(vi) *Acceptance number "c."* The maximum number of defective sample units permitted in the sample in order to consider the lot as meeting the specified requirements.

(vii) *Acceptable quality level (AQL).* The maximum percent of defective sample units permitted in a lot that will be accepted approximately 95 percent of the time.

(2) Sampling and acceptance:

Acceptable quality level (AQL) 6.5

Lot size (primary containers)	Size of container	
	Net weight equal to or less than 1 kg (2.2 lbs)	
	n	*c*
4,800 or less	13	2
4,801 to 24,000	21	3
24,001 to 48,000	29	4
48,001 to 84,000	48	6
84,001 to 144,000	84	9
144,001 to 240,000	126	13
Over 240,000	200	19
	Net weight greater than 1 kg (2.2 lbs) but not more than 4.5 kg (10 lbs)	
	n	*c*
2,400 or less	13	2
2,401 to 15,000	21	3
15,001 to 24,000	29	4
24,001 to 42,000	48	6
42,001 to 72,000	84	9
72,001 to 120,000	126	13
Over 120,000	200	19
	Net weight greater than 4.5 kg (10 lbs)	
	n	*c*
600 or less	13	2
601 to 2,000	21	3
2,001 to 7,200	29	4
7,201 to 15,000	48	6
15,001 to 24,000	84	9
24,001 to 42,000	126	13
Over 42,000	200	19

n=number of primary containers in sample.
c=acceptance number.

(c) If canned applesauce falls below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard fill specified in § 10.7(b) of this chapter, in the manner and form therein specified.

Any person who will be adversely affected by the foregoing order may at any time on or before April 4, 1974 file with the Hearing Clerk, Food and Drug Administration, Room 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 for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by 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. This order shall become effective May 6, 1974, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the FEDERAL REGISTER.

(Secs. 401, 701, 52 Stat. 1046, 1055-1056, as amended by 70 Stat. 919 and 72 Stat. 948; (21 U.S.C. 341, 371))

Dated: February 22, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-4991 Filed 3-4-74;8:45 am]

Title 31—Money and Finance: Treasury

CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

PART 51—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Miscellaneous Amendments

Pursuant to the authority vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. Supp. II, 1221-1263), approved October 20, 1972, the Department of the Treasury hereby amends the regulations in Part 51 of Subtitle B of Title 31, Code of Federal Regulations, which became effective on April 5, 1973 (38 FR 9232) and amended on July 13, 1973 (38 FR 18668), for the entitlement period beginning January 1, 1973, and for entitlement periods subsequent thereto.

These amendments are intended primarily to clarify the language of certain provisions of the regulations and to give notice to State and local governments of certain internal procedures in use by the Office of Revenue Sharing. Because the purpose of these amendments is to provide immediate guidance to the States and local units of government as to procedures applicable after December 31, 1972, in order that the requirements of the Act be complied with, it is hereby found impracticable to issue these amendments with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

Section 51.22(a) provides for the determination of the date on which revenue sharing entitlements will be made final and no longer subject to adjustment. This section restricts the selection to a date which is subsequent to the entitlement period for which the entitlements are allocated. However, the data improvement program upon which adjustments depend has been accelerated to such an extent that final entitlements are now available prior to the close of the affected entitlement. Accordingly, § 51.22(a) is being amended to provide that entitlements may be declared final as soon as practicable without regard to the end date of the affected entitlement period.

Section 51.24(a) sets forth the procedure by which a recipient government may waive payment of its revenue sharing entitlement. The present section contemplates only the waiver of funds for a specifically identified entitlement period. In certain cases, however, adjustments from earlier entitlements have been scheduled to be added to or subtracted from the waived entitlement. Section 51.24(a) is being amended to provide not only for the waiver of the referenced entitlement but also for the waiver of any adjustments which were scheduled to be added to it. Section 51.24 is also being amended to add a new paragraph (b) which states the procedure that will be followed by the Office of Revenue Sharing in constructively waiving a recipient government's entitlement. This procedure has been made necessary by the fact that some governments have failed to comply with the communication or reporting requirements upon which the release of entitlement funds are conditioned and have refused to execute a waiver pursuant to paragraph (a) of this section. In order to prevent the distribution of entitlement funds from being indefinitely delayed, paragraph (b) is being added to this section to provide the affected recipient government with two opportunities to achieve compliance and if compliance is not forthcoming, a constructive waiver will be determined to have occurred.

Section 51.25(b) states the procedure by which the Office of Revenue Sharing will adjust entitlement payments because of previous underpayments or overpayments. It was previously contemplated that entitlements for a given entitlement period would be adjusted only through an alteration of entitlement payments attributable to a subsequent entitlement period. Recently, final data has been available to the Office of Revenue Sharing during the affected entitlement period, thus making possible intra-period adjustments. Accordingly, § 51.25(b) is being amended to make explicit the alternative procedure which may be followed by the Office of Revenue Sharing to revise entitlements by adjusting entitlement payments during the applicable entitlement period rather than adjusting only the entitlement payments of subsequent entitlement periods.

Section 51.27(a) notifies State governments of the procedure to be followed in the event that they decide to adopt an optional allocation formula for use by the Office of Revenue Sharing to determine the entitlements of units of local government. The present section requires the State to provide the Secretary with a minimum of 30 day's notice in advance of the entitlement period to which the optional allocation formula is to apply. This section is being amended to require a notice of at least 90 days in order

that the Office of Revenue Sharing may prepare reliable entitlement estimates for the affected local governments and make the adjustments necessary for transition to a new formula.

Section 51.33(a) provides that recipient governments must insure that contractors and subcontractors will comply with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), and applicable regulations of the U.S. Department of Labor in the event that 25 percent or more of the cost of any construction project is paid using entitlement funds. Because the Davis-Bacon Act is only applicable to construction projects which have a total cost in excess of $2,000, § 51.33(a) is being amended to provide recipient governments with notice of this minimum cost. Section 51.33(b) provides guidance on the subject of obtaining wage rate determinations for construction projects covered by the Davis-Bacon Act. This section is being amended to notify recipient governments that if they are within a geographic area covered by general wage rate determinations, they may obtain applicable wage rates from an issue of the FEDERAL REGISTER rather than submitting a Standard Form 308. Also, this section is being amended to inform recipient governments that the Employment Standards Administration is the appropriate unit with which to file the Standard Form 308 in the applicable regional office of the U.S. Department of Labor.

Section 51.40(b) provides that recipient governments must use, obligate, or appropriate their entitlement funds within 24 months from the end of the entitlement period to which the check is applicable. Questions have been raised concerning the time limitation within which recipient governments must use, obligate, or appropriate interest earned on entitlement funds invested while in the local trust fund. The answer is interest earned on entitlement funds must be used, obligated, or appropriated within 24 months from the end of the entitlement period during which the interest was received or credited and the section is being amended to reflect that answer.

The foregoing amendments are issued under authority of Title I of the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. Supp. II, 1221–1263) and Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342). These amendments shall become effective February 28, 1974 and are applicable to entitlement periods beginning on or after January 1, 1973.

Dated: February 27, 1974.

[SEAL] GRAHAM W. WATT,
Director,
Office of Revenue Sharing.

Approved:
EDWARD C. SCHMULTS,
General Counsel.

The first sentence of § 51.22(a) is amended by deleting the words "as of" and inserting in lieu thereof the words "not later than." The second sentence of § 51.22(a) is amended by deleting the phrase "after the close of that entitlement period." As amended § 51.22(a) reads:

§ 51.22 Date for determination of allocation.

(a) *In general.* Pursuant to the provisions of § 51.20 (a) and (b) (3), the determination of the data definitions upon which the allocations and entitlements for an entitlement period is to be calculated shall be made not later than the day immediately preceding the beginning of the entitlement period. The final date upon which determinations of allocations and entitlements, including adjustments thereto, may be made for an entitlement period shall be determined by the Secretary as soon as practicable and shall be publicized by notice in the FEDERAL REGISTER.

The fourth sentence of § 51.24(a) is amended by inserting the phrase "and adjustments thereto, if any, resulting from recalculation of earlier entitlements" after the word "waived." Section 51.24 is further amended by redesignating paragraphs (b) and (c) as (c) and (d) and by inserting a new paragraph (b). As amended these provisions read as set forth below:

§ 51.24 Waiver of entitlement, nondelivery of checks; insufficient data.

(a) * * * The entitlement waived, and adjustments thereto, if any, resulting from recalculation of earlier entitlements, shall be added to and shall become a part of the entitlement of the next highest unit of government eligible to receive entitlement funds in that State in which the unit of government waiving entitlement is located. * * *

(b) *Constructive waiver.* Any recipient government which has not waived and is otherwise eligible to receive entitlement payments and which has failed to provide required reports, assurances or certifications pursuant to Subpart B is subject to a determination of having constructively waived its entitlement funds for the affected entitlement period through inaction. The Secretary, prior to such a determination, shall notify nonresponsive recipient governments of their noncompliance and that their entitlement funds are being temporarily withheld pursuant to § 51.3(b). If compliance is not achieved within a reasonable period of time, which shall not be less than 30 days, the Secretary shall notify the affected recipient governments that if compliance is not achieved within a period of 30 days after mailing such notice, a constructive waiver of entitlement funds will be determined to have occurred. Entitlement funds thus constructively waived will be redistributed pursuant to the provisions of paragraph (a) of this section.

The subject heading of paragraph (b) of § 51.25 is amended by deleting the word "future." The first sentence of § 51.25(b) is amended by deleting the phrase "for future entitlement periods" and the word "future." As amended, the subject heading and first sentence of § 51.25(b) read:

§ 51.25 Reservation of funds and adjustment of entitlement.

* * * * *

(b) *Adjustment to entitlement payments.* Adjustment to an entitlement of a recipient government will ordinarily be effected through alteration to entitlement payments unless there is a downward adjustment which is so substantial as to make payment alterations impracticable or impossible. * * *

The second sentence of § 51.27(a) is amended by deleting the number "30" and by inserting in lieu thereof the number "90". As amended, the second sentence of § 51.27(a) reads:

§ 51.27 Optional formula.

(a) * * * Any State which provides by law for such a variation in the allocation formula provided by subsections 108(a) or 108(b) (2) and (3) of the Act, shall notify the Secretary of such law not later than 90 days before the beginning of the first entitlement period to which such law is to apply. * * *

Section 51.33 (a) and (b) is revised to read as follows:

§ 51.33 Wage rates and labor standards.

(a) *Construction laborers and mechanics.* A recipient government which receives entitlement funds under the Act shall require that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project costing in excess of $2,000.00 and of which 25 percent or more of the cost is paid out of its entitlement funds: (1) Will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a–276a–5); and (2) will be covered by labor standards specified by the Secretary of Labor pursuant to 29 CFR Parts 1, 3, 5, and 7.

(b) *Request for wage determination.* In situations where the Davis-Bacon standards are applicable, the recipient government must ascertain the U.S. Department of Labor wage rate determination for each intended project and insure that the wage rates and the contract clauses required by 29 CFR 5.5 and 29 CFR 5a.3 are incorporated in the contract specifications. The recipient government must also satisfy itself that the bidder is made aware of his labor standards responsibilities under the Davis-Bacon Act. Wage rate determinations may be obtained by filing a Standard Form 308 with the Employment Standards Administration of the applicable regional office of the U.S. Department of Labor at least 30 days before the invitation for bids or, in case of construction covered by general wage rate determinations, the appropriate rate may be obtained from the FEDERAL REGISTER.

The first two sentences of § 51.40(b) are revised and a new sentence added, all of which to read as set forth below:

§ 51.40 Procedures applicable to the use of funds.

* * * * *

(b) Use, obligate, or appropriate such funds within 24 months from the end of the entitlement period to which the check is applicable. Any interest earned on such funds while in the trust fund shall be used, obligated, or appropriated within 24 months from the end of the entitlement period during which the interest was received or credited. An extension of time in which to act on the funds, or interest earned thereon, must be obtained by application to the Secretary. * * *

* * * * *

[FR Doc.74-4939 Filed 2-28-74;9:47 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER D—WATER PROGRAMS

PART 104—PUBLIC HEARINGS ON EFFLUENT STANDARDS FOR TOXIC POLLUTANTS

Pursuant to the authority of section 307(a) of the Federal Water Pollution Control Act, as amended (the Act) (Pub. L. 92-500, 86 Stat. 816), notice is hereby given that the Environmental Protection Agency has adopted amendments to Part 104, Title 40, Code of Federal Regulations, as set forth below.

Part 104 sets forth rules of practice applicable to public hearings in connection with the establishment of effluent standards for toxic pollutants. The rules were published in the FEDERAL REGISTER (39 FR 1027, Friday, January 4, 1974), effective upon publication.

Pursuant to notice published in the FEDERAL REGISTER (38 FR 35388, Thursday, December 27, 1973), a public hearing under this Part was convened on January 25, 1973, to consider proposed effluent standards for toxic pollutants under section 307(a) of the Act. At that first day of hearing, it became clear that the rules of practice could be construed in such a way as to allow the application of traditional rules of evidence applicable to adjudicatory hearings, and to exclude from the hearing record public comments received pursuant to the notice setting forth the proposed standards, and other unsworn documents which might be submitted by any party.

These amendments clarify the regulations with respect to the admissibility of evidence and the contents of the hearing record. The Agency believes that views, arguments, and data submitted by the public should be considered in the formulation of effluent standards for toxic pollutants. The standards affect not only the industries which discharge the pollutants, but also fishermen, sportsmen, and anyone who drinks water which might contain one of the pollutants which are subject to the standards—in short, all members of the public as a whole. Yet the formal parties to the first hearing include 34 industries and trade associations, two environmental groups, and no members of the general public. While this can be ascribed to the difficulty and expense inherent in formal participation in hearings of this nature, it underscores the need to provide for wider public participation in accordance with section 101(e) of the Act.

To provide such public participation, the Notice of Proposed Rulemaking for the proposed standards provided that public comments could be sent to Dr. C. H. Thompson, Chairman, Hazardous and Toxic Substance Regulation Task Force, Office of Water Program Operations, Environmental Protection Agency, Washington, D.C. 20460. However, since the statute requires any modifications in the proposed standards to be based upon a preponderance of evidence adduced at the hearing, such comments may not be considered unless they appear as part of the record of the hearing. These amendments clarify that all public comments shall be admitted to the record of the hearing.

With respect to evidence presented at the hearing itself, it is clear that nothing is gained by admitting only those affidavits or exhibits which are subject to cross-examination. While such evidence is clearly admissible, and should be given considerable weight in any final decision, it is necessary to investigate a wide range of data in finding the "legislative facts" involved in this rulemaking proceeding. Thus, for example, it may be necessary to consider scientific reports, articles in scholarly journals, and reports prepared by the Environmental Protection Agency or other Federal or State agencies, in arriving at the required decision. It would be arbitrary for the Agency to refuse to consider such matter solely on the formalistic grounds that the author is not available for cross-examination.

The time limitations set forth in the Act are also relevant to these evidentiary questions, as is the complexity of the questions to be investigated. The Act requires promulgation of the proposed standards within six months after proposal unless the Administrator determines on the record that a modification is justified. If he finds that a modification is justified, he must immediately promulgate a revised standard. In addition to these constraints, the Act requires the Administrator to consider "the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms * * *." This broad range of issues must be considered for all nine pollutants considered at the hearing, and each of the 36 objectors must be afforded a full opportunity to present evidence and, to the extent practicable, to respond to evidence appearing in the record. It seems clear that this cannot be done within the constraints of traditional full cross-examination, even if direct testimony is submitted in writing. For this reason, the existing rules give the presiding officer authority to limit oral testimony and cross-examination (§ 104.11 (b)). Such limitations should not, however have the effect of excluding from the record (and therefore from the Administrator's consideration) important and relevant information.

The Administrative Procedure Act (5 U.S.C. 551 et seq.) provides generally that in on-the-record hearings, "A party is entitled * * * to conduct such cross-examination as may be required for a full and true disclosure of the facts." 5 U.S.C. 556(d). That section further provides, however, that "In rulemaking * * * an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form." Thus, the APA recognizes the lesser utility of cross-examination in assessing evidence in rulemaking proceedings.

It does not appear, moreover, that any party would be prejudiced by the adoption of procedures allowing the submission of written evidence without cross-examination. All parties will equally have the right to submit such evidence. The rules provide an ample opportunity for parties to respond to evidence submitted by other parties. As before, the rules require the Administrator to consider the extent to which cross-examination was afforded in assigning weight to evidence in the record. Finally, it should be noted that the delays and the deficiencies in the record which would result from following strict adjudicatory procedures would result, in a hearing of this nature, in detriment to the environmental goals which the Act was intended to achieve.

For these reasons, it is appropriate to amend the regulations to provide for the admission into the hearing record of all relevant and material documentary evidence, whether or not a witness is available for cross-examination with respect to such evidence. Only in this manner can a record sufficiently comprehensive to sustain findings required under the Act be produced within the time limitations set forth in the Act.

Because these amendments constitute "rules of agency procedure or practice", notice and public procedure hereon are not required by 5 U.S.C. 553. The regulations set forth below are hereby adopted, effective March 5, 1974.

Dated: February 22, 1974.

JOHN R. QUARLES, Jr.,
Deputy Administrator.

Part 104 of Title 40, Code of Federal Regulations, is amended as follows:

1. The first sentence of § 104.5 is amended to read as follows:

§ 104.5 Notice of conference.

Whenever the Administrator publishes a notice of hearing under this Part, the hearing clerk shall promptly establish a docket for the hearing, which shall constitute the record of the hearing.

2. Paragraph (g) of § 104.10 is revoked and paragraph (f) is amended to read as follows:

§ 104.10 Conference procedure.

* * * * *

(f) Any relevant and material documentary evidence shall be received in evidence, including affidavits, published scientific articles, and official documents, regardless of whether or not the affiant, author, or maker is available for cross-examination. Where any such evidence is admitted without cross-examination, or where cross-examination is limited for any purpose by the presiding officer, the Administrator shall consider the extent to which an opportunity for cross-examination was provided in determining the weight to be accorded evidence appearing in the record."

[FR Doc.74-5016 Filed 3-4-74;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 5416]

[Idaho 3212, Nevada 054520]

IDAHO AND NEVADA

Powersite Restorations Nos. 691 and 692; Final Revocation of Powersite Reserve No. 113

By virtue of the authority contained in section 24 of the Act of June 10, 1920, as amended (16 U.S.C. 818 (1970)), and pursuant to the determination of the Federal Power Commission in DA-602-Idaho and DA-24-Nevada, it is ordered as follows:

1. The Executive Order of July 2, 1910, creating Powersite Reserve No. 113, as modified by Powersite Modification No. 53 of May 19, 1913, and as construed in Powersite Interpretation No. 60 of April 10, 1925, is hereby revoked as to the remaining lands reserved thereby described as follows:

IDAHO

BOISE MERIDIAN

T. 16 S., R. 15 E.,
Sec. 17, SW¼SW¼;
Sec. 18, SE¼SE¼;
Sec. 19, NE¼NE¼;
Sec. 20, W½NE¼, NW¼, NE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 28, NW¼NW¼;
Sec. 29, lots 3 and 4, NE¼, N½SE¼.

The lands described aggregate 878.12 acres in Twin Falls County.

NEVADA

MOUNT DIABLO MERIDIAN

T. 47 N., R. 64 E.,
Sec. 3, lot 4, S½NW¼, SW¼, W½SE¼;
Sec. 4, lots 1, 2, and 3, S½NE¼, NE¼SE¼;
Sec. 10, NW¼NE¼, S½NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 14, W½NW¼, SW¼;
Sec. 15, NE¼, N½SE¼, SE¼SE¼;
Sec. 22, E½NE¼, NE¼SE¼;
Sec. 23, NW¼, NW¼SW¼.

The lands described aggregate 1,991.45 acres in Elko County.

2. At 10 a.m. on April 3, 1974, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 3, 1974, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The lands have been and continue to be open to the filing of applications and offers under the mineral leasing laws, and to location and entry under the United States mining laws.

Inquiries concerning the lands in Idaho should be addressed to the Chief, Division of Technical Services, Bureau of Land Management, Boise, Idaho 83702, and inquiries concerning the lands in Nevada should be addressed to the Chief, Division of Technical Services, Bureau of Land Management, Reno, Nevada 89502.

JACK O. HORTON,
Assistant Secretary of the Interior.

FEBRUARY 26, 1974.

[FR Doc.74-4999 Filed 3-4-74;8:45 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

Scope and Applicability of Titles I, X, XIV, and XVI of the Social Security Act

Part 201, Chapter II, Title 45 of the Code of Federal Regulations is amended to clarify the effect of sections 301 and 303 of Public Law 92-603, Social Security Amendments of 1972.

As of January 1, 1974, Puerto Rico, the Virgin Islands and Guam continue to administer public assistance programs for the aged, blind, or disabled under titles I, X, and XIV, or XVI, as in effect prior to that date. In the fifty States, those programs are superseded by the Federally administered Supplemental Security Income (SSI) program under the new title XVI that went into effect on January 1, 1974.

Since this regulation merely explains the statutory effect, notice and public comment thereon are unnecessary.

Part 201, Chapter II, Title 45 of the Code of Federal Regulations is amended by adding a new § 201.0 to read as follows:

§ 201.0 Scope and applicability.

Titles I, X, XIV and XVI (as in effect without regard to section 301 of the Social Security Amendments of 1972) shall continue to apply to Puerto Rico, the Virgin Islands, and Guam. The term "State" as used in such titles means Puerto Rico, the Virgin Islands, and Guam.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)
(Catalog of Public Assistance—13.754 Public Assistance-Social Services; 13.761 Public Assistance-Maintenance Assistance (State-Aid).)

Dated: February 20, 1974.

JAMES S. DWIGHT, Jr.,
Administrator, Social and Rehabilitation Service.

Approved: February 27, 1974.

FRANK CARLUCCI,
Acting Secretary.

[FR Doc.74-4985 Filed 3-4-74;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 1000—THE COMMISSION

Canons of Conduct

1. Section 1000.735-12 to Subpart B of Part 1000 of Chapter X of Title 49 of the Code of Federal Regulations is revised to read as follows:

§ 1000.735-12 Prohibited financial interests.

Members and employees shall not be employed by or hold any official relation to, or own any securities of, or be in any manner pecuniarily interested in carriers to the extent prohibited by the Interstate Commerce Act. This Canon prohibits (a) any direct interest in any for hire transportation company whether or not subject to the Interstate Commerce Act and (b) any interest in any company, mutual fund, conglomerate, or other enterprise which in turn has an interest of more than ten percent of its income from any for-hire transportation company whether or not subject to the Interstate Commerce Act. (The Commission, notation vote, October 2, 1973.)

2. Appendix I to Subchapter B of Part 1000 of Chapter X of Title 49 of the Code of Federal Regulations is amended by adding additional positions to the list of employees required to submit ICC Form No. 1164, as follows:

APPENDIX I—LIST OF EMPLOYEES REQUIRED TO SUBMIT ICC FORM NO. 1164

* * * * *

7. Contract Administrator.

8. Chief, Procurement and Property Management Branch, Section of Administrative Services.

* * * * *

Amendment No. 1 approved by the U.S. Civil Service Commission on October 11, 1973. Amendment No. 2 approved by the Civil Service Commission on February 15, 1974. These amendments become effective on March 5, 1974.

(E.O. 11222 of May 9, 1965, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104.)

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-5045 Filed 3-4-74;8:45 am]

[S.O. 1123, Amdt. 2]

PART 1033—CAR SERVICE

Frank W. Pollock, Jr., and Northwestern Oklahoma Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of February 1974.

Upon further consideration of Service Order No. 1123 (38 FR 5174 and 24902), and good cause appearing therefore:

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

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., February 28, 1974.

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

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

By the Commission, Railroad Service Board.

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

[FR Doc.74–5049 Filed 3–4–74;8:45 am]

[S.O. 1126, Amdt. 2]

PART 1033—CAR SERVICE

Baltimore and Ohio Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of February, 1974.

Upon further consideration of Service Order No. 1126 (38 FR 6999 and 22790), and good cause appearing therefor:

It is ordered, That: § *1033.1126 Service Order No. 1126,* (The Baltimore and Ohio Railroad Company authorized to operate over tracks of Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., February 28, 1974.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; (49 U.S.C. 1, 12, 15, 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), 17(2))

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

By the Commission, Railroad Service Board.

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

[FR Doc.74–5050 Filed 3–4–74;8:45 am]

[S.O. 1131, Amdt. 3]

PART 1033—CAR SERVICE

Chicago, Rock Island and Pacific Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of February 1974.

Upon further consideration of Service Order No. 1131 (38 FR 9232, 17845 and 33399), and good cause appearing therefor:

It is ordered, That: § *1033.1113 Service Order No. 1131* (Chicago, Rock Island and Pacific Railroad Company authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 31, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., February 28, 1974.

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

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

By the Commission, Railroad Service Board.

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

[FR Doc.74–5051 Filed 3–4–74;8:45 am]

[Ex Parte No. MC–84]

PART 1060—SPECIAL TEMPORARY RELIEF FOR MOTOR CARRIERS AFFECTED BY A HIGHWAY CLOSING

Special Relief for Motor Carriers Affected by Temporary Closing of West Virginia Highways

FEBRUARY 28, 1974.

In the report of the Commission in the above-entitled proceeding decided October 30, 1970 (112 M.C.C. 323), special regulations (49 CFR 1060.1) were promulgated to ensure continuous movement of traffic between certain points in West Virginia via a described Ohio highway due to the temporary closing of the only feasible West Virginia routing. The regulations and the special limited certificate issued in accordance with them were expressly conditioned to expire automatically upon the reopening of West Virginia Highway 2 between New Martinsville and Wheeling, W. Va. This portion of West Virginia Highway 2 has now been reopened and the involved regulations are of no further force and effect.

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

[FR Doc.74–5048 Filed 3–4–74;8:45 am]

Title 50—Wildlife and Fisheries

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

PART 33—SPORT FISHING

Bitter Lake National Wildlife Refuge, N. Mex.

The following special regulation is issued and is effective on March 5, 1974.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEW MEXICO

BITTER LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Bitter Lake National Wildlife Refuge, N. Mex., is permitted only on the areas designated by signs as open to fishing. These open areas, comprising approximately 550 acres, are delineated on maps available at refuge headquarters, 13 miles northeast of Roswell, N. Mex., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) Fishing is permitted from April 1 through October 15, 1974, inclusive.

(2) The use of boats or floating devices is prohibited.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through October 15, 1974.

BARNET W. SCHRANCK,
Refuge Manager, Bitter Lake National Wildlife Refuge, Roswell, N. Mex.

FEBRUARY 26, 1974.

[FR Doc.74-5026 Filed 3-4-74;8:45 am]

CHAPTER I—COST OF LIVING COUNCIL

Title 6—Economic Stabilization

PART 150—COST OF LIVING COUNCIL PHASE IV PRICE REGULATIONS

PART 152—COST OF LIVING COUNCIL PHASE IV PAY REGULATIONS

Toy and Game Manufacturing Industry; Price and Pay Exemptions

The purpose of these amendments is to exempt the sale of toys, games and similar products by firms which manufacture those products and to add a corresponding exemption to the Phase IV pay regulations.

In accordance with the Council's objective to remove controls selectively where conditions permit, the Council has decided to exempt the sale by the manufacturers of dolls, toys, games, children's vehicles (except bicycles), and similar products listed in the Standard Industrial Classification Manual, 1972 edition, in Industry Nos. 3942 and 3944. The price stability which has prevailed in this industry over the past few years is expected to continue in the absence of price controls. The industry is highly competitive, having over 1,000 firms which together offer a virtually limitless variety of choices and which depend heavily upon the availability of income to purchase these "discretionary" items.

Under §§ 150.11(e) and 150.161(b), a firm with revenues from the sale of exempt items remains subject to the profit margin constraints and reporting provisions of the Phase IV program unless in its most recent fiscal year it derived both (1) less than $50 million in annual sales and revenues from the sale or lease of nonexempt items and (2) 90 percent or more of its annual sales and revenues from the sale of exempt items or exempt sales.

As with all exemptions from Phase IV controls, firms subject to this amendment remain subject to review for compliance with appropriate regulations in effect prior to this exemption. A firm affected by this amendment will be held responsible for its pre-exemption compliance under all phases of the Economic Stabilization Program. A firm affected by this exemption alleged to be in violation of stabilization rules in effect prior to this exemption is subject to the same compliance actions as a non-exempt firm. These compliance actions include investigations, issuance of notices of probable violation, issuance of remedial orders requiring rollbacks or refunds and possible penalty of $2,500 for each stabilization violation.

As a complementary action to the exemption from price controls, the Council has also exempted pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment in the toys and games manufacturing industry. The exemption is set forth in new § 152.40s. The exemption is inapplicable to any such employee who receives an item of incentive compensation, or who is a member of an executive control group. The exemption is also inapplicable to any such employee whose duties and responsibilities are not of a type exclusively performed in or related to the toys and games manufacturing industry and whose pay adjustments are historically related to the pay adjustments of employees performing such duties outside the industry and are not related to the pay adjustments of other employees that are within the exemption. The exemption is further inapplicable to employees who are part of an appropriate employee unit where 25 percent or more of the members of such unit are not engaged on a regular and continuing basis in the operation of an establishment in the toys and games manufacturing industry or in support thereof. In cases of uncertainty of application, inquiries concerning the scope or coverage of the wage exemption should be addressed to the Administrator, Office of Wage Stabilization, P.O. Box 672, Washington, D.C. 20044.

The Council remains the authority to reestablish price and wage controls in this industry if price or wage behavior is inconsistent with the goals of the Economic Stabilization Program. The Council also has the power, under §§ 150.162 and 152.6, to require firms to file special or separate reports setting forth information relating to the Economic Stabilization Program in addition to any other reports which may be required under Phase IV controls program.

Because the purpose of these amendments is to grant an immediate exemption from the Phase IV price and pay regulations, the Council finds that publication in accordance with normal rule making procedure is impracticable and that good cause exists for making this amendment effective in less than 30 days. Interested persons may submit written comments regarding this amendment. Communication should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

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

In consideration of the foreging, Parts 150 and 152 of Title 6 of the Code of Federal Regulations are amended as set forth herein, effective March 1, 1974.

Issued in Washington, D.C. on March 1, 1974.

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

1. In 6 CFR Part 150, § 150.54 is amended by adding a new paragraph (ss) to read as follows:

§ 150.54 Certain price adjustments.

* * * * *

(ss) *Toys and Games.* The prices which manufacturers of the following products charge for those products are exempt: Products listed in the Standard Industrial Classification Manual, 1972 edition, under Industry Nos. 3942 and 3944.

2. In 6 CFR Part 152, Subpart D is amended by adding thereto a new § 152.40s to read as follows:

§ 152.40s Toys and games manufacturing industry.

(a) *Exemption.* Pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment in the toys and games manufacturing industry or in support of such operation are exempt from and not limited by the provisions of this title.

(b) *Establishment in the toys and games manufacturing industry.* For purposes of this section, "Establishment in the toys and games manufacturing industry" means an establishment classified in the Standard Industrial Classification Manual, 1972 edition, under Industrial Code 3942 (Dolls) and primarily engaged in the manufacture of dolls, stuffed animals, or stuffed toys; or under Industrial Code 3944 (Games, Toys, and Children's Vehicles; Except Dolls and Bicycles) and primarily engaged in the manufacture of games for adults and children or toys and certain children's vehicles.

(c) *Covered employees.* For purposes of this section, an employee is considered to be engaged on a regular and continuing basis in the operation of an establishment in the toys and games manufacturing industry or in support of such operation only if such employee is employed at an establishment in the toys and games manufacturing industry and only if such employee is employed by the firm which operates such establishment.

(d) *Limitation.* The exemption provided in paragraph (a) of this section shall not be applicable to—

(1) An employee who receives an item of incentive compensation subject to the provisions of §§ 152.124, 152.125, or § 152.126.

(2) An employee who is a member of an executive control group (determined pursuant to § 152.130).

(3) Employees whose occupational duties and responsibilities are of a type not exclusively performed in or related to the toys and games manufacturing industry and whose pay adjustments are—

(i) Historically related to the pay adjustments of employees performing such duties outside the toys and games manufacturing industry; and

(ii) Not related to pay adjustments of another unit of employees engaged on a regular and continuing basis in the operation of an establishment in the toys and games manufacturing industry or in sup-

port of such operation within the meaning of paragrah (c) of this section.

(4) Employees who are members of an appropriate employee unit if 25 percent or more of the employees who are members of such unit are not engaged on a regular and continuing basis in the operation of an establishment in the toys and games manufacturing industry or in support of such operation.

(e) *Effective date.* The exemption provided in this section shall be applicable to pay adjustments with respect to work performed on and after March 1, 1974.

[FR Doc.74-5157 Filed 3-1-74;4:00 pm]

PART 152—COST OF LIVING COUNCIL PHASE IV PAY REGULATIONS

Elimination of Executive Control Group Requirements for Tax Exempt Firms in the Health Care Industry and Certain Medical Practitioners

Section 152.130 is amended by the addition of a new paragraph (1). Paragraph (1)(1) eliminates the requirement that a tax exempt firm in the health care industry designate an executive control group (ECG) and apply separate mandatory controls to salaries and incentive compensation received by members of the ECG. Paragraph (1)(2) eliminates the ECG requirements for certain firms that are medical practitioners. This amendment does not exempt such firms from the mandatory controls imposed on pay adjustments in the health care industry under Subpart I.

On January 25, 1974, the Cost of Living Council exempted from wage controls the pay adjustments of most firms that are determined by the Internal Revenue Service to be exempt from Federal income taxation under § 501(a) of the Internal Revenue Code. However, pay adjustments of firms that are health care providers (other than those exempted by § 152.40b) were expressly retained under mandatory wage controls. A result of that action was to continue in effect the requirement that non-profit tax-exempt providers of health care (including many hospitals) designate ECGs and apply not only the mandatory controls on the health care industry set forth in Subpart I, but the mandatory controls on ECG pay adjustments set forth in § 152.130. These firms were the only firms exempt from taxation under § 501(a) of the Code that remained subject to § 152.130.

The Council has now determined that it is appropriate to remove the set of ECG restraints from tax-exempt firms in the health care industry. Such firms are by definition non-profit. Incentive compensation, when paid to officers and directors of such firms, is generally based on formulas tied to percentages of salary or percentages of gross revenues or billings, rather than percentages of profit margin. Most such employees receive no incentive compensation at all. The ECG rules were established by the Council in order to apply stricter controls where the prior rules presented the opportunity for top executives to receive salary and incentive compensation increases above the general standards because of the presence of lower-paid employees in the same appropriate employee unit. Compensation practices of non-profit tax-exempt health care providers do not generally lead to such disproportionate expenditure of salary and bonus amounts. Section 152.130(1)(1) in no way affects the status of health care providers that are not tax exempt.

Section 152.130(1)(2) eliminates the ECG requirements for a firm that is a medical practitioner (as defined in § 150.732 of the Council's Phase IV Health Regulations) if on February 27, 1974 the firm had fewer than 25 employees that are physicians, surgeons, osteopathic physicians, dentists, dental surgeons, or podiatrists. As in the case of a tax-exempt firm in the health care industry, such a firm remains subject to the mandatory controls on pay adjustments in the health care industry set forth in Subpart I.

Medical practitioners are not customarily tax-exempt. However, in professional service corporations with relatively few practitioner employees, there is rarely a management group comparable to the ECG required to be designated by firms in other industries. Physicians employed by such firms, for example, are customarily compensated primarily on the basis of their individual billings or net revenues or some other measure related to the service of patients rather than the performance of management functions. Even senior physicians (or "partners") in such a firm may exercise relatively little control over the compensation of other practitioner employees compared to the control over compensation exercised by members of an ECG in other industries. The Council has determined that the single set of mandatory controls set forth in Subpart I adequately restrains wage and salary increases of employees of the medical practitioner firms described in the regulation.

Certain firms in the health care industry were previously exempted from all wage controls by § 152.40b. That exemption remains in effect.

Because the purpose of these amendments is to grant an immediate exemption from portions of the Phase IV pay regulations, the Council finds that publication in accordance with normal rule making procedure is impracticable and that good cause exists for making this amendment effective in less than 30 days. Interested persons may submit written comments regarding this amendment. Communications should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street NW., Washington, D.C. 20508.

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

In consideration of the foregoing, Part 152 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective February 28, 1974.

Issued in Washington, D.C. on February 28, 1974.

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

In 6 CFR Part 152, § 152.130 is amended by the addition of a new paragraph (1) to read as follows:

§ 152.130 Executive control groups.

* * * * *

(1) *Exclusions from coverage.* Notwithstanding the provisions of paragraph (a) of this section, the provisions of this section shall not be applicable to—

(1) A firm that is determined by the Internal Revenue Service to be exempt from Federal income taxation under section 501(a) of the Code, with respect to pay adjustments for work performed on and after February 28, 1974.

(2) A firm that is a medical practitioner within the meaning of § 150.732 of this chapter and that on February 27, 1974 had fewer than 25 employees who are physicians, surgeons, osteopathic physicians, dentists, dental surgeons, or podiatrists, with respect to pay adjustments for work performed on or after February 28, 1974.

[FR Doc.74-5124 Filed 3-1-74;2:04 pm]

PART 152—COST OF LIVING COUNCIL PHASE IV PAY REGULATIONS

Executive Control Group Alternative Salary Computation Method

The purpose of the amendment set forth below is to make changes in the alternative salary computation method and the reporting rules for executive control groups which elect that method under § 152.130(d)(3).

Under the mandatory rules published October 26, 1973 (38 FR 29684), most firms were required to designate an executive control group (ECG). Each ECG is subject to limitations on salary increases (§ 152.130(d)) and limitations on incentive compensation (§ 152.130(e)). The general rule for limiting salary increases provides that during a fiscal year the average group salary rate for an ECG may not exceed 105.5 percent of the average group salary rate in effect for the group on the fiscal base date.

Another computation method was prescribed as an alternative to using the average group salary rate method. If this method is elected, wage and salary increases during a fiscal year may not exceed the general wage and salary standard applied to a base compensation rate for the group on the fiscal base date. Computations of increases under the alternative method are required to be recorded on the Council's Form PB-3 and to be made in accordance with the provisions of subpart E of part 201. Thus, the Council incorporated by reference in its regulations the computation rules adopted by the Pay Board that are still used on Form PB-3. However, the Council limited those rules by requiring that in-

creases in the average straight-time hourly rate be computed by using only the method in § 201.57.

The Council has received a number of reports from firms required to report ECG information under paragraph (f) of § 152.130. The reports from firms which elected to use the alternative computation method indicate that in the form presently prescribed the alternative computation method will not adequately serve the Council's objectives in monitoring executive salaries and incentive compensation. Further, the questions being asked of the Council with respect to this method indicate that the regulations in their present form are subject to misinterpretation, thus producing wide variances in the assembly and comparison of data from filed reports.

Accordingly, paragraph (d)(3) of § 152.130 has been substantially revised, but the general principles underlying the alternative computation method have been retained. The key changes include the manner in which the base compensation rate and increases therein are to be computed and presented on the Form PB–3 for a fiscal year, and the requirement that an additional Form PB–3 be submitted for the next succeeding fiscal year.

Paragraph (d)(3)(i) of § 152.130, as amended below, retains the general rule on election of the alternative method and makes clear that increases in salary and included benefits (and qualified benefits in excess of the applicable qualified benefits standard) are chargeable against the general wage and salary standard. Thus, the computation of salary increases within the ECG during a fiscal year must also take into account the secondary effect of such salary increases on both included and qualified benefits, as well as the cost of new benefits.

Paragraph (d)(3)(ii) of § 152.130 provides a new method for determining a base compensation rate for the ECG on the fiscal base date. Since ECG members are salaried, the Council believes it appropriate to compute the average straight-time hourly rate component by dividing total annual salaries in effect on the fiscal base date by 2080 hours per employee member of the group on that date. This method is prescribed in lieu of the method reflected on Form PB–3 and in subpart E of part 201 that authorizes use of a base payroll period for computation of the average straight-time hourly rate component of the base compensation rate. The Council recognizes that many executives work a variable schedule of hours. However, since the prescribed computation method has the effect of "freezing" hours from one fiscal year to the next, disruptive effects should be minimal. If the use of this new computation method results in serious inequities to members of an ECG, appropriate relief in the form of an exception is available under § 152.130(h) upon proper application to the Council. Similar computations are also provided with respect to determining both the included and qualified benefit components of the base compensation rate.

Paragraph (d)(3)(iii) of § 152.130 retains the general rule on computing increases in the base compensation rate, but limits the use of provisions in subpart E of part 201 to those not inconsistent with the revised computations prescribed under the alternative method. For example, longevity increases referred to in § 201.60(b) may still be excluded from computations and are not charged against the general wage and salary standard.

Paragraph (d)(3)(iv) of § 152.130 provides a new method for computing and reporting increases in wages and salaries to be reflected on reports with respect to completed fiscal years. Salary increases are computed for the group by dividing the sum of individual salary increases (expressed in annual amounts) by the product of the number of employees in the ECG on the fiscal base date and 2080 hours. Year-end reports are required to include increases granted during the completed fiscal year both to employees who were terminated and to employee additions to the group during that year. These increases are apportioned among the number of members in the group on the fiscal base date. Increases attributable to bona fide promotions remain excludible under the revised rule.

The amendment set forth below requires that any firm which elects to use the alternative computation method and which is required to report under § 152.130(f)(1) for a completed fiscal year will be required to submit an additional report projecting proposed increases in the ECG for the next succeeding fiscal year. The new reporting requirement is set forth in new paragraph (f)(4) of § 152.130. Prospective reports are required to be filed within 60 days after the close of any fiscal year ending after August 28, 1973. A "grandfather clause" is provided with respect to fiscal years completed prior to publication of this amendment, and firms will have at least 60 days in which to submit such prospective reports. Any firm which was required to report for a completed fiscal year and which elected the alternative computation method, but which has not submitted a year-end report prior to publication of this amendment, will be required to submit both its year-end report and its prospective report using the new rules published in this document.

Paragraph (d)(3)(v) of § 152.130 provides a new method for computing and reporting prospective increases in wages and salaries planned for the ECG in the fiscal year next succeeding the fiscal year for which a year-end report is submitted under paragraph (f)(1) of § 152.130. In line with the Council policy expressed on October 26, 1973, salary increases are required to be projected with respect to the actual employee complement in the ECG on the fiscal base date. Such increases are computed for the group by dividing the sum of proposed individual salary increases (expressed in annual amounts) by the product of the number of employees in the group on the fiscal base date and 2080 hours. Similarly, increases in included benefits and increases in qualified benefits would be projected by dividing the sum of the reasonable and supportable estimates of increases in the respective annualized individual benefit costs by the product of the number of employees in the group on the fiscal base date and 2000 hours.

Because the purpose of this amendment is to provide immediate guidance as to Cost of Living Council decisions, the Council finds that publication in accordance with normal rule making procedure is impracticable and that good cause exists for making this amendment effective in less than 30 days. Interested persons may submit comments regarding this amendment. Communications should be addressed to the Office of General Counsel, Cost of Living Council, Washington, D.C. 20508.

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

In consideration of the foregoing, Part 152 of Title 6 of the Code of Federal Regulations is amended as set forth herein effective March 5, 1974.

Issued in Washington, D.C. on February 28, 1974.

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

In 6 CFR Part 152, § 152.130 is amended by revising paragraph (d)(3) and by adding a new paragraph (f)(4) to read as follows:

§ 152.130 Executive control groups.

* * * * *

(d) *Limitation on salary increases.*
* * *

(3) *Alternative computation method.* (i) *General.* For purposes for this paragraph, and in lieu of the computation provided in paragraph (d)(2) of this section, a firm may elect to treat an executive control group as though such group were a separate appropriate employee unit. If such election is made, the total of salary increases, included benefit increases, and chargeable qualified benefit increases (within the meaning of § 201.59 of this title) in such group with respect to a fiscal year shall at no time exceed an amount expressed in dollars and cents per hour equal to the product of the base compensation rate (computed for such group with respect to the fiscal base date) and the general wage and salary standard.

(ii) *Base compensation rate defined.* If an election is made under paragraph (d)(3)(i) of this section, the base compensation rate shall incorporate with respect to the employees who are members of the executive control group—

(A) An average straight-time hourly rate, computed as of the fiscal base date by dividing the total annual salaries in effect with respect to such employees by 2080 hours per employee (disregarding

use of base payroll period data reflected on the Council's Form PB–3);

(B) An average hourly included benefit rate computed as of the fiscal base date by dividing the reasonable and supportable estimates of the total annual costs of included benefits for such employees by 2,000 hours per employee; and

(C) An average hourly qualified benefit rate computed as of the fiscal base date by dividing the reasonable and supportable estimates of the total annual costs of qualified benefits for such employees by 2,000 hours per employee.

(iii) *Increases in the base compensation rate. The* computation of increases in the base compensation rate determined under paragraph (d)(3)(ii) of this section (including increases in the average hourly included benefit rate and the average hourly qualified benefit rate) shall be recorded on the Council's Form PB–3 in the manner prescribed in paragraphs (d)(3)(iv) and (v) of this section, as applicable. However, the provisions of subpart E of part 201 of this title shall also apply to the extent the rules contained therein are not inconsistent with the computation method prescribed in paragraph (d)(3) of this section. For example, increases in the average hourly included benefit rate shall be computed by dividing the sum of increased expenditures (or proposed increased expenditures, as appropriate) for included benefits during the fiscal year by the product of the number of employees in such group on the fiscal base date and 2,000 hours.

(iv) *Retrospective reports.* If an election is made under paragraph (d)(3)(i) of this section, a report required to be filed for a completed fiscal year pursuant to paragraph (f)(1) of this section shall include a completed Form PB–3. Such report shall reflect increases attributable to the completed fiscal year in dollars and cents per hour. Such reported increases in wages and salaries may not be time weighted for the period during the fiscal year such increases were in effect. The total of such reported increases in salary for the fiscal year shall be computed by dividing the sum of individual salary increases (expressed in annual amounts) within the executive control group by the product of the number of employees in such group on the fiscal base date and 2080 hours. Such total shall include any increases (expressed in annual amounts) granted during the fiscal year to employees who were terminated from such group (by retirement or otherwise) as well as any such increases granted to employee additions to such group. However, increases attributable to bona fide promotions within the group may be excluded.

(v) *Prospective reports.* If an election is made under paragraph (d)(3)(i) of this section, a report required to be filed prospectively for a succeeding fiscal year pursuant to paragraph (f)(4) of this section shall be filed on the Council's Form PB–3. Such report shall reflect increases in wages and salaries proposed to be made in dollars and cents per hour with respect to the actual employee complement and positions in the executive control group at the close of the immediately preceding fiscal year. Such reported increases in wages and salaries may not be time weighted for the period during the fiscal year such increases are proposed to be in effect. The total of such proposed increases in salary for the fiscal year shall be computed by dividing the sum of proposed individual salary increases (expressed in annual amounts) within the executive control group by the product of the number of employees in such group on the fiscal base date and 2080 hours. For purposes of computing wage and salary increases proposed for such fiscal year, increases attributable to bona fide promotions may be excluded.

(vi) *Effect on appropriate employee units.* The provisions of paragraph (d)(3) of this section shall not operate to permit any actual change of appropriate employee units and do not affect any other provisions of this part. (See paragraph (j) of this section.)

* * * * *

(f) *Reporting.* * * *

(4) *Special reporting requirement under alternative computation rule.* If a firm is required to report under paragraph (f)(1) of this section with respect to any completed fiscal year ending on or after August 29, 1973, and if such firm elected the alternative computation method prescribed in paragraph (d)(3) of this section in making such report, in addition to the Council's Form PB–3 with respect to such completed fiscal year, such firm shall complete and file another Form PB–3 with respect to the next succeeding fiscal year using the computation method prescribed in paragraph (d)(3)(v) of this section. Such additional Form PB–3 shall be filed not later than the sixtieth day of a succeeding fiscal year that begins on or after March 5, 1974 and not later than May 6, 1974 in the case of a succeeding fiscal year beginning prior to March 5, 1974.

* * * * *

[FR Doc.74–5123 Filed 3–1–74;2:03 pm]

PART 152—COST OF LIVING COUNCIL PHASE IV PAY REGULATIONS

Pay Adjustments Affecting Employees in Food Industry

Part 152 is amended in Subpart H to add certain interpretive provisions to the special rules applicable to the food industry.

Sections 152.72 is amended by adding a new paragraph (e) to make clear that pay adjustments to employees engaged on a regular and continuing basis in the growing, harvesting, or raising of food after January 10, 1973, or in the performing of administrative or support functions with respect to such activities, are not covered by the special rules applicable to the food industry unless such activity is controlled by a manufacturer, service organization, wholesales, or retailer and the annual sales or revenues derived from the sales of food (excluding sales or revenues attributable to such activity which are exempt from price controls pursuant to 6 CFR 152.52) amount to at least 50 percent of total sales or revenues (including those sales and revenues attributable to such activity which are exempt from price control pursuant to § 152.52). The effect of this amendment is to set forth previous policy with respect to employees engaged in the growing, harvesting, or raising of food.

In addition, a conforming change is made in § 152.72(b).

Because the immediate implementation of Executive Order No. 11730 is required, and because the purpose of these regulations is to provide immediate guidance as to Cost of Living Council decisions, the Council finds that publication in accordance with normal rule making procedures is impracticable and that good cause exists for making these amendments effective in less than 30 days. Interested persons may submit comments regarding these amendments. Communications should be addressed to the Office of General Counsel, Cost of Living Council, Washington, D.C. 20508.

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

In consideration of the foregoing, Part 152 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective January 11, 1973.

Issued in Washington, D.C., February 28, 1974.

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

In 6 CFR Part 152, § 152.72 is amended by revising paragraph (b) and by adding a new paragraph (e) to read as follows:

§ 152.72 Pay adjustments affecting employees in the food industry.

* * * * *

(b) For purposes of paragraph (a) of this section, and except as provided in paragraphs (c), (d), and (e) of this section, "Pay adjustments affecting employees in the food industry" means pay adjustments by any manufacturer, service organization, wholesaler, or retailer which derives at least 20 percent or at least $50 million of its annual sales or revenues from the sales of food, with respect to:

(1) Employees who are members of an appropriate employee unit (regardless of size) in which 50 percent or more of the employees are engaged on a regular and continuing basis in food operation; and

(2) Employees engaged on a regular and continuing basis in food operations and who are members of an appropriate employee unit (other than a unit referred to in paragraph (b)(1) of this section) in which 60 or more of such employees are engaged in food operations.

* * * * *

(e) For purposes of paragraph (b) of this section, "Pay adjustments affecting employees in the food industry" does not include pay adjustments with re-

spect to employees engaged on a regular and continuing basis in the growing, harvesting, or raising of food after January 10, 1973, or in the performing of administrative or support functions with respect to such growing, harvesting, or raising, unless—

(1) Such activity is controlled, directly, or indirectly, by a manufacturer, service organization, wholesaler, or retailer, and

(2) The annual sales or revenues derived by the manufacturer, service organization, wholesaler, or retailer from the sales of food (excluding sales or revenues attributable to such activity which are exempt from price controls pursuant to § 150.52 of this chapter) amount to at least 50 percent of total sales or revenues of the manufacturer, service organization, wholesaler, or retailer (including sales or revenues attributable to such activity which are exempt from price controls pursuant to § 150.52).

[FR Doc.74-5178 Filed 3-1-74;4:20 pm]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. RM74-3, Order 491-D]

PART 2—GENERAL POLICY AND INTERPRETATIONS

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

Termination of Emergency Sales Procedures

MARCH 1, 1974.

Policy with respect to establishment of measures to be taken for the protection of reliable and adequate service for the 1973-1974 winter heating season.

Order terminating 180 day emergency sale procedures in Order No. 491 and amending policy statements and regulations under the Natural Gas Act.

On September 14, 1973, acting pursuant to our exemption authority under section 7(c) of the Natural Gas Act, 15 U.S.C. 717f(c), we issued Order No. 491 which amended §§ 2.68 and 2.70 of the Commission's General Policy and Interpretations and §§ 157.22 and 157.29 of the Commission's Regulations under the Natural Gas Act.[1] The effect of those amendments was to extend from 60 to 180 days the term under which an emergency sale in interstate commerce of natural gas would be permitted without Commission certification to a pipeline experiencing a shortage of natural gas on its system.

As emphasized in Order No. 491 and the subsequent related orders, our action was taken solely for the alleviation of a proven shortage of interstate natural gas supplies during the 1973–1974 winter heating season. Accordingly, we said the emergency procedures established by Order No. 491 were to be effective until March 15, 1974.

The Commission hereby serves notice that the 180 day exempted sales procedures will be terminated on March 15, 1974. As such, March 15, 1974, is the last day on which natural gas may be dedicated to the interstate market for a period of 180 days without obtaining a certificate of public convenience and necessity: *Provided, however,* That no emergency sale will qualify for the 180 day exemption from certificate authorization unless deliveries have commenced on or before March 15, 1974.

In rescinding the 180 day emergency procedure for sales commencing after March 15, 1974, we will reinstate the prior Rules and Regulations allowing such emergency sales without certificate authorization for a period of up to 60 days. Our present procedures allowing the issuance of limited term certificates are unaffected by this order.

As indicated in Order No. 491, we will continue to review the 180 day exemption measures to weigh their impact during the 1973–1974 winter heating season and to determine what, if any, emergency measures may be required during the 1974 summer storage injection period and the 1974–1975 winter heating season. It may be determined that some or all of the 60 day emergency procedures should be eliminated in the future.

The Commission finds.

Inasmuch as this order serves only to implement previous orders of the Commission in Order No. 491, ordering paragraph (D), and Order No. 491-B, ordering paragraph (F), requiring that the revisions and amendments of the Commission's general rules and regulations ordered therein were to be effective only until March 15, 1974, no further notice or hearing pursuant to 5 U.S.C. 553 is now required.

The Commission orders that effective after March 15, 1974.

(A) Part 2, Subchapter A, General Rules, Chapter I of Title 18 of the Code of Federal Regulations, is amended by revising the following:

In § 2.68 (a) and (b) the 180-day periods found therein are changed to 60 days.

In § 2.70(b)(3) the 180-day periods found therein are changed to 60 days.

(B) Section 157.22, Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations, is amended by revising the following:

In § 157.22(a) the 180-day period is changed to 60 days, and in paragraph (d) the 180-day period is changed to 60 days.

(C) Section 159.29, Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations, is amended by revising the following:

In § 157.29(a) the 180-day period is changed to 60 days, and in paragraph (b), the 180-day period is changed to 60 days.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5196 Filed 3-4-74;10:33 am]

[1] Appeal docketed, Consumer Federation of America v. F.P.C., D.C. Cir. No. 73-2009 (filed September 21, 1973). A stay by the United States Court of Appeals for the District of Columbia on December 10, 1973, of the 180 day procedure ordered in subsequent related orders, was vacated by order of the Supreme Court of the United States on December 20, 1973, sub nom., F.P.C. v. Consumer Federation of America, et al., No. A-608.

[Docket No. R-424 Order No. 505-A]

PART 101—UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES (CLASS A AND CLASS B)

PART 104—UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES (CLASS C AND CLASS D)

PART 141—STATEMENT AND REPORTS (SCHEDULES)

PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES (CLASS A AND CLASS B)

PART 204—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES (CLASS C AND CLASS D)

PART 260—STATEMENT AND REPORTS (SCHEDULES)

Accounting for Premium, Discount and Expense of Issue, Gains and Losses on Refunding and Reacquisition of Long-Term Debt, and Interperiod Allocation of Income Taxes

FEBRUARY 25, 1974.

On February 11, 1974, the Commission issued Order No. 505 in this proceeding. By that order the Commission found that good cause existed for making the amendments to the Uniform Systems of Accounts for Public Utilities and Licensees and Natural Gas Companies ordered therein to be effective January 1, 1973, and the amendments to FPC Annual Report Forms No. 1, No. 1-F, No. 1-M, No. 2 and No. 2-A effective for the reporting year 1973. The effective date of amendments to FPC Forms No. 5 and No. 11 was effective upon issuance of the order.

Due to the fact that some companies have rendered Annual Stockholder Reports to the public for the accounting year 1973, prior to receipt of Order No. 505, it is deemed practical to allow the implementation date of the accounting prescribed in Order No. 505 to be effective January 1, 1974. And further, due to the fact that the FPC Annual Report Forms No. 1, No. 1-F, No. 2 and No. 2-A are already in the hands of respondents for the reporting year 1973 it is deemed practical to allow those companies who elect to implement the provisions of Order No. 505, January 1, 1974, to report their 1973 accounting data in a modified fashion on the new prescribed report changes for 1973 as described below:

FPC ANNUAL REPORT FORM NO. 1

Schedule page 110:
Line 34—Report the Debt Expense portion of old account 181 here with the Unamortized Debt Discount portion of old account 181 being reported at line 18 on scheduled page 111.
Line 42—Make no entry.
Schedule page 111:
Line 17—Report balance of old account 251 here.
Line 36—Make no entry.
Schedule page 116A:
Lines 50 and 52—Make no entry.
Schedule page 211:
Report appropriate detail from old accounts 181 and 251.
Schedule page 214B:
Make no entry.

FPC ANNUAL REPORT FORM NO. 2

Schedule page 110:
Line 31—Report the Debt Expense portion of old account 181 here with the Unamortized Debt Discount portion of old account 181 being reported at line 18 on schedule page 111.
Line 39—Make no entry.
Schedule pages 116A, 211 and 214B:
Same as for Form No. 1 above.

FPC ANNUAL REPORT FORM NO. 1–F

Schedule page 3:
Line 19, column (a)—Report the Debt Expense portion of old account 181 here with the Unamortized Debt Discount portion of old account 181 being reported at column (e), line 16.
Line 24, column (a)—Make no entry.
Line 15, column (e)—Enter balance of old account 251.
Line 31, column (e)—Make no entry.
Schedule page 6:
Lines 48 and 50—Make no entry.

FPC ANNUAL REPORT FORM NO. 2–A

Schedule page 3:
Line 21, column (a)—Report the Debt Expense portion of old account 181 here with the Unamortized Debt Discount portion of old account 181 being reported at line 16.
Line 26, column (a)—Make no entry.
Line 15, column (e)—Enter balance of old account 251.
Line 32, column (e)—Make no entry.
Schedule page 6:
Lines 48 and 50—Make no entry.

The Commission Finds:

(1) The notice and opportunity to participate in this proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments and suggestions in the manner as described above are consistent and in accordance with all procedural requirements therefor as prescribed in section 553 of Title 5 of the United States Code.

(2) The effective date of amendments to the Commission's Uniform System of Accounts and Annual Report Form schedules herein prescribed are necessary and appropriate for the administration of the Federal Power Act and Natural Gas Act.

(3) The amendments prescribed herein which were not included in the notice in this proceeding are of a minor nature, and further notice thereof is therefore unnecessary.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 301, 302, 303, 304 and 309 thereof (49 Stat. 854–856, 859; 16 U.S.C. 825, 825a, 825b, 825c, 825h) and Natural Gas Act, as amended, particularly sections 8, 9, 10 and 16 thereof (52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717h, 717i, 717o), *orders:*

That the provisions of Order No. 505 issued by the Commission February 11, 1974, may be implemented as of January 1, 1974, and that where implemented January 1, 1974, a modified method of reporting will be used as prescribed heretofore in this order.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4966 Filed 3-4-74;8:45 am]

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 728]

1975 NATIONAL ALLOTMENT FOR WHEAT

Proposed Determinations

Notice is hereby given that the Secretary of Agriculture proposes to make determinations and issue regulations relative to the 1975 national allotment for wheat. Section 379c(a) (1) of the Agricultural Adjustment Act of 1938, as amended by the Agriculture and Consumer Protection Act of 1973, requires that the Secretary proclaim a national wheat acreage allotment not later than April 15, 1974. The national allotment shall be the number of acres which the Secretary determines on the basis of the estimated national average yield will produce the quantity (less imports) that he estimates will be utilized domestically and for export during the marketing year for the crop. If the Seeretary determines that carryover stocks are excessive or an increase in stocks is needed to assure a desirable carryover, he may adjust the allotment by the amount he determines will accomplish the desired decrease or increase in carryover stocks.

Prior to determining the 1975 national allotment, consideration will be given to any data, views, and recommendations relative to the estimated national yield, estimated domestic utilization of wheat, estimated exports, estimated carryover and other data pertinent to this determination which are submitted in writing to the Director, Grain Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. In order to be sure of consideration, all submissions must be received by the Director not later than April 4, 1974. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Director during regular business hours (8:15 a.m. to 4:45 p.m.).

Signed at Washington, D.C. on February 26, 1974.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.74-4989 Filed 3-4-74;8:45 am]

Commodity Credit Corporation

[7 CFR Part 1425]

COOPERATIVE MARKETING ASSOCIATIONS

Proposed Eligibility Requirements for Price Support

The Commodity Credit Corporation is considering amending Part 1425, Cooperative Marketing Associations, Eligibility Requirements for Price Support, published in 33 FR 13024. This amendment is considered to be necessary to clarify what is meant by member control and the term active member. Prior to adoption of the amendment, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing to the Director, Program Operations Division, ASCS, U.S. Department of Agriculture, Washington, D.C. 20250. In order to be considered, all submissions must be received by the Director not later than April 4, 1974.

The following changes to Part 1425 are proposed:

1. Correct the word "or" in line 4 of § 1425.4(a) to read "and".

2. Amend paragraph (b) of § 1425.4 to read as follows:

§ 1425.4 Ownership and control.

* * * * *

(b) *Control.* The organization and operation of the cooperative shall be under the control of its active producer members and member cooperatives which are owned and controlled by their active producer members. A cooperative shall be considered so controlled if more than 50 percent of its membership consists of active producer members, or member cooperatives which are owned and controlled by their active producer members. A director shall be an active member, a representative of an active member serving in the capacity of a farm manager or its equivalent (including an officer of a corporation and a partner in partnership), or an officer or employee of a member cooperative which is owned and controlled by its active members and shall be elected by active members except when selected to fill the unexpired term of a director so elected.

3. Correct the word "application" in line 3 of § 1425.5(c) to read "applicant".

4. Amend paragraph (d) (1) of § 1425.5 to read as follows:

§ 1425.5 Charter and bylaw provisions.

* * * * *

(d) * * *

(1) Nominations for election of delegates and directors shall be made by secret balloting, nominating committee, petition of members, or from the floor; and,

* * * * *

5. Amend paragraph (b) of § 1425.21 to read as follows:

§ 1425.21 Definitions.

* * * * *

(b) *Active member.* The term "active member" shall mean a member of a cooperative who has utilized the services offered by a cooperative for marketing his commodity or purchasing production supplies for his farming operation in one of the three preceding crop years or such shorter period as may be provided in the cooperative's articles of incorporation or bylaws.

Signed at Washington, D.C., on February 26, 1974.

GLENN A. WEIR,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.74-4990 Filed 3-4-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 132]

GRANTS FOR TRAINING IN LIBRARIANSHIP

Notice of Proposed Rule Making

In accordance with section 503 of the Education Amendments of 1972 (Pub. L. 92-318) and pursuant to the authority contained in the Higher Education Act of 1965, as amended (20 U.S.C. 221, 222), the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Title 45, Part 132 of the Code of Federal Regulations to read as set forth below.

The revised regulations contain all mandatory requirements for the program. At present, there will be no guidelines under this program. Should guidelines be issued in the future, they will be limited to material in the nature of suggestions and recommendations for program management and operation.

1. *Program purpose.*

The Higher Education Act of 1965, as amended, authorizes the Commissioner to award grants to elligible institutions of higher education and library organizations or agencies to assist them in training persons in librarianship through institutes, fellowships, or traineeships. Under section 222(b) of the amended Act, such program grants can only be made based on the Commissioner's finding that such programs will substantially further the objective of increasing the opportunities throughout the Nation for training in librarianship.

2. *Section 503 procedures and effect.*

Section 503 of the Education Amendments of 1972 requires the Commissioner to study all rules, regulations, guidelines, or other published interpretations or orders issued by him or by the Secretary after June 30, 1965, in connection with, or affecting, the administration of Office of Education programs; to report to the Committee on Labor and Public Welfare

of the Senate and the Committee on Education and Labor of the House of Representatives concerning such study; and to publish in the FEDERAL REGISTER such rules, regulations, guidelines, interpretations, and orders, with an opportunity for public hearing on the matters so published. The regulations proposed below reflect the results of this study as it pertains to the library training program under section 222 of Title II, Part B, of the Higher Education Act of 1965, as amended. Part 132 will be published in final form after comments and hearings. Thirty days after such publication, all preceding rules, regulations, guidelines, or other published interpretations and orders issued in connection with or affecting Part 132 will be superseded.

3. *Effect of Office of Education general provisions regulation.*

The proposed regulations differ from the current regulations in that provisions have been deleted relating to general fiscal and administrative matters which are presently covered in 45 CFR Part 132 and which are now covered under the overall Office of Education general provisions regulation, published as a final regulation in the FEDERAL REGISTER on November 6, 1973 (38 FR 30654) in connection with the same study under section 503 of the Education Amendments of 1972 of which this publication is a part. Reference is made in particular to the provisions of proposed Part 100a of Title 45, Code of Federal Regulations, containing general provisions for discretionary programs, which are now applicable to the library training program under Title II, Part B, of the Higher Education Act of 1965, as amended.

4. *Changes in the proposed regulations.*

The major substantive change since the publication of the previous regulations in the FEDERAL REGISTER (August 14, 1971, 36 FR 15440), brought about through the Education Amendments of 1972, is the widening of eligibility to include library organizations or agencies in additon to institutions of higher education. Minor technical changes have also been made to delete matters covered by the general provisions and to update references to organizational units.

5. *Citations of legal authority.*

As required by section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)) and section 503 of the Education Amendments of 1972, a citation of statutory or other legal authority for each section of the regulations has been placed in parentheses on the line following the text of the section.

On occasion a citation appears at the end of a subdivision of the section. In that case the citation is to all that appears in that section between the citation and the next preceding citation. When the citation appears only at the end of the section, it applies to the entire section.

6. *Opportunity for public hearing.*

Pursuant to section 503(c) of the Education Amendments of 1972, the Commissioner will provide interested parties opportunity for a public hearing on these regulations, as follows:

A hearing will take place at the U.S. Office of Education in the auditorium of Regional Office Building Three (ROB–3) located at 7th and D Streets SW., Washington, D.C., beginning at 11 a.m. on April 1, 1974.

Parties interested in attending the hearing should notify the Office of Education, 400 Maryland Avenue, SW., Room 2079–G, Washington, D.C. 20202, Chairman, Office of Education Task Force on section 503, and are urged to submit a written copy of their comments with such notification. Each party planning to make oral comments at the hearing is urged to limit his presentation to a maximum of fifteen minutes.

Written comments and recommendations may also be sent to the above address. All relevant material received prior to the date of the hearing will be considered. Comments and suggestions submitted in writing will be available for review in the above office between the hours of 9 a.m. and 4:30 p.m., Monday through Friday of each week.

(Catalog of Federal Domestic Assistance No. 13.468, Library Training Grants (Library Institute and Fellowship Program))

Dated: January 21, 1974.

JOHN OTTINA,
U.S. Commissioner of Education.

Approved: February 21, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

PART 132—GRANTS FOR TRAINING IN LIBRARIANSHIP

Subpart A—General

Sec.
132.1 Applicability.
132.2 Definitions.
132.3 Eligible purposes.
132.4 Apportionment.
132.5 Program objectives.
132.6 Eligible applicants.
132.7 Eligible participants.
132.8 Review of applications or proposals for grants; outside experts.
132.9 Review of proposals for institute grants; factors.
132.10 Review of proposals for institute grants; priorities.
132.11 Review of applications for fellowship grants.
132.12 Review of applications or proposals for traineeship grants.
132.13 Duration of the training program.
132.14 Program accountability and evaluation procedures.

Subpart B—Allowable Costs

132.21 Allowable costs.
132.22 Direct costs for training program participants.
132.23 Institutional support payment.
132.24 Stipends and dependency allowances for participants in library training institutes and institute/traineeship programs.
132.25 Stipends and dependency allowances for participants in library training institutes and institute/traineeship programs; inexperienced personnel.
132.26 Stipends and dependency allowances for participants in library training institutes and institute/traineeship programs; experienced personnel.
132.27 Stipends for participants in library training fellowship programs and fellowship/traineeship programs.
132.28 Dependency allowances for participants in library training programs and fellowship/traineeship programs.
132.29 Stipend payments to dependents.
132.30 Assistance under other Federal programs.
132.31 Tuition and housing charges.
132.32 Non-self-contained institute programs.
132.33 Submission of biographical sketch.
132.34 Travel allowances; program participants.
132.35 Payments to participants by grantees.
132.36 Payment adjustments.
132.37 Cross reference to General Provisions Regulations.

APPENDIX A—Criteria and point scores.

AUTHORITY: Secs. 221–222, Pub. L. 89–329, 79 Stat. 1277, as amended by sec. 111(b)(3), Pub. L. 92–318, 86 Stat. 238 (20 U.S.C. 1031–1033), unless otherwise noted.

Subpart A—General

§ 132.1 Applicability.

The regulations in this part apply to grants by the Commissioner to institutions of higher education and library organizations or agencies to assist them in training persons in librarianship under secton 222 of Title II–B of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1031, 1033)

§ 132.2 Definitions.

As used in this part:

"Dependent" means any of the following individuals more than half of whose support, for the calendar year in which the school year begins, was received from a student:

(a) a spouse;

(b) a son or daughter of the student, or a descendent of either;

(c) a stepson or stepdaughter of the student;

(d) a brother, sister, stepbrother, or stepsister of the student;

(e) a father or mother of the student, or an ancestor of either,

(f) a stepfather or stepmother of the student;

(g) a son or daughter of a brother or sister of the student;

(h) a brother or sister of the father or mother of the student;

(i) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the student;

(j) an individual (other than the student's spouse) who, during the student's entire calendar year, lives in the student's home and is a member of the student's household (but not if the relationship

between the individual and the student is in violation of local law);

(k) an individual who—

(1) is a descendent of a brother or sister of the father or mother of the student; and

(2) for the school year of the student receives institutional care required by reason of a physical or mental disability; and

(3) before receiving such institutional care, was a member of the same household as the student; or

(l) an individual who is a legally adopted child or a child placed in the student's home for adoption by a licensed child-placing agency.

A citizen of a foreign country may not be claimed as a dependent, unless he is a resident of the United States, Canada, or Mexico, or Panama, or the Canal Zone, at some time during the calendar year in which the school year of the student begins, or is a resident of the Philippines born to, or adopted by, a student while he was a member of the Armed Forces, before January 1, 1956, or is an alien child legally adopted by and living with a student as a member of his household for the entire calendar year.

(m) "Fellowship" means an award to a participant engaged in a regular academic program of formal education in an institution of higher education for which are awarded credits that may be used to earn an academic degree.

(n) "Institute" means an intensive short-term or regular-session program of specialized training designed to train individuals in particular principles and practices of librarianship. A "non-self-contained institute" is one in which not all participants are receiving Federal support under this program. A "self-contained institute" is one in which all participants are receiving Federal support.

(o) "Institution of higher education" means an educational institution in any State which meets all of the following criteria:

(1) It admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.

(2) It is legally authorized within such State to provide a program of education beyond secondary education.

(3) It provides at least one of the following types of programs:

(i) An educational program for which it awards a bachelor's degree.

(ii) A program of not less than 2 years which is acceptable for full credit toward a bachelor's degree.

(iii) A program of not less than 1 year of training to prepare students for gainful employment in a recognized occupation.

(p) It is a public or other nonprofit institution.

(q) It is either accredited by a nationally recognized accrediting agency or association, or meets at least one of the following requirements:

(1) It is an institution with respect to which the Commissioner has determined that there is satisfactory assurance—considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made—that the institution will meet the accreditation standards of such an agency or organization within a reasonable period of time.

(2) It is an institution whose credits are accepted on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(r) "Librarianship" means the principles and practices of the library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information, and reference and research use of the library and other information resources.

(s) "Library organization or agency" means a State library agency, a State education department, a public library, a local educational agency, a national, State, regional or local library association, or any other public or private agency providing library service programs.

(t) "Paraprofessional" means a person with special skills or capacities for professional work which can support or complement a professional. Such term includes positions identified as library assistant, technical assistant, library technician, media technician, library aide, etc., but excludes such positions characterized as clerical, service, and custodial. The minimum educational objective for such positions is participation in a course (or courses) leading to graduation from a junior or community college (or its equivalent) in a paraprofessional library curriculum.

(u) "Traineeship" means an award to participants enrolled in a directed training program which is not a regular academic program for which are awarded credits that may be used to earn an academic degree.

(20 U.S.C. 1021–1034)

§ 132.3 Eligible purposes.

Funds available under the Act may be used by the Commissioner to award grants to institutions of higher education and library organizations or agencies to assist them in training persons in librarianship, for any one or more of the following purposes:

(a) To assist in covering the cost of courses of training or study (including institutes) for such persons;

(b) For establishing and maintaining fellowships or traineeships with stipends (including allowances for traveling, subsistence, and other expenses) for fellows and others undergoing training and their dependents not in excess of such maximum amounts prescribed in this part; and

(c) For establishing, developing, and expanding programs of library and information science, including law librarianship.

(20 U.S.C. 1033)

§ 132.4 Apportionment.

Not less than 50 percent of the grants awarded shall be for the purpose of establishing and maintaining fellowships or traineeships.

(20 U.S.C. 1033(a))

§ 132.5 Program objectives.

(a) The purpose of the institute/traineeship program is to provide persons an opportunity to enter the library field by obtaining necessary skills and training and to provide persons serving any type of library, information center or instructional materials center (including persons serving as library, media, and information science educators) an opportunity to upgrade and update their competencies.

(b) The purpose of the fellowship/traineeship program is to provide for full-time study as determined by the grantee in any graduate or undergraduate level program in library and information science sponsored by the participating grantee, regardless of whether the particular program terminates in the award of a specific graduate or undergraduate degree, or is merely designed to provide specialized training in some branch or aspect of librarianship. Fellowship/traineeship awards may not be made, however, to participants in any program which is designed to run for less than one academic year, regardless of the experience or educational level of the student body for whom such programs are created.

(c) Since the objectives of this program are to increase the opportunities throughout the Nation for training individuals in the principles and practices of the library and information sciences, including the acquisition, storage, retrieval, and dissemination of information, and reference and research use of library and other information sources, the grants awarded under this program must supplement rather than supplant the library, media, and information science education programs and graduate fellowships presently conducted by the grantee, and the total number of students enrolled in such programs must therefore be increased.

(d) Grants will be made to the institution, organization, or agency to establish fellowships for persons enrolled in programs in the library and information sciences (student assistance) and to assist in defraying the cost of such courses of training in librarianship (institutional support).

(20 U.S.C. 1031, 1033)

§ 132.6 Eligible applicants.

Any institution of higher education or other library organization or agency

which has an established graduate or undergraduate library education program, which is planning to begin such a program, or which can mount a training program consistent with the purposes of the Act, is eligible to submit proposals or applications for fellowships, traineeships, and institutes for training in librarianship.

(20 U.S.C. 1033)

§ 132.7 Eligible participants.

(a) An individual may be enrolled as a participant in training programs assisted with Federal funds under this part; *Provided*, That such individual is a national of the United States or is in the United States for other than a temporary purpose and intends to become a permanent resident thereof and is either (1) engaged in, or preparing to engage in, a profession or other occupation involving librarianship, or (2) concerned with the study or teaching of library, media, or information science, or (3) has majored in library science at the undergraduate level, or (4) has a graduate degree in library science. This eligibility includes library paraprofessionals.

(b) In addition to the requirements of paragraph (a) of this section:

(1) Participants in full-time training programs are generally required to devote full-time to the work of the program.

(2) A fellowship may be awarded to a student who has at least a high school diploma or its equivalent and who has been accepted for enrollment on a full-time basis in a program of library and information science. For such purpose, a student will be deemed to be enrolled on a "full-time basis" where he is carrying a program load sufficient to allow him to complete the course of study in which he is enrolled in the normal time period.

(3) A traineeship may be awarded to an individual who has at least a high school diploma or its equivalent and who has been accepted for enrollment in a directed program of study being conducted by an institution of higher education, library organization, or agency which is not a regular part of the academic program of the institution, organization, or agency.

(c) The grantee shall have sole responsibility for the selection of student recipients in the fellowship, institute, and traineeship programs and for the administration thereof.

(d) In the event that a participant drops out of the training program, another candidate may be substituted provided that the new candidate can successfully complete the training program and the Federal project officer is notified in writing of the substitution.

(20 U.S.C. 1031, 1033)

§ 132.8 Review of applications or proposals for grants; outside experts.

The Commissioner will approve applications or proposals for an institute grant under this part only after such proposals have been (a) reviewed by a panel of outside experts and specialists and (b) rated in accordance with such other procedures as the Commissioner may establish.

(20 U.S.C. 1033)

§ 132.9 Review of proposals for institute grants; factors.

In addition to the factors set forth in § 100a.26(b) of this chapter, review of proposals for an institute grant will take into account the following factors:

(a) Criteria for selection of participants; and

(b) Potential for achieving innovative and exemplary training programs.

(20 U.S.C. 1033)

§ 132.10 Review of proposals for institute grants; priorities.

Review of proposals will take into account the following priorities:

(a) The attraction of minority and/or economically deprived persons into the library, media, and information science fields as professionals and paraprofessionals;

(b) The training and retraining of professionals in service to the disadvantaged, including the aged and the handicapped;

(c) The presentation of alternatives for recruitment, training, and utilization of library personnel and manpower;

(d) The fostering and development of innovative practice to reform and revitalize the traditional system of library and information service;

(e) The retraining of professional librarians in the mastery of new skills and competencies in support of key priority need areas, such as: Learning to read campaigns, drug abuse education, environmental and ecological education, early childhood education, career education, management (planning, evaluation, and needs assessment), human relations and social interaction, service to the institutionalized, community learning center programs, service to foster the quality of life, intellectual freedom, and institute planning;

(f) The training of trainers of trainers;

(g) The training of library trustees, school administrators, and other persons with administrative, supervisory, and/or advisory responsibility for library, media, and information services, such as boards of education, State advisory councils, etc.;

(h) The training and retraining of persons in law librarianship.

(20 U.S.C. 1033)

§ 132.11 Review of applications for fellowship grants.

(a) In addition to the factors set forth in § 100a.26(b) of this chapter, review of applications for fellowship grants will take into account the following factors:

(1) Type and levels of fellowship requested (see priorities in § 132.11(b));

(2) Whether and how the program(s) to be offered substantially furthers the objective of increasing the opportunities of minority group persons and/or economically disadvantaged persons throughout the Nation for training in librarianship;

(3) Whether and how the program(s) to be offered substantially furthers the objective of training librarians to work more responsively with the disadvantaged and of developing viable alternatives to traditional library service patterns.

(b) The review under paragraph (a) of this section will take into account the following levels which are listed in order of priority:

(1) Fellowships in master's degree level programs;

(2) Fellowships in two-year associate degree level programs;

(3) Fellowships in post-master's degree or certificate programs;

(4) Fellowships in doctoral degree level programs;

(5) Fellowships in bachelor's degree level programs.

(c) The master's degree fellowships under this program will be awarded for a period not to exceed one year.

§ 132.12 Review of applications or proposals for traineeship grants.

The review of applications or proposals for traineeship grants will take into account the following priorities:

(a) Traineeships in post-master's level programs;

(b) Traineeships in post-baccalaureate level programs;

(c) Traineeships in post-associate degree level programs.

(20 U.S.C. 1033)

§ 132.13 Duration of the training program.

Training programs shall not exceed 12 months.

(20 U.S.C. 1033)

§ 132.14 Program accountability and evaluation procedures.

Under the institute program, each project proposal shall include an evaluation plan to be carried out by a third party for the purpose of evaluating the effectiveness of the program or project. Such plan shall describe the steps by which the grantee will:

(a) Determine the extent to which the objectives of the program or project have been accomplished;

(b) Determine what factors either enabled or precluded the accomplishment of these objectives; and

(c) Promote the inclusion of the successful aspects of the program or project into other education programs supported with funds other than those provided under the grant.

(20 U.S.C. 1033)

Subpart B—Allowable Costs

§ 132.21 Allowable costs.

Except as otherwise indicated in §§ 132.22 and 132.23, allowable costs for any approved grant shall be determined in accordance with Subpart G of Part 100a of this chapter.

(20 U.S.C. 1033)

§ 132.22 Direct costs for training program participants.

There may be included in direct costs for payments to training program participants only those allowances provided for in §§ 132.24–132.29 and 132.34.

(20 U.S.C. 1033)

§ 132.23 Institutional support payment.

(a) An institutional support payment is allowable under the fellowship program in lieu of tuition and all other fees required of all students of similar standing up to $2,500 for each fellow enrolled for an academic year and an amount up to $500 for each fellow enrolled in a summer session provided it is an approved program. This institutional support is provided to a grantee in conjunction with a fellowship awarded to an individual to study at institution to assist in covering the cost of courses of training or study for persons in librarianship. Such expenditures will be subject to audit on the basis of institutional rather than per student fellowship costs.

(b) The institution is entitled to one-half the total amount of the institutional support as soon as the fellow begins his training. Entitlement for the second half of the support payment begins six months after entitlement for the first half, *Provided,* That the fellow (or substitute fellow where permitted) continues to be enrolled (or substitute is enrolled) six months after the date of entitlement for the first half of the support payment. In those cases where the entitlement date falls between enrollment periods, such as during an inter-semester break, the institution becomes entitled upon the subsequent enrollment of the fellow for the following academic term. However, in the event the fellow does not attend the summer session, the institution will not be entitled to the support payment for the summer.

(c) Where substitution is permitted, the fellowship need not be used by the same fellow during the entire fellowship period.

(d) Justification is necessary to demonstrate what the actual cost per student is to the grantee. If the actual cost is below $2,500 per student, then the amount of institutional support per fellow will be correspondingly lower; if the actual cost is above $2,500 per student, however, the amount claimed for institutional support cannot exceed $2,500 for the academic year and $500 for the summer.

(20 U.S.C. 1033)

§ 132.24 Stipends and dependency allowances for participants in library training institutes and institute/traineeship programs.

Stipends and dependency allowances for library training institutes and institute/traineeship programs shall be authorized as follows: Depending upon the nature and objectives of a given training program, stipends may or may not be paid to institute participants. The stipend is based on the length and nature of the project; long-term, full-time; short-term, full-time; and part-time. Long-term training is usually equivalent to an academic year or more. Short-term training is anything less than an academic year, but normally is identified with institutes of one to twelve weeks in duration. Project participants are classified in two categories, inexperienced personnel and experienced personnel.

(20 U.S.C. 1033)

§ 132.25 Stipends and dependency allowances for participants in library training institutes and institute/traineeship programs; inexperienced personnel.

Personnel who have not reached the entrance level in the library profession (public librarian, college librarian, school librarian, special librarian, paraprofessional) for which the project is training them are classified as inexperienced personnel. Projects in which participants are classified as inexperienced personnel may include training at the post-baccalaureate or prebaccalaureate level.

(a) *Long-term, full-time: (post-baccalaureate).* Participants may receive $2,000 for the academic year, plus $500 per dependent. Participants in a summer component may receive a $400 stipend and $100 for each dependent. Stipend levels will not exceed $2,400 per support year. A support year is defined as a twelve-month period. Dependency allowances will not exceed $600 for each dependent per support year ($500 per academic year and $100 per summer component).

(b) *Long-term, full-time: (pre-baccalaureate).* Participants may be paid a stipend of $1,500 for the academic year and a maximum of $250 for a summer session if required by the grantee to meet program requirements. Dependency allowance shall be $250 for the academic year and $50 for the summer for each eligible dependent. Stipend levels will not exceed $1,750 per support year. Dependency allowances will not exceed $300 per dependent per support year.

(c) *Short-term, full-time.* Participants may be paid a stipend of up to $75 per week plus up to $15 per week per dependent.

(20 U.S.C. 1033)

§ 132.26 Stipends and dependency allowances for participants in library training institutes and institute/traineeship programs; experienced personnel.

This category includes experienced personnel who are enrolled in training designed to raise their level of competency or to give them new competencies. Projects in which the participants are experienced personnel usually encompass training equivalent to post-master's or pre-doctoral training.

(a) *Long-term, full-time.* Stipends for a support year will be awarded in accordance with the following schedule:

Months of related work experience	Academic year stipend only	Yearly stipend
Less than 12 months	$2,500	$3,000
12 to 23 months	2,750	3,300
24 to 35 months	3,000	3,600
36 to 47 months	3,250	3,900
48 or more months	3,500	4,200

Each full-time academic year of graduate experience, as defined by the grantee, beyond the baccalaureate level, shall equal 12 months of related professional work experience for stipend level purposes. If a participant has been awarded a master's degree, in a field relevant to the training to be undertaken, an additional $500 may be added to the stipend amount which is appropriate for his work experience. (If credit for a master's degree is claimed for an academic year program only, then the allowance will be prorated accordingly.) Stipend levels shall not exceed $4,700 per support year. Dependency allowances of up to $600 per support year for each dependent is authorized, $500 for the academic year and $100 for the summer.

(b) *Short-term, full-time.* Participants may be paid a stipend of up to $75 per week plus up to $15 per week per dependent.

(c) *Part-time.* Participants undergoing part-time training are eligible to receive up to $75 per week stipend and $15 per week dependency allowance per dependent prorated on the basis of a five-day week.

(20 U.S.C. 1033)

§ 132.27 Stipends for participants in library training fellowship programs and fellowship/traineeship programs.

Stipends for library training fellowships shall be authorized as follows. For each fellowship awarded under this program, the institution will receive and pay over to the fellowship recipient the following amounts:

(a) In the case of fellows enrolled at the undergraduate level: $1,500 for the academic year; and a maximum of $250 for summer study, if required by the grantee in addition to the academic year to meet degree or program requirements;

(b) In the case of fellows enrolled at the master's, postmaster's or doctoral level, stipends will be in accordance with the following schedule:

Months of related professional work experience	Academic year stipend only	Yearly stipend amount
Less than 12 months	$2,500	$3,000
12 to 23 months	2,750	3,300
24 to 35 months	3,000	3,600
36 to 47 months	3,250	3,900
48 or more months	3,500	4,200

Each single full-time academic year of graduate experience as defined by the grantee, beyond the baccalaureate level, shall equal 12 months of related professional work experience for stipend level purposes. If a fellow in a pre-doctoral experience program has been awarded

a master's degree in a field relevant to the professional training to be undertaken, an additional $500 may be added to the stipend amount which is appropriate for his work experience. (If credit for a master's degree is claimed for an academic year program only, then the allowance will be prorated accordingly.) Maximum pre-doctoral stipend shall not exceed $4,700. The yearly stipend amount includes the regular academic year plus the summer session.

(20 U.S.C. 1033)

§ 132.28 Dependency allowances for participants in library training programs and fellowship/traineeship programs.

A dependency allowance for the fellow may also be provided as follows:

(a) For undergraduate fellows, the dependency allowance shall be $250 for the academic year for each eligible dependent. The dependency allowance for a summer session shall be a maximum of $50 for each eligible dependent.

(b) For graduate fellows, the dependency allowance for the academic year shall be $500 for each eligible dependent. The dependency allowance for a summer session shall be a maximum of $100 for each eligible dependent.

(20 U.S.C. 1033)

§ 132.29 Stipend payments to dependents.

Individuals receiving stipend payment may claim as dependents those individuals meeting the definition of a dependent as stated in § 132.2.

(20 U.S.C. 1033)

§ 132.30 Assistance under other Federal programs.

Any amounts paid under any other Federal grant program for educational purposes (except veterans' and war orphans' and widows' educational assistance under Title 38, United States Code) shall be set off against the amount which a participant otherwise would be entitled to receive under this part. A participant shall not be precluded from receiving a loan that is made, insured, or reinsured under any Federal educational loan program, and neither the amount of such loan nor any Federal interest payment made during the period of his participation in a training program shall be deducted from the amount received by the participant under this part.

(20 U.S.C. 1033; 38 U.S.C. 1781)

§ 132.31 Tuition and housing charges.

The grantee is required as a condition for receiving the grant to exempt a participant from all tuition and other normally required fees, but it may charge for room and board.

(20 U.S.C. 1033)

§ 132.32 Non-self-contained institute programs.

In the case of a non-self-contained institute, regular students of the institution admitted to the institute program shall not receive stipends or dependency allowances under this program. The grantee must pay a pro-rata share of the cost of the institute based on the number of regular students enrolled in the institute.

(20 U.S.C. 1033)

§ 132.33 Submission of biographical sketch.

In order to document adherence to the related work experience requirement, the grantee will require each institute and fellowship grant award recipient enrolled at the graduate level to submit a brief biographical sketch.

(20 U.S.C. 1033)

§ 132.34 Travel allowances; program participants.

(a) Under the fellowship program, travel allowances for fellows from their places of residence to the training site will not be provided. However, in cases of extreme need or hardship, the Commissioner of Education may authorize one-way travel allowances for individual fellows/trainees at a rate not to exceed 8¢ per mile.

(b) Under the institute program, the grantee may pay for a participant's daily commuting travel for a reasonable distance upon determination by the Commissioner that such allowances are necessary for successful participation in the program and that extreme need and hardship exist. Such travel may be performed either by public or private conveyance; but if performed by private conveyance, the allowance for such travel shall not exceed 8¢ per mile or the common carrier cost of such travel, whichever is less.

(20 U.S.C. 1033)

§ 132.35 Payments to participants by grantees.

Payments to participants will be made by the grantee. The amount of stipends, dependency allowances, and travel costs to be paid to eligible participants will be estimated in the application and included in the grant award, subject to adjustment based on the actual education, work experience, or number of dependents. The grantee is responsible for any overpayment of stipends to participants. No deductions may be made by the grantee from these payments for any purpose, except as provided in § 132.36.

(20 U.S.C. 1033)

§ 132.36 Payment adjustments.

Payment adjustments are necessary in the event of the withdrawal of a participant from the training program and/or a change in the number of dependents. In either event, a system of proration by week, based on the number of weeks in the training period, shall be used for the purpose of determining the amount of stipend and/or dependency allowance to which a participant is eligible. In determining the number of weeks in the training period, the first week of the training period shall be the week during which classes begin and the last week of the training period shall be the week during which the classes end. Accordingly, any segment of a week for the first and last week of classes shall be counted as a full week for the purpose of computing payment adjustments. Adjustments of payment due to the withdrawal of a participant and/or a change in the number of dependents shall be effective the Monday following the week in which the change occurred and prorated accordingly on the basis of the number of weeks for which the participant is eligible for payment. The last day of actual class attendance or the date which the institution certifies that a participant has ceased to maintain proficiency in his course of study shall be used in determining the date of withdrawal.

(20 U.S.C. 1033)

§ 132.37 Cross reference to General Provisions Regulations.

Assistance provided under this part is subject to applicable provisions contained in Subchapter A of this chapter (relating to fiscal, administrative, property management, and other matters).

(20 U.S.C. 1033)

APPENDIX A

GRANTS FOR TRAINING IN LIBRARIANSHIP

CRITERIA AND POINT SCORES INSTITUTES

(a) *Criteria and point scores for review of proposals for institute grants.*

Review of proposals for an institute grant will take into account the following criteria (206 points):

(1) *The extent to which the proposed program is justified.* (10 points)

Consideration will be given to such questions as:

(i) Will the program contribute to reduction of staff shortage?

(ii) Does the program address itself to an appropriate training need?

(iii) Is the subject important and timely?

(iv) Is the applicant well prepared to offer such training?

(2) *The extent to which participant selection is appropriate.* (10 points)

Consideration will be given to such questions as:

(i) Are the selection criteria appropriate and realistic to meet program objectives?

(ii) Is the need as expressed in the program justification, above, related accurately to the duties of the participant?

(iii) Can the proposed number of participants be accommodated by proposed program method?

(3) *The extent to which the program objectives are related to needs and proposal.* (20 points)

Consideration will be given to such question as:

(i) Are the objectives specific and clearly defined?

(ii) Are the objectives directly related to identified needs?

(iii) Are the objectives involved in the improvement or updating of personnel competencies? (if applicable)

(4) *The extent to which the proposed program will achieve high quality and effectiveness.* (30 points)

Consideration will be given to such questions as:

(i) Is the subject appropriate for intensive or long-range training?

(ii) Is there adequate program potential for the solution of the training problem or need?

(iii) Is the proposed professional education sound?

(iv) Is there a satisfactory blend of the theoretical and the practical?

(v) Are the training approaches new and imaginative?

(vi) Does the proposed program supplement existing training? Advanced study level?

(vii) Will participants be involved in innovative and creative experiences?

(viii) Will the program maintain focus on the subject?

(5) *The adequacy of program content as related to program objectives.* (15 points)

(45 CFR 100a.26(b)(8)(i))

Consideration will be given to such questions as:

Will the proposed program content adequately achieve the stated program objectives?

(6) *The adequacy of the proposed program director.* (15 points)

(45 CFR 100a.26(b)(3))

Consideration will be given to such questions as:

(i) Is the level of professional competence and leadership of the program director adequate?

(ii) What is the degree of capability of the program director to conduct a successful program?

(7) *The adequacy of the proposed program staff.* (15 points)

(45 CFR 100a.26(b)(3))

Consideration will be given to such questions as:

(i) Is the level of professional competence and leadership of the program staff adequate?

(ii) Is the number of program staff adequate for program needs?

(iii) Is staff utilization planned properly?

(8) *The adequacy of the applicant's facilities and services.* (10 points)

(45 CFR 100a.26(b)(4))

Consideration will be given to such questions as:

(i) Is there evidence of adequacy of supporting facilities, services, and equipment?

(ii) Is there evidence that the applicant will provide adequate library services and instructional materials for the program?

(9) *The adequacy of the program budget.* (15 points)

(45 CFR 100a.26(b)(5))

Consideration will be given to such questions as:

(i) Is the proposed budget adequate for the program?

(ii) Are the proposed costs reasonable?

(10) *The extent to which the institute format is appropriate.* (5 points).

Consideration will be given to such questions as:

(i) Is the type of institute (self-contained or non-self-contained) properly chosen?

(ii) Is the proposed timing well chosen?

(iii) Is the length of the institute right? Too long? Too short?

(11) *The extent to which program purposes will be achieved.* (30 points).

Consideration will be given to such questions as:

(i) To what degree will the proposed program substantially contribute to librarianship training?

(ii) To what degree will prospects for employment and/or advancement be provided?

(iii) To what degree will training opportunities be provided for minority group and/or disadvantaged persons?

(12) *Adequacy of the evaluation component.* (25 points)

Consideration will be given to such questions as:

(i) Does the proposal provide for both external and internal evaluation?

(ii) Is the evaluation component adequate to ensure effective program assessment?

(13) *General criteria.* (6 points)

Consideration will be given to the criteria specified in 45 CFR 100a.26(b) (1), (2), (6), (7), and (8) (ii) and (iii).

(b) *Criteria and point scores for review of applications for fellowship grants.* Review of applications for fellowship grants will take into account the following criteria (107 points):

(1) *Adequacy of educational objectives.* (15 points)

Consideration will be given to such questions as:

(i) Are objectives consonant with standards for library education?

(ii) Are proposed changes in goals sound?

(iii) Are special factors to attract outstanding personnel valid and appropriate?

(iv) Are special needs listed valid?

(v) Are educational objectives well-defined?

(vi) Will the program further the objective of improving service to the disadvantaged and developing viable alternatives to traditional library services

(2) *Adequacy of program content.* (10 points)

(i) Are the character and scope of the program appropriate, sound, modern, and cohesive?

(ii) Are contemplated changes well conceived?

(iii) Is the catalog information adequate?

(iv) Do common course requirements meet acceptable standards?

(v) Are program evaluation procedures effective?

(vi) Is the student practicum component sufficient?

(3) *Adequacy of program content as related to objectives.* (5 points)

(45 CFR 100a.26(b)(8)(i))

Consideration will be given to such questions as:

What is the extent to which objectives would be achieved by program content?

(4) *Adequacy of qualifications for admission.* (10 points)

Consideration will be given to such questions as:

(i) Are selection criteria for fellows suitable and sufficient?

(ii) Are applied tests well recommended?

(iii) Are scholarship requirements adequate?

(5) *Characteristics of program faculty.* (10 points)

(45 CFR 100a.26(b)(3))

Consideration will be given to such questions as:

(i) Is the list of faculty complete for display of all qualifications?

(ii) Is estimate of faculty quality high, medium, or low?

(iii) Is numerical strength of faculty adequate?

(iv) Is faculty specialization relevant to program offered?

(v) Is the research and writing productivity of the faculty adequate?

(vi) Is estimate of credit-hour teaching load of faculty high, medium, or low?

(vii) Is estimate of the number of student advisees per faculty high, medium, or low?

(6) *Adequacy of facilities and resources.* (5 points)

(45 CFR 100a.26(b)(4))

Consideration will be given to such questions as:

(i) Are facilities, equipment, and other resources suitable and sufficient?

(ii) Is the size of the librarianship special collection sufficient for the curriculum offered?

(iii) Is the applicant's total library collection adequate?

(iv) Are planned additions or improvements significant?

(7) *Level of institutional expenditures.* (10 points)

Consideration will be given to such questions as:

(i) Are expenditures increasing for education in librarianship?

(ii) What is the relationship of expenditures to student enrollment changes?

(iii) Are expenditures high, medium, or low compared to other library education programs with similar curricula and student enrollment?

(8) *Quantity of enrollment and degrees awarded.* (5 points)

Consideration will be given to such questions as:

(i) Are enrollment and degrees increasing?

(ii) Is the ratio of degrees awarded to enrollment satisfactory?

(9) *Quantity of institutional fellowships and scholarships.* (5 points)

Consideration will be given to such questions as:

(i) Are institutional fellowships and scholarships increasing or decreasing?

(ii) What is the ratio of the requested number of II–B fellowships to the institutionally supported number?

(10) *Adequacy of prospects for increasing training opportunities.* (15 points)

Consideration will be given to such questions as:

(i) Is there any evidence that the program will be adequately promoted and that there will be effective recruitment?

(ii) Was the priority selected appropriate to the applicant's capabilities or record of experience in this field?

(11) *Prospect for increasing training opportunities for minority group and/or disadvantaged persons.* (10 points)

(12) *General criteria.* (7 points)

Consideration will be given to the criteria specified in 45 CFR 100a.26(b)(1), (2), (5), (6), (7), and (8)(ii) and (iii))

(c) *Criteria and point scores for review of applications or proposals for traineeship grants.* Review of applications or proposals for traineeship grants will take into account the following criteria (110 points):

(1) Whether and how the program to be offered substantially furthers the objective of increasing the opportunities of minority group persons and/or disadvantaged persons throughout the Nation for advanced train-in librarianship and information science which would result in professional advancement and upward mobility; (20 points)

(2) Whether and how the program to be offered substantially furthers the objective of training librarians to work more responsively with the disadvantaged and of developing viable alternatives to traditional library service patterns; (20 points)

Degree of internship opportunities available through cooperating library agencies and appropriateness of those opportunities to the program objectives; (20 points)

(4) Appropriateness of behavioral objectives as related to the program objectives and the recruitment criteria; (20 points)

(5) Degree of individualization of program activities and objectives; (20 points)

(6) Criteria specified in 45 CFR 100a.26(b). (10 points)

(20 U.S.C. 1033)

[FR Doc.74-4984 Filed 3-4-74;8:45 am]

[45 CFR Part 158]

FOLLOW THROUGH PROGRAM

Notice of Proposed Rulemaking

In accordance with section 503 of the Education Amendments of 1972 (Pub. L. 92-318) and pursuant to the authority contained in Titles II and VI of the Economic Opportunity Act of 1964 (78 Stat. 516, as amended; 42 U.S.C. 2781), notice is hereby given that the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Part 158 of Title 45 of the Code of Federal Regulations as set forth below.

1. *Program purpose.*

The proposed amendment of Part 158 would provide the requirements for assistance and for Federal financial participation in the Follow Through Program authorized under Title II of the Economic Opportunity Act of 1964. The Follow Through Program is a community action program under which assistance is provided to assist the overall development of children from low-income families in the early elementary grades and to amplify the educational gains made by such children in Head Start and other similar quality preschool programs.

2. *Section 503 procedures and effect.*

Section 503 of the Education Amendments of 1972 requires the Commissioner to study all rules, regulations, guidelines, or other published interpretations or orders issued by him or by the Secretary after June 30, 1965, in connection with, or affecting, the administration of Office of Education programs; to report to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives concerning such study; and to publish in the FEDERAL REGISTER such rules, regulations, guidelines, interpretations, and orders, with an opportunity for public hearing on the matters so published. The regulations proposed below reflect the results of this study as it pertains to the Follow Through Program under Title II of the Economic Opportunity Act as amended. Upon publication of revised Part 158 in final form, after comments and hearing, all preceding rules, regulations, guidelines, and other published interpretations and orders issued in connection with or affecting Part 158 will be superseded effective thirty days after such publication.

3. *Effect of Office of Education general provisions regulation.*

The rules and standards proposed by this notice are those which are unique to the Follow Through Program. Other administrative requirements of a general nature which the Follow Through Program shares in common with other programs administered by the Commissioner of Education are covered in the overall Office of Education General Provisions Regulation, published in the FEDERAL REGISTER at 38 F.R. 30653 (November 6, 1973). Those regulations were developed in connection with the same study under section 503 of the Education Amendments of 1972 of which this publication is a part. (Reference is made in particular to the provisions of parts 100a and 100c of title 45 CFR, containing general provisions which would be applicable to the Follow Through Program). Department-wide regulations will also be issued in the near future covering some aspects of the administration of the Follow Through Program. Included therein will be rules governing the valuation of in-kind contributions toward the required non-Federal share.

4. *Citations of legal authority.*

As required by section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)) and section 503 of the Education Amendments of 1972, a citation of statutory or other legal authority for each section of the regulations and guidelines has been placed in parentheses on the line following the text of the section.

On occasion, a citation appears at the end of a subdivision of the section. In that case the citation is to all that appears in that subdivision above the citation. When the citation appears only at the end of the section it applies to the entire section.

5. *Opportunity for public hearing.*

Pursuant to section 503(c) of the Education Amendments of 1972, the Commissioner will provide interested parties an opportunity for a public hearing on these regulations and guidelines as follows:

A hearing will be held in the auditorium of Regional Office Building Three (ROB-3), 7th and D Streets, SW., Washington, D.C. on March 28, 1974, beginning at 10:00 a.m.

The purpose of the hearing is to receive comments and suggestions on the published materials.

Parties interested in attending the hearing should notify the Office of Education, 400 Maryland Avenue, SW., Room 2079-G, Washington, D.C. 20202, Attention: Chairman, Office of Education Task Force on section 503, and are urged to submit a written copy of their comments with such notification. Each party planning to make oral comments at the hearing is urged to limit his presentation to a maximum of fifteen minutes.

Written comments and recommendations may also be sent to the above address. All relevant material received prior to the date of the hearing will be considered. Comments and suggestions submitted in writing will be available for review in the above office between the hours of 9 a.m. and 4:30 p.m., Monday through Friday of each week.

(Catalog of Federal Domestic Assistance No. 13.433, Follow Through Program.)

Dated: January 14, 1974.

JOHN OTTINA,
U.S. Commissioner of Education.

Approved: February 15, 1974.

FRANK CARLUCCI,
Acting Secretary of Health, Education, and Welfare.

Part 158 of Title 45 of the Code of Federal Regulations is amended to read as follows:

PART 158—FOLLOW THROUGH PROGRAM

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158.82 Preliminary audit survey.
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AUTHORITY: Title II and VI, Pub. L. 90-222, as amended, 78 Stat. 516 (42 U.S.C. 2781), unless otherwise noted.

Subpart A—Purpose and Definitions

§ 158.1 Program purpose.

The Follow Through program implemented by these regulations is an experimental community action program designed to assist, in a research setting, the overall development of children enrolled in kindergarten through third grade from low-income families, and to amplify the educational gains made by such children in Head Start and other similar quality preschool programs by (a) implementing innovative educational approaches, (b) providing comprehensive services and special activities in the areas of physical and mental health, social services, nutrition, and such other areas which supplement basic services already available within the school system, and (c) conducting the program in a context of effective community action and parental involvement, and (d) to provide documentation on these models which are found to be effective.

(42 U.S.C. 2809(a)(2))

§ 158.2 Definitions.

As used in this part:

"Act" means the Economic Opportunity Act of 1964, Pub. L. 88-452 (42 U.S.C. 2701), as amended.

"Early elementary grades" means kindergarten through grade three inclusive.

"Follow Through children" means all children in public or private school who have been enrolled in a Follow Through project in accordance with § 158.12.

"Follow Through parents" means all parents of children enrolled (or to be enrolled) in a Follow Through project, including the parents of private school children participating in the project.

"Head Start agency" means an organization funded in whole or in part by the Office of Child Development, DHEW, pursuant to section 222(a)(1) of the Act.

"Inservice training" means such specialized training as may be required or recommended for project staff during the course of employment in the Follow Through project.

"Local educational agency" means a public school board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as is recognized in a State as an administrative agency for its public elementary or secondary schools. The term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

"Low-income children" or "low-income persons" means children or persons from families whose annual income falls within the official poverty line as defined by the Office of Management and Budget and as revised periodically by the Department of Health, Education, and Welfare pursuant to section 625 of the Act.

"Paraprofessional" means a person who does not have a baccalaureate or equivalent degree of certification, but who directly assists persons in the performance of educational, social service, medical, or other duties of a professional nature in a Follow Through project, (e.g., teacher's aide, nurse's aide, or social worker aide).

"Perservice training" means workshops, courses, seminars, and other forms of specialized training which precede, and are required or recommended for, employment as a member of a Follow Through project staff.

"Project sponsor" means a college, university, regional education laboratory, or other agency, organization or institution which receives a grant or contract to undertake some or all of the activities listed in § 8158.51 and which maintains a contractual relationship with one or more local Follow Through projects for the purpose of conducting such activities in conjunction with such projects.

"Project area" means the local community or the smaller geographic area within such community (defined by school attendance zones or other similar neighborhood boundaries) in which a Follow Through project operates.

"Project staff" means all persons who work (full time or part time) directly in the Follow Through project, either on public or private school premises, whether or not such persons are paid with funds made available under the Act.

"Rural" as applied to a geographic area, means an area which is not included within a Standard Metropolitan Statistical Area (as defined by the U.S. Bureau of Census) and which is not within or coterminous with a city, town, borough, or village or other subcounty political unit, the population of which exceeds 2,500.

"State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or State law.

(42 U.S.C. 2809(a)(2)).

§ 158.3 Planned variation.

(a) Follow Through grants are made to local educational agencies and other public or non-profit private agencies, organizations, or institutions in order to explore the effects of a number of promising approaches to the education of children from low-income families in the early elementary grades. Most grantees must agree to carry out the project in cooperation with project sponsors who have developed such approaches in affiliation with the U.S. Office of Education.

(b) In order to evaluate the effectiveness of each approach, a carefully planned evaluation is being implemented by the U.S. Office of Education. Because such evaluation will continue over a period of years, project grantees are required to implement and develop the sponsor's approach for the period of their participation in the Follow Through program.

(42 U.S.C. 2809(a)(2), 2825)

Subpart B—Grants and Contracts for Local Follow Through Projects

ELIGIBILITY REQUIREMENTS AND PROCEDURES

§ 158.11 Eligible applicants.

(a) Except as provided in paragraph (b) of this section, the Commissioner will provide financial assistance under this subpart, in the form of grants, only to local educational agencies.

(b) Whenever the Commissioner determines that (1) a local educational agency receiving assistance under paragraph (a) of this section is unable or unwilling to serve private school children as required by § 158.28 or (2) it is otherwise necessary in order to best fulfill the purposes of Follow Through as set forth in § 158.1, he may provide financial assistance to be used for this purpose to a Head Start agency or other public or appropriate non-profit private agency, organization, or institution.

(42 U.S.C. 2809(a)(2), 2949(2))

§ 158.12 Eligible children.

(a) *Low-income children.* Subject to the provisions of paragraph (b) of this section, only low-income children enrolled in the early elementary grades may participate in projects funded under this subpart. At least 50 percent of the children in each entering class shall be children who have previously participated in a full-year Head Start or similar quality preschool program and who were low-income children at the time of enrollment in such preschool program; except that the Commissioner may reduce this percentage requirement in special cases where he determines that its enforcement would prevent the most effective use of Follow Through funds (e.g., where the grantee is implementing a racial desegregation plan).

(b) *Non-low-income children.* If the Commissioner determines (1) that participation in the project of children from diverse socio-economic backgrounds would enhance the development of the low-income children to be served and would benefit the community in which the project is located, or (2) that such socio-economic diversity in a particular project will produce evidence concerning how best to fulfill the purposes of Follow Through as set forth in § 158.1, he may require or permit the inclusion of a specified percentage of children other than low-income children in the project. The inclusion of such other children in a project shall not in any case dilute or

interfere with the services designed for low-income children. In order to prevent such dilution, families of such other children may be required to pay, or have payment made in their behalf from some other source, e.g. by the grantee, for all or part of the identifiable costs of the services such children receive, to the extent that the family's financial situation makes payment appropriate.

(c) *Procedures for selection.* Agencies proposing to operate or continue projects under this subpart shall establish procedures for identification and selection of eligible children which comply with the requirements of this section and shall set forth such procedures in the project proposal. Such procedures shall assure that every reasonable effort will be made (1) to serve the poorest children first under paragraph (a) of this section, and (2) to determine on an equitable basis the extent to which payment shall be made with respect to children other than low-income children enrolled under paragraph (b) of this section.

(d) *Records.* Each project shall maintain records indicating that its identification and selection of eligible children complies with the requirements in this section.

(42 U.S.C. 2809 (a) (2))

§ 158.13 Selection of grantees and application procedures.

(a) *Continuation grants.* In order to provide the necessary continuity for evaluation of the planned variation approaches provided for in § 158.3, grants will be given only to applicants who are successfully conducting Follow Through projects during the current fiscal year and who demonstrate the capability to continue to so operate projects in accordance with the planned variation approach. Beginning in school year 1974–1975 when a continuation grant is awarded, support will be provided only for the continuation of classes already in the project. After school year 1973–1974 no new entering grade levels will be supported. (Thus where the entry level of a project in the previous school year was kindergarten, services under the continuation grant will be provided only at the first through third grades. In the following year, such services will be limited to second and third grades, and in the final year only to the third grade.)

(b) *Preparation of proposals.* Agencies submitting applications shall prepare project proposals in such form and containing such information as the Commissioner shall, from time to time, require. Proposals shall be submitted for review to the appropriate office of the U.S. Office of Education.

(c) *Review of proposals.* Project proposals will be reviewed by the Commissioner, and negotiated as needed in a process of consultation with the applicant and low-income parents of Follow Through children. The Commissioner will notify each applicant of the approval, modification or disapproval of its proposal upon the completion of such negotiations.

(42 U.S.C. 2809(a)(2), 2834)

§ 158.14 Geographic allocation of funds.

(a) Of the funds to be distributed under this subpart, a maximum of 2 percent shall be allotted among Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands according to the relative numbers of low-income children between grades K–3 residing in each of these territories; the remainder shall be allotted among the States according to the relative numbers of low-income children in each State as compared to all States. In no event, however, may more than 12½ percent of the funds distributed under this subpart be used in any one State.

(b) Funds allocated under paragraph (a) of this section shall be distributed equitably between urban and rural areas in the United States and, to the extent practical, within each of the States. Such distribution shall be based upon a comparison of the number of low-income children living in urban areas to the number of such children living in rural areas.

(c) For the purposes of paragraph (a) of this section, the term "State" means a State, Puerto Rico, or the District of Columbia.

(42 U.S.C. 2812 (a), (b), 2833, (a)(b), 2949 (1), 2967)

§ 158.15 Criteria for selection, approval, and refunding of projects.

The Commissioner will select and fund projects under this subpart subject to the allotments made under § 158.14, and subject to the priority established by § 158.13(a), and in addition to the criteria set forth in § 100a.26(b) of this chapter in accordance with the following criteria:

(a) Whether the applicant satisfactorily operated a federally funded Follow Through project in the immediate prior year.

(b) *The applicant and the community.* (Unsatisfactory; satisfactory; above average; outstanding)

(1) The relative number and concentration of low-income children in the community served by the applicant.

(2) The demonstrated quality of other educational programs for low-income children (including Head Start and previous Follow Through programs) operated by the applicant or by another agency in the community which will assist the applicant.

(3) The ability of the applicant to implement and support processes leading to:

(i) The direct participation of Follow Through parents in the development and operation of the project,

(ii) The involvement of other agencies and organizations and the use of other community resources in the project as indicated in § 158.27, and

(iii) The creation of a climate conducive to communication between low-income and non-low-income persons and to the construction of working relationships between school and community.

(c) *Programmatic criteria.* (Unsatisfactory; satisfactory; above average; outstanding)

(1) The extent to which the instructional component required by § 158.26(a) is implemented.

(2) The extent of implementation of sponsor's model (does not apply to sell sponsored projects).

(3) The extent of provision for parental and community involvement as required by § 158.26(b).

(4) The extent of development of comprehensive services as required by § 158.26.

(i) Nutrition,

(ii) Medical and Dental,

(iii) Social services,

(iv) Psychological and guidance,

(v) Career Development,

(vi) Coordination of comprehensive services.

(5) If appropriate, whether the supplementary training program is oriented toward a college degree.

(d) *Organizational criteria.*

(1) Whether over half of Policy Advisory Committee membership is composed of low-income parents elected by such parents.

(2) The extent to which the staffing pattern is designed to accomplish program objectives. (Unsatisfactory; satisfactory; above average; outstanding)

(3) The extent to which other programs or agencies are involved in, or coordinated with, the project. (Unsatisfactory; satisfactory; above average; outstanding)

(e) *Participating children.* (1) Whether the majority of the children in the project are low-income (by the official OEO poverty line);

(2) Whether the majority of the children are graduates of Head Start or similar preschool programs; [1]

(f) *Management criteria.* (1) Whether the Policy Advisory Committee is primarily responsible for recommending the filling of non-professional and para-professional positions;

(2) Whether there is a Career Development Committee;

(3) In the employment of non-professional and paraprofessionals, the extent to which priority is given to low-income parents. (Unsatisfactory; satisfactory; above average; outstanding)

(4) The extent to which the Policy Advisory Committee participates in the decision-making process in respect to important aspects of the program (e.g., program design; recommendations in the selection of personnel; parent activities). (Unsatisfactory; satisfactory; above average; outstanding)

(5) The extent of provision for staff training. (Unsatisfactory; satisfactory; above average; outstanding)

[1] The Commissioner may reduce this majority requirement as provided in § 158.12 paragraph (a).

(6) If appropriate, whether the supplementary training program is serving para-professional and non-professional staff of the project.

(g) *Finance.* (1) The extent to which other resources or related assistance (local, State or Federal—e.g., Title I ESEA) are contributing to the project. (Unsatisfactory; satisfactory; above average; outstanding)

(2) Non-Federal Share

(i) Whether the required non-Federal share percentage is contributed;

(ii) If the required non-Federal share is not contributed, whether the proposal includes a request for a waiver (in part or in whole) of this requirement;

(iii) If the proposal includes a request for waiver, whether there is information adequate upon which to base a decision.

(42 U.S.C. 2809(a), 2812)

(h) *Renewals.* The Commissioner shall, in accordance with the provisions of § 158.13, renew funding for projects under this subpart on the basis of evidence that processes enumerated in paragraph (a)(4) of this section are being implemented; on the basis that the purposes of Follow Through as set forth in § 158.1 are being effectively met; and on the basis of periodic evaluations made pursuant to § 158.24.

(42 U.S.C. 2809 (a)(2))

§ 158.16 Financial support of projects.

Project activities conducted under this subpart shall be supported through the following combination of resources: (a) The normal effort (in funds and services) which the grantee or contractor is required to maintain under § 158.67 and upon which the project builds, (b) the Federal funds appropriated under the Act and distributed under this subpart, and (c) the non-Federal contribution specified in § 158.64.

(42 U.S.C. 2809(a)(2), 2812 (c)(d))

Project Management

§ 158.18 Project coordinator.

(a) *Position.* Each grantee or contractor receiving funds under this subpart shall, with the approval of the Policy Advisory Committee described in § 158.19, appoint a project coordinator to be responsible for overall project management. The position of project coordinator shall be a full-time position, unless the Commissioner, in individual cases, specifies otherwise.

(b) *Duties.* The project coordinator's duties shall include: (1) Supervising all project staff; (2) serving as liaison between the project and Federal, regional, State, and local agencies involved in the Follow Through program; (3) working with the program sponsor to implement the program approach selected; (4) attending all relevant Follow Through meetings, workshops, and training sessions sponsored by the Commissioner or by the project's program sponsor; (5) ensuring that project components and activities are interrelated so that children are not served in a fragmented manner; and (6) maintaining communication and cooperation among the program sponsor, Follow Through parents, Policy Advisory Committee members, project staff, administrative and other school staff, and the various community agencies and organizations which serve low-income persons.

(42 U.S.C. 2809(a)(2))

§ 158.19 Policy Advisory Committee.

(a) *Purpose.* Each grantee or contractor shall, upon the identification of Follow Through project children, establish a Policy Advisory Committee, selected in accordance with paragraphs (b) and (c) of this section, to assist with the planning and operation of project activities and to actively participate in the decisionmaking process concerning such activities.

(b) *Membership.* (1) More than one-half of the Policy Advisory Committee members shall be low-income Follow Through parents who are elected (or re-elected) by such parents in elections held at least annually.

(2) The remaining members shall be chosen by the parent members, elected under paragraph (b)(1) of this section, from among the various persons and representatives of agencies and organizations in the community who have manifested concern for the development of low-income persons.

(3) In no case shall an officer of the Policy Advisory Committee serve for more than two years in such capacity.

(c) *Advisors.* At the request of the Policy Advisory Committee, elected or appointed officials and employees of the local educational agency (including project staff) in whose jurisdiction the project is located and any group contracted to work for such agency may serve in an advisory capacity to the Committee, but shall in no case have the right to vote.

(d) *Duties.* The Policy Advisory Committee's duties shall include: (1) Developing by-laws which define the purposes and procedures of the Committee; (2) helping to develop all components of the project proposal and approving them in their final form; (3) assisting in the development of criteria for selection of, and in recommending the selection of professional and paraprofessional project staff; (4) exercising the primary role in developing criteria for selection and recruiting of eligible children which are required by § 158.12; (5) contributing to the continued effectiveness of the project coordinator; (6) establishing and operating a procedure of petition and discussion under which complaints of parents and other interested persons can be promptly and fairly considered; (7) helping to organize activities for Follow Through parents; and (8) mobilizing community resources and securing the active participation of Follow Through parents in the project.

(e) *Funding.* (1) In order to facilitate the functioning of the Policy Advisory Committee, (i) the committee shall at the beginning of each grant period submit a proposed budget of its projected operational costs to the grantee or contractor, and (ii) the grantee or contractor, on the basis of such budget and the negotiation sessions held pursuant to § 158.13(c), and in accordance with local laws and regulations, shall at the beginning of each grant period allocate to the Committee a sum sufficient to allow it effectively to fulfill its responsibilities under paragraph (d) of this section.

(2) Funds allocated to the Policy Advisory Committee under § 158.19 (e) (1) shall not be used for: (i) The purchase of classroom equipment, (ii) classroom instructional purposes, (iii) personal loans or expenditures.

(3) Policy Advisory Committee members may be compensated for attending a negotiation workshop, special conference or board of education meeting directly related to the Follow Through project at a rate not less than the Federal minimum wage nor more than the wages he would otherwise earn during such time, but in no event shall payments be made to members if no wages are actually lost.

(20 U.S.C. 1231d; 42 U.S.C. 2781 (a) (4), 2809 (a) (2))

§ 158.20 Employment of low-income persons.

Whenever an opening exists in project staff positions for nonprofessionals or paraprofessionals, the grantee shall actively solicit applications from low-income persons and give preference to such persons in hiring. The highest priority shall be accorded to low-income persons who are parents of Follow Through children. The grantee shall establish hiring procedures which assure that the Policy Advisory Committee will be primarily responsible for recommending the filling of nonprofessional and paraprofessionals positions in accordance with § 158.19(d)(3).

(42 U.S.C. 2810)

§ 158.21 Career Development Committee.

(a) *Establishment.* Each grantee utilizing a significant number of low-income paraprofessional or nonprofessional employees or volunteers in the project shall establish a Career Development Committee to provide direction and initiative for the project training and career development program required under § 158.26(g). This committee shall operate under the general supervision of the Policy Committee.

(b) *Membership.* The members of the Career Development Committee shall be appointed by the Policy Advisory Committee from among the following groups in numbers adequate to assure their effective representation: (1) The low-income Follow Through parents, including low-income parent members of the Policy Advisory Committee, (2) paraprofessionals and nonprofessionals working in the project, and (3) the professional members of the project staff.

(c) *Duties.* The Career Development Committee's duties shall include: (1) Devising a career development plan which includes academic training that is responsive to the expressed needs of project paraprofessionals and nonprofessionals;

(2) assisting the Policy Advisory Committee to fulfill its responsibilities under § 158.19(d) (3) for selecting paraprofessional and nonprofessional project staff; and (3) selecting paraprofessionals and nonprofessionals to participate in supplementary training programs which the Commissioner may from time to time sponsor.

(42 U.S.C. 2781(a) (4), 2810)

§ 158.22 Parent-implemented projects.

(a) *Eligible projects.* The Commissioner may designate certain of the projects funded under this subpart as parent-implemented projects. Both projects operated directly by nonprofit, private agencies or organizations constituted by parent groups to whom grants are awarded under § 158.11(b) (2) and projects operated by other grantees or contractors who delegate significant operating authority to a parent group are eligible for such a designation.

(b) *Functions of parents.* In a parent-implemented project the parents (as defined in paragraph (c) of this section) shall assume at least the following functions in regard to project management: (1) All functions of the Policy Advisory Committee set forth in § 158.19(d); (2) all functions of the Career Development Committee set forth in § 158.21(c); (3) primary responsibility and authority for selecting the project coordinator and other project staff.

(c) *Definition.* For purposes of this section, "parents" means all parents of children enrolled or to be enrolled in the project or their duly elected representatives, except that, where the grantee is itself a parent group, it may choose to define "parents" to include the entire body of parents which it represents. In the latter case, the Follow Through parents shall be equitably represented on all boards or committees performing the functions specified in paragraph (b) of this section.

(42 U.S.C. 2781(a) (4), 2809(a) (2))

§ 158.23 Nepotism and conflict of interest.

(a) No person shall hold a Follow Through staff position supported in whole or in part with funds made available under the Act during any period of time in which:

(1) A member of his immediate family exercises supervisory authority over the Follow Through project or any portion thereof;

(2) He or a member of his immediate family serves on a board or committee of the grantee or contractor which has authority to order personnel actions affecting his job;

(3) He or a member of his immediate family serves on a board or committee which, either by rule or practice, regularly nominates, recommends, or screens candidates for staff positions in the Follow Through projects.

(b) For purposes of this section, the term "immediate family" means husband, wife, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, and daughter-in-law.

(42 U.S.C. 2809(a) (2))

§ 158.24 Evaluation of program effectiveness.

(a) *General.* Grantees shall participate to the extent requested by the Commissioner in periodic evaluations of the Follow Through program. Grantees shall comply with all evaluation procedures that the Commissioner from time to time may require unless, after consultation with a particular grantee, he determines that compliance with one or more such procedures would not be in the best interest of the project. Such procedures shall include making available upon request any records or other information which may be reasonably necessary to the conduct of evaluation activities. General program evaluation data will be collected through testing of children, interviews, and questionnaires.

(b) *Evaluation criteria.* In order to ascertain whether local projects are fulfilling the purposes of Follow Through set forth in § 158.1, program effectiveness will be evaluated on the basis of criteria established by the Commissioner, including the following:

(1) Degree of cognitive and of personal social development of the children served, including comparisons with non-Follow Through children;

(2) Comparison of the cognitive and personal social development of Follow Through children who participated in Head Start and other quality preschool programs with the cognitive and personal social development of Follow Through children who did not;

(3) Extent and effectiveness of parent involvement in the project, including participation in the decision-making process and participation in the classroom as paid employees or volunteers, and the effect of the project upon parental attitudes concerning the school and education in general;

(4) Thoroughness of implementation of the program sponsor model;

(5) Quality and quantity of medical and dental care, of psychological services, and of social services available to low-income Follow Through children;

(6) Evidence of changes in school programs and in institutional rules and practices which increase the responsiveness of the educational system to low-income children and their parents;

(7) Evidence of changes in attitudes of low-income and non-low-income persons in the community towards themselves and each other; and

(8) Evidence of the degree of growth of community services (e.g., medical services) and their responsiveness to the needs of low-income persons.

(42 U.S.C. 2809(a) (2), 2826 (a), (b))

PROJECT IMPLEMENTATION

§ 158.25 Project design and development.

(a) *Services and activities.* Each Follow Through project assisted under this subpart shall be designed to fulfill the special purposes of Follow Through set forth in § 158.1 by providing services and activities which focus upon all aspects of child learning and development. The services and activities incorporated into the project proposal shall include all of the program components set forth in § 158.26.

(42 U.S.C. 2809(a) (2))

(b) *Coordination.* In designing and developing the project, the grantee (or contractor) shall provide for coordination among the various program components set forth in § 158.26 to prevent fragmentation of services, and for coordination of each such program component with related community agencies and resources to prevent duplication of existing services. Each program component shall be developed with the participation of (1) the Policy Advisory Committee established under § 158.19; (2) interested community agencies and organizations, including the Head Start agency; and (3) to the extent appropriate, the project's program sponsor.

(c) *Policy advisory committee approval.* No program proposal shall be approved or funded by the Commissioner without the prior approval of all program components by the Policy Advisory Committee, unless the Commissioner determines that the basis of the Committee's refusal to approve the proposal is inconsistent with these regulations.

(20 U.S.C. 1231d; 42 U.S.C. 2809 (a) (2))

§ 158.26 Program components.

Unless the Commissioner in particular cases specifies otherwise, each Follow Through project shall include at least the following program components:

(a) An instructional component which, through association with a program sponsor, implements a particular innovative approach to the education and development of low-income children;

(b) A parent and community involvement component which actively involves parents and other interested persons in the community in all aspects of the project through such activities as (1) participation in the work of the Policy Advisory Committee and other parent groups; (2) participation in the classroom as observers or volunteers, or as paid employees under § 158.20; (3) regular home visits and other contacts initiated by project staff; and (4) participation in educational and community activities developed through other program components;

(c) A health component, developed with the direct assistance of the health professionals, which responds to both short- and long-range needs by providing (1) screening, referral, and corrective treatment services for all low-income Follow Through children; (2) preventive activities such as health education for Follow Through children and their families; and (3) activities designed to encourage and improve related community health services and maximum opportunities for their continuation even after

conclusion of the Follow Through project;

(d) A social services component designed to aid Families of low-income Follow Through children in identifying and solving family problems and to assist in the development of more effective community social service for low-income families.

(e) A guidance and psychological services component which (to the extent consistent with the program approach of the project's program sponsor) utilizes trained psychological personnel to assist the psychological development of low-income Follow Through children through (1) classroom observation followed by consultation with teachers, teacher aides, and other staff members; (2) staff development of pertinent Follow Through personnel; (3) work with Follow Through parents; and (4) testing and appropriate follow-up for Follow Through children where necessary.

(f) A nutrition component which provides for (1) a daily type-A lunch (as defined by the U.S. Department of Agriculture); (2) breakfast and snack where necessary; (3) nutrition education and counseling for Follow Through children and their parents; and (4) training in nutrition for Follow Through staff members;

(g) A training and career development component, developed with the assistance of the program sponsor, which includes (1) pre-service and in-service training for Follow Through staff members (including parent coordinators, social service aides, and other ancillary personnel); (2) appropriate orientation activities for non-Follow Through personnel with responsibilities relating to the Follow Through project; (3) establishment of a career development plan which provides for increases in both salary and job responsibility on the basis of job experience, academic background, and other relevant factors, and which is coordinated with education and supplementary training opportunities leading to career advancement; and (4) adult education and supplementary training (leading in general to college level degrees particularly in the field of early childhood education) for nonprofessional and paraprofessional project employees and, where possible, for classroom volunteers and observers. Participation in such programs shall not be made a condition of employment in a Follow Through project.

(20 U.S.C. 1231d; 42 U.S.C. 2809(a)(2), 2810)

§ 158.27 Relation to other programs and projects.

Each grantee or contractor shall make a maximum effort to utilize the resources of, and coordinate the project with, other public and private programs and projects providing benefits which are or may be made available to the children to be served.

(42 U.S.C. 2976)

PARTICIPATION OF PRIVATE SCHOOL CHILDREN

§ 158.28 Numbers of private school children to be served.

(a) Local eductional agencies receiving assistance under this subpart, and other agencies, organizations, and institutions receiving such assistance for projects in which one or more local educational agencies participate, shall serve public and private school children in equitable proportions. Such proportions shall approximate the relative proportions of low-income children enrolled at the entering grade level served by the project in the public and private schools in the local education agency's school district who are graduates of a full-year Head Start or similar quality pre-school program.

(b) If a grantee or contractor is unwilling or unable to serve public and private school children in equitable proportions as required by paragraph (a) of this section, the Commissioner may pro rata reduce the funds to which such grantee or contractor would otherwise be entitled and award another contract or grant under § 158.11(b) for the purpose of serving that proportion of private school children which such grantee or contractor would otherwise have served.

(42 U.S.C. 2809(a), 2809(a)(2) 113 Cong. Rec. § 14138-39, (daily ed., Oct. 4, 1967))

§ 158.29 Manner of service.

(a) Private school children may be served pursuant to § 158.28: (1) On public school premises through dual enrollment or shared-time programs; (2) on private school premises, in accordance with § 158.30, or (3) on a neutral site donated or rented for use in the project. If private school children are served under paragraph (a) (2) or (3) of this section, they shall be concentrated in as few sites as possible, and such sites shall be located, to the extent practical, in a public school project area or in reasonable proximity thereto.

(b) The grantee or contractor shall involve private school officials and the parents of private school children in planning all phases of the project, including the selection of the method for serving private school children under paragraph (a) and the selection of the program sponsor.

(c) Private school children shall participate to the maximum feasible extent in all phases of the project, and services provided for such children shall be comparable to those provided for public school children in terms of quality, scope, and opportunity.

(d) Any project to be carried out in public facilities and involving a joint participation of children enrolled in private schools and children enrolled in public schools shall include such provisions as are necessary to avoid classes which are separated by school enrollment or religious affiliation of the children.

(e) The project proposal shall indicate the number of private school children to be served and the manner in which and places at which they will be served. If the services differ in type or extent from those to be provided for public school children, the project application shall indicate how and why such services will differ. Letters from private school officials describing their participation in the planning of the project shall be attached to the project proposal.

(42 U.S.C. 2809(a), 2809(a)(2) 113 Cong. Rec. § 14138-39 (daily ed., Oct. 4, 1967))

§ 158.30 Provision of services.

(a) Services shall be provided to private school children by the grantee or contractor, directly or through a third party contractor (other than the private school whose children are served). In providing such services, the grantee or contractor shall: (1) Maintain custody of funds and exercise control over their expenditure, (2) retain title to equipment, textbooks, and other materials acquired with project funds or donated (by other than the private school) as a non-Federal contribution to the project, (3) insure that project funds are not used to provide services for private school children which would, in the absence of the project, have been provided by the private school in which such children are enrolled and (4) insure that none of the Follow Through services received by private school children in any way involve religious worship or instruction or religious proselytization.

(b) In complying with paragraph (a) (4) of this section, the grantee or contractor shall establish procedures for insuring compliance with the following requirements:

(1) Facilities renovated or rented for use in the project shall be devoid of sectarian or religious symbols, decoration, or other identification. Other facilities used primarily for the project shall, to the maximum feasible extent, also be devoid of sectarian or religious symbols, decoration, or other identification;

(2) Textbooks and other instructional materials used in the project shall be only those which are used in, or approved by an appropriate State or local educational agency or authority for use in, the public schools, or which have been specifically recommended by the program sponsor; and

(3) Project funds shall not be used to pay the salaries of teachers or other employees of a private sectarian school.

(c) The grantee or contractor shall describe in the project proposal the method by which it will provide services to private school children in compliance with the requirements of this section.

(42 U.S.C. 2809(a), 2809(a)(2), 113 Cong. Rec. § 14138-39 (daily ed., Oct. 4, 1967))

Subpart C—Grants and Contracts for Technical Assistance and Supplementary Training

§ 158.41 Grants and contracts with State educational agencies.

Technical assistance and leadership. The Commissioner may provide financial assistance, in the form of grants, to State educational agencies to enable them to provide technical assistance to local Follow Through projects and otherwise exercise leadership in regard to Follow Through activities in the State. Activities undertaken with such assistance may include, but need not be limited to, familiarizing State educational agency personnel with the Follow Through program and with the projects in their States through onsite visits and other means; promoting the coordination of Follow Through with other State and local programs having similar objectives; assisting local projects to identify and make maximum use of available public and private resources which can contribute to the development of comprehensive projects; assisting local projects to improve school-community relationships; assisting local projects to evaluate project activities and to disseminate information regarding project activities and their evaluation; and assisting local projects with staff training and development programs.

(42 U.S.C. 2823, 2824)

§ 158.42 Criteria for approval and funding of grants.

(a) *Funding priorities.* Applications for grants under § 158.41 will be approved and funded according to: (1) The needs of the local projects to be served by the applicants for technical assistance of the type proposed to be provided, (2) the abilities of the applicants to effect the objectives of technical assistance as set forth in § 158.41; and (3) the numbers and sizes of the local projects to be served by the applicants.

(b) *Level of funding.* The applications from State educational agencies under this section to enable them to provide technical assistance to local Follow Through projects and otherwise exercise leadership in regard to Follow Through activities in their States shall be for an amount not to exceed an amount of funds representing a total of (1) $4,000; which is the base rate; (2) $2,000 for each Follow Through project expected to be in operation during the period for which the application is being made; and (3) an amount arrived at by the application of the OEO-poverty index to each State.

(c) *Application approval criteria.* The Commissioner will select and fund projects eligible for assistance under this section (subject to the provisions of paragraphs (a) and (b) of this section) in accordance with the following criteria:

(1) *Programmatic* (Unsatisfactory, satisfactory, above average, outstanding)

(i) The extent to which the State educational agency has shown or will show familiarity with the Follow Through program and the projects in its State through site visits and other means;

(ii) the extent to which the State educational agency will promote coordination of Follow Through with other State and local programs having similar objectives;

(iii) the extent to which the State educational agency will assist local projects in identifying and making the maximum use of available public and private resources which can contribute to the development of comprehensive projects;

(iv) the extent to which the State educational agency will assist local projects in improving parent-school-community relationships;

(v) the extent to which the State educational agency will assist local projects in evaluating project activities and disseminating information regarding project activities and their evaluation;

(vi) the extent to which the State educational agency will assist local projects with staff training and development programs.

(2) *Organizational.* (Unsatisfactory; satisfactory; above average; outstanding) The extent to which the staffing for administering the grant is adequate to carry out the objectives.

(3) *Management.* (Unsatisfactory; satisfactory; above average; outstanding) The extent to which the State educational agency will seek information from the local project sites to meet their project needs for technical assistance.

(42 U.S.C. 2823, 2824)

§ 158.43 Joint applications for technical assistance grants and contracts.

In order to more effectively carry out the purpose of this subpart, applicants which are eligible to receive a technical assistance grant under § 158.41 may submit applications which either in whole or in part envision a joint technical assistance program undertaken in cooperation with other eligible agencies pursuant to § 100a.19 of this chapter. Such joint applications shall clearly delineate the responsibilities of each separate agency in administering the program, and a separate grant will be awarded to each agency to administer its portion of the joint program. No agency receiving funds under this section may be the fiscal or administrative agent for a technical assistance grant or contract for another such agency.

(42 U.S.C. 2823, 2824)

Subpart D—Grants and Contracts for Research and Demonstration

§ 158.51 Eligible projects.

(a) *Parties and activities.* The Commissioner may provide financial assistance, in the form of grants or contracts, to public and private agencies, organizations, and institutions for the purpose of developing and implementing approaches to the education and development of disadvantaged children, which approaches can serve as models for use in Follow Through and similar programs. Activities undertaken with such assistance may include:

(1) The implementation of classroom instructional techniques and approaches;

(2) The implementation of methods for enlisting and utilizing the assistance of members of the community, particularly the parents of disadvantaged children, in the educational process;

(3) The development and application of methods for the evaluation of educational programs designed for disadvantaged children, and for the use and dissemination of information derived from such evaluation; and

(4) The development of techniques for, and the provision of, specialized training for teachers and other personnel (both professional and nonprofessional) involved in the education of low-income children.

(42 U.S.C. 2825(a), 2942(2))

(b) *Special problems.* In addition to the assistance provided under paragraph (a) of this section, the Commissioner may also, where he has determined that projects of the type funded under paragraph (a) of this section can benefit therefrom, make grants or contracts for research pertaining to special problems encountered in the education of disadvantaged children.

(42 U.S.C. 2825(a))

(c) *Priorities.* Not more than 15 per centum of the amount appropriated for any fiscal year under authorization of Title II of the Economic Opportunity Act of 1964, as amended, will be used for the purposes of this subpart. Priority for funding under paragraph (a) of this section will be given to applicants that are or will be serving, pursuant to § 158.26, as program sponsors for one or more local projects funded under Subpart B of this part. Pilot or demonstration projects will be considered by the Commissioner only if submitted for approval of the appropriate local agency or governing body serving the area in which the project is to be conducted, in accordance with section 232(d) of the Act.

(42 U.S.C. 2825(c), 2825(d))

§ 158.52 Funding criteria.

The Commissioner will select and fund projects from among those eligible for assistance under paragraphs (a) or (b) of § 158.51 in accordance with the following criteria (subject to the priorities established by paragraph (c) of § 158.51):

(a) *General criteria for selection and approval.*

(1) the extent to which the proposal utilizes knowledge gained from relevant educational research, including that funded under § 158.51(b);

(2) the educational significance of the project in terms of its potential impact upon the education of low-income children and the potential of the project's educational approach and methodologies for a general adaptability to Follow Through and other similar programs; and

(3) the degree to which provision has been made for coordinating the project with other similar projects and activities;

(4) requirements of the evaluation criteria described in § 158.24(b).

(b) *Programmatic criteria.* Each of these criteria will be rated on the following scale: (Unsatisfactory, satisfactory, above average, outstanding.)

(1) The extent to which the objectives of the educational approach are clearly stated;

(2) The extent to which the strategies for achieving the objectives are clearly delineated in the following areas:

(i) Physical facilities and equipment

(ii) Staffing requirements

(iii) Classroom management

(iv) Instruction techniques

(v) Instructional materials

(3) The extent to which parents are involved in activities directed toward the achievement of program goals;

(4) The extent to which the program provides for the training of:

(i) Administrators

(ii) Teachers

(iii) Teacher aides and other paraprofessionals

(iv) Parents

(v) Others

(5) The extent to which the applicant provides for the evaluation of the effectiveness of the educational approach.

(c) *Organizational criteria.* The extent to which the following factors implement the objectives of the educational approach:

(1) Organizational structure (organizations chart)

(2) Staffing pattern and percent of time allocated

(3) Qualifications of key personnel

(d) *Management criteria.* The extent to which indicators of effective management are present, including:

(1) Planning/operating system

(2) Estimate of costs of operation

(3) Internal reporting system

(4) Methods for dissemination of information

(5) The extent to which the applicant provides for the monitoring of project administration.

(42 U.S.C. 2825(a), 2942(2))

Subpart E—Federal Financial Participation

§ 158.63 Federal share of expenditures.

The Federal share of expenditures incurred under Follow Through grants and contracts made pursuant to this part, up to the total specified in the award document, shall be:

(a) for local projects under Subpart B of this part, the difference between the non-Federal share required by § 158.64 and total expenditures;

(b) for technical assistance and training under Subparts B, C and D of this part, 100 percent of expenditures; and

(c) for research and demonstration programs under Subpart D of this part, 100 percent of expenditures.

(42 U.S.C. 2809 (a)(2), 2812 (c), 2823, 2824, 2825)

§ 158.64 Non-Federal share.

Subject to the provisions of § 158.63 the grantee or contractor shall share part of the costs of a Follow Through project funded under Subpart B of this part. Such share (hereinafter, "non-Federal share") shall be an amount equal to not more than: (a) 25 percent of the amount of the approved project grant if the project comprises one grade level; (b) 20 percentum of such amount if the project comprises two grade levels, (c) 16 percentum of such amount if the project comprises three grade levels, and (d) 14 percentum of such amount if the project comprises four or more grade levels. Once the project has reached its highest grade level (at least four grades, unless no kindergarten is in operation in the school district) and has operated at that level for a period of two project years, the non-Federal share shall increase again up to the maximum 25 percentum, rising in the same increments (one per year) in which it decreased to its lowest point.

(42 U.S.C. 2812 (c))

§ 158.65 Waiver of non-Federal share.

(a) *Eligibility.* (1) The Commissioner may reduce the non-Federal share required of a grantee or contractor by § 158.64 under any of the following circumstances:

(i) If the annual per capita income of the county in which the Follow Through project is located is less than $1,000, by an amount up to 100 percentum of the required non-Federal share;

(ii) If the annual per capita income of the county in which the project is located is $1,000 or more but less than $1,250, by an amount not in excess of 50 percentum of the required non-Federal share;

(iii) If the grantee or contractor can demonstrate, using the most reliable available data, that the annual per capita income of the political subdivision of the county in which the project is located, or of the project area, is less than the annual per capita income of the county and that the annual per capita of the political subdivision or project area is within the dollar limitations in either paragraph (a)(1)(i) or (ii) of this section, by the amount specified therein;

(iv) If, in the case of a project serving migratory children or Indian children residing on reservations, the annual per capita income of the group or groups served is within the dollar limitations in either paragraph (a)(1)(i) or (ii) of this section, by the amount specified therein.

(2) The Commissioner may also make an appropriate reduction in the non-Federal share required of a grantee or contractor if it is demonstrated to his satisfaction that:

(i) There has occurred a simultaneous increase in both the percentage of non-Federal share and the overall costs of the Follow Through project, such as occasioned by a rise in per capita income beyond the limits prescribed in paragraphs (a)(1)(i) and (a)(1)(ii) of this section during a period in which there has been a significant increase in the number of children served; or

(ii) the financial or human resources which would otherwise be available for use in the Follow Through project have been significantly reduced by natural disaster or other unusual circumstances affecting the project area or the larger community in which it is located.

(b) *Application for waiver.* A grantee or contractor that is unable to contribute the full amount of its required non-Federal share, after having made every reasonable effort to do so, may request a reduction of its non-Federal share pursuant to paragraph (a) of this section. Such request shall be submitted in writing with the project proposal or such time thereafter as the grantee or contractor determines that it is unable to provide the entire non-Federal share, and shall describe:

(1) The circumstances which justify a reduction of the non-Federal share under paragraph (a) of this section;

(2) The source or sources of the information on per capita income (if such information is relied upon in the request);

(3) The effort which the grantee or contractor has made to provide its non-Federal share; and

(4) The amount of the non-Federal share which the grantee or contractor is able to provide and the extent to which this contribution is in kind.

(c) *Period of waiver.* The Commissioner shall not approve the reduction of non-Federal share for any period in excess of one year, but may renew such approval upon resubmission of a written request that complies with paragraph (b) of this section.

(42 U.S.C. 2812(c))

§ 158.66 Use of funds for sectarian purposes.

Funds appropriated under the Act and distributed under this part shall not be used for any purpose which involves religious worship or instruction or religious proselytization.

(42 U.S.C. 2809(a))

§ 158.67 Maintenance of effort.

Services and activities provided with funds made available under Subpart B of these regulations shall be in addition to, and not in substitution for, services and activities previously provided without Federal assistance. Funds or other resources devoted to programs designed to meet the needs of the poor within the community may not be diminished in order to provide any contribution required by § 158.64.

(42 U.S.C. 2812(d), 2836(5))

§ 158.68 Salary and wage limitations and reporting requirements.

(a) *Limitations.* To the extent paid from Federal funds or matching non-Federal funds, salaries and wages of persons engaged in activities funded under these regulations shall be subject to the following limitations:

(1) The rate of compensation shall not be less than the prevailing Federal minimum wage rate specified in section 6(a)

(1) of the Fair Labor Standards Act of 1938, nor more than the average rate paid to a substantial number of the persons providing substantially comparable services in the community where the project is located or, if higher, the average rate paid for such services in the area of the employee's immediately preceding employment.

(2) The rate of compensation shall not exceed $15,000 per year (and no non-Federal funds paid to a person at a rate in excess of $15,000 per year shall be considered as non-Federal share under § 158.64) unless the grantee or contractor obtains a specific exception from this requirement upon application to the Commissioner. Such an exception may be granted only where application of the limitation would greatly impair the recruitment of qualified project personnel either because (i) the prevailing local salary level for persons whose skills are required exceeds $15,000, or (ii) the local scarcity of persons with professional and other highly specialized skills required for the project makes it necessary to recruit such persons from other communities where the relevant salary levels are above $15,000.

(3) Unless otherwise specifically approved by the Commissioner, the rate of compensation of any person being paid more than $6,000 per year shall not exceed by more than 20 percentum that person's rate of compensation in his immediately preceding employment.

(42 U.S.C. 2836 (2), 2951 (a), (c))

(b) *Records.* The grantee or contractors shall (1) maintain records adequate to demonstrate compliance with the limitations in paragraph (a) of this section, and (2) submit to the Commissioner on or before July 15 of each year the names of all persons covered by paragraph (a) of this section who, as of June 30 of that year, were receiving a salary of $10,000 or more per year, together with the total annual salary paid to each such person and the amount of that salary provided from funds made available under the Act.

(42 U.S.C. 2951)

Subpart F—General Provisions

§ 158.81 Certification of accounting system adequacy.

(a) *Requirements.* Each grantee or contractor receiving funds under this part, and each subcontractor performing services for such grantee or contractor, shall utilize an accounting system with internal controls adequate to (1) safeguard its assets, (2) check the accuracy and reliability of the accounting data, (3) promote operating efficiency, and (4) encourage compliance with prescribed management policies and any additional fiscal responsibility or accounting requirements which the Commissioner may establish.

(b) *Certification.* Prior to receiving funds under this part for any fiscal year, each grantee or contractor shall submit to the Commisioner a statement certifying that it, and any intended subcontractor, has established an accounting system which fulfills the requirements of paragraph (a) of this section. Such statement shall be submitted by a certified public financial officer responsible for providing required financial services to the agency.

(42 U.S.C. 2835 (a))

§ 158.82 Preliminary audit survey.

(a) *When required.* Each grantee or contractor that (1) is receiving financial assistance under this part for the first time, (2) has made significant changes in its accounting system since it last received financial assistance under the Act or this part, or (3) is otherwise directed to do so by the Commissioner, shall arrange for a preliminary audit survey and submit a report of such survey to the Commissioner within three months following the effective date of the grant or contract. The survey shall be conducted by, and the report signed by a certified public accountant or other duly licensed public accountant, or if the grantee or contractor is a local educational agency or other public agency, by the appropriate public financial officer who accepts responsibility for providing audit services to such grantee or contractor.

(b) *Scope of survey.* The preliminary audit survey shall be a review and evaluation of the adequacy, under the standards set forth in § 158.81(a), of the grantee's or contractor's accounting system and the accounting system of any subcontractor performing services for such grantee or contractor. In addition to the investigations normally required under generally accepted audit standards, the survey shall include examination of (1) the training and experience of the grantee's or contractor's accounting personnel, (2) the procedures adopted to identify and control the use of equipment purchased with funds provided under this part, and (3) the procedures for evaluation and recording of the non-Federal share contributions required by § 158.64.

(c) *Appraisal of accounting system.* The report of the preliminary audit survey shall contain the auditor's appraisal of the grantee's or contractor's accounting system based upon a review conducted in accordance with paragraph (b) of this section, a specification of the reasons for all weaknesses uncovered, and recommendations for corrective action. The Commissioner will review each report in accordance with the provisions of section 243(b) of the Act.

(42 U.S.C. 2835(b))

§ 158.83 Annual audit.

(a) Each grantee and contractor shall arrange for an annual financial audit of its grant or contract to be performed by one of the same types of persons authorized under § 158.82 to conduct the preliminary audit survey. Where the grantee or contractor regularly schedules an annual audit of other activities which it conducts, the audit required by this section may be conducted simultaneously with such regular audit. A copy of the audit report (or section of the report relevant to Follow Through) shall be submitted to the Commissioner by September 30 of each year for which funds are received under this part or within 60 days of the audit's completion, whichever is earlier.

(b) The annual audit shall be a complete examination of all accounts and supporting documents (of the grantee or contractor as well as any subcontractor) pertaining to the receipt and disbursement of funds under these regulations. Such audit shall be conducted in accordance with generally accepted audit standards and with specific reference to the regulations contained in this part, the project proposal and budget, and other laws and documents governing the use of Follow Through funds. In addition to verifying that Follow Through funds were properly expended and accounted for, the audit shall also verify that the non-Federal share required by § 158.64 was contributed to the project and that all in-kind contributions were fairly evaluated.

(c) The audit report shall be certified by the auditor and shall include the auditor's statement concerning receipts and disbursements of both Follow Through funds and non-Federal share contributions, as well as a summary of audit findings and explanation of all items questioned by the auditor. The Commissioner will review each report in accordance with the provisions of section 243(c) of the Act.

(42 U.S.C. 2835(c))

§ 158.84 Final accounting.

(a) In addition to such other accounting as the Commissioner may require the recipient shall render, with respect to the project, a full account of funds expanded, obligated, and remaining.

(b) A report of such accounting shall be submitted to the Commissioner within 90 days of the expiration or termination of the grant or contract, and the recipient shall remit within 30 days of the receipt of a written request therefor any amounts found by the Commissioner to be due. Such period may be extended at the discretion of the Commissioner upon the written request of the recipient.

(20 U.S.C. 1232c (b) (3))

§ 158.85 Suspension, termination and refusal to refund.

(a) (1) Assistance under the program may be terminated in whole or in part if the Commissioner determines after affording the recipient reasonable notice and an opportunity for a full and fair hearing, that the recipient has failed to carry out its approved project proposal in accordance with the applicable law and the terms of such assistance or has otherwise failed to comply with any law, regulation, assurance, term or condition applicable to the program. Assistance under this program may be suspended during the pendency of a termination proceeding initiated pursuant to this paragraph but only in emergency situations, e.g., where there is evidence of flagrant mis-

use of funds by the recipient, or evidence of unauthorized activity by the recipient which poses a threat of harm to children participating in the program.

(2) Proceedings with respect to the termination of a grant shall be initiated by the mailing to the recipient of a notice by certified mail, return receipt requested, informing the recipient of the Government's request for termination and the specific grounds therefor, together with information regarding the time, place, and nature of the hearing to be held and such other information with respect to the conduct of such proceedings as the Commissioner may determine. If the Commissioner determines for the reason specified in paragraph (a)(1) of this section that suspension of assistance during the pendency of such proceedings is necessary, he shall afford the recipient reasonable notice of such determination. Such notice shall: (i) Inform the recipient of such determination, (ii) advise the recipient of the effective date of such suspension (which will be no earlier than the date of such notice), and (iii) offer the recipient an opportunity to show cause why such action should not be taken.

A notice of suspension of assistance shall advise the recipient, in addition to the matters described in paragraph (a)(2) of this section, that any new expenditures or obligations made or incurred in connection with the program during the period of the suspension will not be recognized by the Government in the event the assistance is ultimately terminated. Expenditures to fulfill legally enforceable commitment made prior to the notice of suspension, in good faith and in accordance with the recipient's approved program or project, and not in anticipation of suspension or termination, shall not be considered new expenditures.

(4) Termination of assistance shall be effected by the delivery to the recipient of a final order of termination, signed by the Commissioner or his designee, or where the recipient invokes the procedures available under paragraph (b)(2) of this section, upon an initial decision of a hearing examiner becoming final without appeal to or review by the Commissioner. If an initial decision of the hearing examiner is appealed to or reviewed by the Commissioner pursuant to paragraph (b)(2) of this section, then termination of assistance shall be effective upon a decision by the Commissioner holding that such termination is appropriate.

(5) In the event assistance is terminated under this section, financial obligations incurred by the recipient prior to the effective date of such termination will be allowable to the extent they would have been allowable had such assistance not been terminated, except that no obligations incurred during the period in which such assistance was suspended pursuant to paragraph (a)(1) of this section and no obligations incurred in anticipation of suspension or termination will be allowed. Within 60 days of the effective date of termination of assistance under this section, the recipient shall furnish an itemized accounting of funds expended, obligated, and remaining. Within 30 days of a request therefor, the recipient shall remit to the Government any amounts found due.

(b)(1) If the recipient requests an opportunity to show cause why a suspension of assistance pursuant to paragraph (a)(1) of this section should not be continued or imposed, the Commissioner will, within 7 days after receiving such request, hold an informal meeting for such purpose.

(2) Hearings respecting the termination of assistance pursuant to this section shall be conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 554–557). Proposed findings of fact, conclusions of law, and briefs will be submitted to the presiding officer within 20 days of the conclusion of the hearing.

(3) The initial decision of a hearing examiner regarding the termination of a grant under the program shall become the decision of the Commissioner without further proceedings unless there is an appeal to, or review on motion of, the Commissioner made in writing no later than 15 days after receipt by the party requesting such appeal or review of the decision of the hearing examiner. A request for appeal or review under this section shall be accompanied by exception to the hearing examiner's decision, proposed findings, supporting reasons and briefs. The adverse party shall submit its reply no later than 15 days after the submission of such request for appeal or review. The Commissioner shall issue a final decision in the case of such appeal or review no later than 30 days after the final submission of the above materials by the parties. The Commissioner may delegate his functions under this subparagraph to an appellate review council established and appointed by him.

(c) The procedures established by this section shall not preclude the Commissioner from pursuing any other remedies authorized by law. Proceedings pursuant to Part 80 of this title with respect to the eligibility of an applicant for assistance under Title VI of the Civil Rights Act (42 U.S.C. 2000d) shall be governed by the regulations in that part and Part 81 of this title.

(d) The Commissioner will not refuse to renew funding of projects pursuant to § 158.15(i), unless the grantee or contractor has been given reasonable notice and opportunity to show cause why such action should not be taken.

(42 U.S.C. 2944 (2), (3))

[FR Doc.74–4983 Filed 3–4–74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 74–SO–16]

ALTERNATE AIRWAY

Proposed Rescission

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would revoke the west alternate to VOR Federal Airway No. 37 between Columbia, S.C., and Fort Mill, S.C.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before April 4, 1974, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue, SW, Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would revoke V–37W from Columbia, S.C., to Fort Mill, S.C., so that the remaining route structure and traffic flow would conform to recently revised terminal procedures at Columbia.

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

Issued in Washington, D.C., on February 27, 1974.

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

[FR Doc.74–4937 Filed 3–4–74;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74–SW–6]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to designate a 700-foot transition area at Thibodaux, La.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before April 4, 1974, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to

become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (39 FR 440), the following transition area is added:

THIBODAUX, LA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Thibodaux Municipal Airport (latitude 29°44'50" N., longitude 90°49'55" W.) and within 2 miles each side of the Tibby, La., VORTAC 359°T radial extending from the 5-mile radius to the Tibby VORTAC excluding the portion that overlaps the Houma, La., transition area.

The proposed transition area will provide controlled airspace for aircraft executing the proposed VOR-A (original) approach procedure at the Thibodaux Municipal Airport.

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

Issued in Fort Worth, Texas, on February 21, 1974.

ALBERT H. THURBURN,
Acting Director, Southwest Region.

[FR Doc.74-4938 Filed 3-4-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

ARIZONA AND CALIFORNIA COMPLIANCE SCHEDULES

Public Hearing

Section 110(c) of the Clean Air Act, as amended (42 U.S.C. 1857c-5), directs the Administrator of the Environmental Protection Agency to publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if the State fails to submit a portion within the time prescribed, or if a portion is determined by the Administrator not to be in accordance with the requirements of section 110 of the Act. In order to satisfy the requirements of section 110(a)(2)(B) of the Act and 40 CFR 51.15(c), the Environmental Protection Agency promulgated regulations applicable to air pollutant sources in certain States and provided that owners or operators of sources which cannot achieve compliance with approved air pollution emission control regulations before January 31, 1974, could submit compliance schedules to the Administrator for approval. These compliance schedules were required to set forth timetables for achieving compliance including, where practicable, specific increments of progress. Pursuant to these regulations, owners and operators in the States of Arizona and California have submitted compliance schedules for approval. A listing of sources for which schedules have been submitted is included in this issue of the FEDERAL REGISTER starting at page 8351.

A compliance schedule consists of intermediate and final dates by which actions are to be taken by an air pollution source toward meeting applicable State or Federal emission limiting regulations.

The public is encouraged to participate in this rule making by submitting comments in accordance with the conditions specified in the notice of proposed rule making in this issue of the FEDERAL REGISTER at page _____. In addition, public hearings will be held on the proposed schedules in order to provide the general public a greater opportunity to comment. Accordingly, notice of public hearings concerning the proposed schedules is given as indicated below.

The presiding officer will have the responsibility for maintaining order; excluding irrelevant or repetitious material; scheduling presentations; and, to the extent possible, notifying participants of the time at which they may appear. The hearing will be conducted informally. Technical rules of evidence will not apply.

Persons wishing to make a statement at the hearing will be afforded the opportunity to do so. The time for making a statement will be limited to fifteen minutes. Such persons are requested to file a notice of their intention to make a statement no later than 15 days prior to the hearing; and, not later than 10 days prior to the hearing, if practicable, to submit five copies of the proposed statement to the Regional Administrator of the Environmental Protection Agency, 100 California Street, San Francisco, California 94111, Attn: ENCPH. All other inquiries and comments prior to and after the hearing should be addressed similarly.

Notice of the following hearings on proposed compliance schedules is hereby given:

ARIZONA

A hearing on proposed compliance schedules for the State of Arizona will be held on Wednesday, April 3, 1974, at 1:30 p.m. and 7 p.m., in Maricopa County Board of Supervisors Auditorium, 205 W. Jefferson Street, Phoenix, Arizona 85003.

All correspondence concerning the hearing should be addressed to the Regional Administrator of the Environmental Protection Agency, Attention: ENCPH, Hearings on Compliance Schedules for the State of Arizona, 100 California Street, San Francisco, California 94111.

CALIFORNIA

A hearing on proposed compliance schedules for the State of California will be held on Thursday, April 4, 1974, at 1:30 p.m. and 7 p.m., in Room 1529, U.S. Court House, 312 North Spring Street, Los Angeles, California.

All correspondence concerning the hearing should be addressed to the Regional Administrator of the Environmental Protection Agency, Attention: ENCPH, Hearing on Compliance Schedules for the State of California, 100 California Street, San Francisco, California 94111.

Dated: February 27, 1974.

ALVIN L. ALM,
Acting Administrator.

[FR Doc.74-4928 Filed 3-4-74;8:45 am]

[40 CFR Part 52]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making: Compliance Schedules

Environmental Protection Agency regulations in 40 CFR 52.134(a) require certain sources in the State of Arizona to comply with a Federally promulgated air pollution control regulation by January 31, 1974, or to submit to the Administrator for approval proposed compliance schedules that demonstrate compliance with the applicable Federal air pollution control regulation. Additionally, for the State of California, the Administrator has disapproved the compliance schedule portion of the regulations in the following Air Quality Control Regions because they failed to provide for necessary increments of progress:

1. Metropolitan Los Angles Intrastate:

(a) Rules 50-A, 52-A, 53-A(a), 53-A(b), 53-A(c), 53.2, 53.3, 54.A, 58.A, 62.1, 68, 69, 70 and 71 of the San Bernardino County APCD

(b) Rules 53, 72.1 and 72.2 of the Riverside County APCD

(c) Rules 53 and 66.c of the Orange County APCD

(d) Rule 39.1 of the Santa Barbara County APCD

(e) Rule 59 of the Ventura County APCD

(f) Rule 66(c) of the Los Angeles County APCD

2. Northeast Plateau Intrastate:

(a) Rule 4.5 of the Siskiyou County APCD

3. San Francisco Bay Area Intrastate:

(a) Rule 64(c) of the Sonoma County APCD

4. Southeast Desert Intrastate:

(a) Rules 50-A, 52-A, 53-A(a), 53-A(b), 53-A(c), 53.2, 53.3, 54.A, 58.A, 62.1, 68, 69, 70, and 71 of the San Bernardino County APCD

(b) Rules 53, 72.1, and 72.2 of the Riverside County APCD

5. San Joaquin Valley Intrastate:

(a) Rule 409 of the Tulare County APCD

6. North Coast Intrastate:

(a) Rule 4.5 of the Siskiyou County APCD

On December 10, 1973, Los Angeles County APCD Rule 68 was added to this list of regulations requiring submittal of increments of progress.

The Administrator promulgated the necessary increments of progress requirements on May 14, 1973, 40 CFR 52.240(d). Subsequently, certain source owners or operators submitted compliance schedules with increments of progress for approval by the Administrator.

Pursuant to these provisions, all compliance schedules referenced by this notice were submitted and are being considered by the Administrator for approval.

The proposed schedules submitted to the Administrator will generally not be adopted in their original form. Rather, specific commitments for achieving increments of progress toward compliance have been extracted from each submittal and transcribed to a separate document. Some clarifications and minor changes were made to the original submittals. This abbreviated document is preferable to the format of the submittals since it facilitates a clearer understanding of the legal requirements to be imposed on each owner or operator of an affected source. The abbreviated compliance schedules are the schedules referenced by this notice and, if approved, will be the official compliance schedule for each source so referenced. Both the submitted compliance schedules and the abbreviated compliance schedules are available for inspection at the Environmental Protection Agency, Region IX, 100 California Street, San Francisco, California.

Compliance schedules pertaining to sources located in Arizona are available for inspection at the following locations:

(1) Division of Air Pollution Control
Arizona State Department of Health
1740 West Adams Street
Phoenix, Arizona 85007

(2) Bureau of Air Pollution Control
Environmental Services Division
Maricopa County Health Department
1845 East Roosevelt Street
Phoenix, Arizona 85006

(3) Air Pollution Control District
Pima County Health Department
151 West Congress Street
Tucson, Arizona 85701

(4) Gila-Pinal Joint Air Pollution Control District
711 Main Street
Florence, Arizona 85232

Compliance schedules pertaining to sources in California are available for inspection at the following locations:

(1) State of California Air Resources Board
1025 "P" Street
Sacramento, California 95814

(2) Los Angeles County Air Pollution Control District
434 South San Pedro Street
Los Angeles, California 90013

(3) San Bernardino County Air Pollution Control District
172 W. Third Street
San Bernardino, California 92401

(4) Ventura County Air Pollution Control District
3319 Telegraph Road
Ventura, California 93003

(5) Riverside County Air Pollution Control District
5888 Mission Boulevard
Riverside, California 92509

Public hearings will be held on all proposed compliance schedules in order to provide the general public the fullest opportunity to comment. Public hearings will be held in accordance with the notice of public hearings published in this issue of the FEDERAL REGISTER and at the dates, times, and places specified therein.

Interested persons may participate in this rule making by presenting statements at the public hearing or by submitting written comments in triplicate to the Regional Administrator, Environmental Protection Agency, Region IX, 100 California Street, San Francisco, California 94111, Attn: ENCPH. All comments received no later than five days after the dates of the public hearings will be considered. All comments will be available for public inspection during normal business hours at the address of the Environmental Protection Agency above.

This notice of proposed rule making is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 1857 c–5).

Dated: February 27, 1974.

ALVIN L. ALM,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart D—Arizona

1. In § 52.134, a new paragraph (b) is added as follows:

§ 52.134 Compliance schedules.

* * * * *

(b) *Federal compliance schedules.*

The compliance schedules for the sources identified below are approved as meeting the requirements of paragraph (a) of this section.

Source	Location	Regulation involved	Effective date	Final compliance date
Spreckels Sugar Division	Maricopa County	40 CFR 52.126(b)	Jan. 31, 1974	June 30, 1975
Producers Cotton Oil Co.:				
a. Greenfield Gin	Maricopa	do	do	July 31, 1974
b. Marana Gin	Pima County	do	do	Do.
c. Avra Gin	do	do	do	Do.
d. Coolidge Gin	Pinal County	do	do	Do.
e. Magna Gin	do	do	do	Do.
Arizona Portland Cement Co.:				
a. No. 3 kiln	Pima County	do	do	Apr. 12, 1974
b. No. 3 clinker cooler	do	do	do	Do.
Arizona Feeds	do	do	do	July 22, 1974
Inspiration Consolidated Copper Co.	Gila County			
a. Copper smelter		do	do	Oct. 1, 1974
b. Smelter feed dryer		do	do	Do.
American Smelting	Pinal County			
a. Reverberatory furnances and roasters.		do	do	Nov. 1, 1974
Magma Copper Co.:				
a. Reverberatory furnaces	Pinal County	do	do	May 15, 1975
b. Converters	do	do	do	Dec. 30, 1974
Maricopa Growers, Inc.:				
a. Gin No. 1	do	do	do	Oct. 1, 1974
b. Gin No. 2	do	do	do	Do.
Independent Gin Co	do	do	do	Mar. 15, 1975
Arizona Gin Co.:				
a. Liberty Gin	Maricopa County	do	do	June 30, 1975
b. South Mountain Gin	do	do	do	Do.
c. Cashion Gin	do	do	do	Do.
d. Santa Rosa Gin	Pinal County	do	do	June 1, 1975
e. Chico Gin No. 1	Pima County	do	do	July 10, 1975
f. Chico Gin No. 2	do	do	do	July 31, 1975
Chandler Gining Co.:				
a. Chandler Gin	Maricopa County	do	do	Dec. 31, 1974
b. Serape Gin	do	do	do	Do.
c. Gilbert Gin	do	do	do	Oct. 20, 1974
d. Higley Gin	do	do	do	Nov. 20, 1974
e. Queen Creek Gin	Maricopa	do	do	Dec. 31, 1974
Casa Grande Oil Mill:	Pinal County			
a. Meal Loading System	do	do	do	Do.
b. Pneumatic Transfer System	do	do	do	Nov. 1, 1974
Western Cotton Products Co.:				
a. Delinting process	Maricopa County	do	do	Aug. 2, 1974
b. Baling and Recycle Beater		do	do	Do.

Subpart F—California

2. In § 52.240, a new paragraph (e) is added as follows:

§ 52.240 Compliance schedules.

* * * * *

(e) *Federal compliance schedules.*

The compliance schedules for the sources identified below are approved as meeting the requirements of paragraph (d) of this section. All regulations cited are air pollution control regulations of the specific county in which the source is located except where noted.

Source	Location	Regulation involved	Effective date	Final compliance date
Avery Label Co	Los Angeles County	Rule 66(c)	Sept. 1, 1974	Aug. 30, 1974
General Motors Corp	do	do	do	Aug. 31, 1974
Gravure West	do	do	do	Do.
International Mill Service	San Bernardino County.	Rule 50A	Jan. 1, 1975	Dec. 31, 1974
Stauffer Chemical Co.:				
a. Grade 80 Plant	do	Rules 50A and 52A	do	Dec. 20, 1974
b. Dense Ash Plant	do	do	do	Nov. 15, 1974
c. Anhydrous Borax Plant	do	do	do	Nov. 8, 1974

Source	Location	Regulation involved	Effective date	Final compliance date
Kerr-McGee Chemical Co.:				
a. Soda Ash Loading (Shipping Section)	do	Rules 50A, 52a, and 54A	do	Aug. 15, 1974
b. Salt Lake Loading (Shipping Section)	do	do	do	Do.
c. Bleacher (Carbonation Section)	do	do	do	Dec. 15, 1974
d. Licons Roaster (Soda Products Section)	do	do	do	Dec. 1, 1974
e. No. 1 Dryer (Soda Products Section)	do	do	do	June 15, 1974
f. No. 2 Dryer (Soda Products Section)	do	do	do	Dec. 20, 1974
g. No. 1 PYRO Furnace (Boron Section)	do	do	do	Nov. 15, 1974
h. No. 6 & 3 PYRO Furnaces (Boron Section)	do	do	do	Oct. 15, 1974
i. Boric Acid Dryer (Boron Section)	do	do	do	Nov. 1, 1974
j. Lithium Carbonate Dryer (Potash Section)	do	do	do	June 1, 1974
k. Supo Compaction Plant (Potash Section)	do	do	do	July 1, 1974
l. No. 1 Aghi Dryer (Potash Section)	do	do	do	Dec. 15, 1974
m. No. 2 Aghi Dryer (Potash Section)	do	do	do	Nov. 15, 1974
n. Supo Dryer (Potash Section)	do	do	do	Nov. 10, 1974
o. Chemhi Dryer (Potash Section)	do	do	do	Oct. 15, 1974
Witteman Steel Mills	do	Rule 50A	do	Nov. 1, 1974
Riverside Cement Co	do	Rules 52A and 54A	do	Dec. 31, 1974
Southern California Edison Co.:				
a. Ormand Beach Station Unit 1	Ventura County	Rule 59	do	Do.
b. Ormand Beach Station Unit 2	do	do	do	Do.
Amax Aluminum/Mill Products, Inc	Riverside County	Rule 72.2	do	Do.
Southern California Edison Co.:				
a. Alamitos Unit 5	Los Angeles County	Rule 68	Dec. 31, 1974	Do.
b. Alamitos Unit 6	do	do	do	Do.
c. Redondo Unit 7	do	do	do	Do.
d. Redondo Unit 8	do	do	do	Do.
City of Los Angeles, Department of Water and Power:				
a. Haynes Unit 1	do	do	do	June 24, 1974
b. Haynes Unit 2	do	do	do	Oct. 21, 1974
c. Haynes Unit 3	do	do	do	Aug. 13, 1974
d. Haynes Unit 4	do	do	do	July 23, 1974
e. Haynes Unit 5	do	do	do	Apr. 29, 1974
Douglas Aircraft Co	do	Rule 66(c)	Sept. 1, 1974	Aug. 31, 1974

[FR Doc.74-4929 Filed 3-4-74;8:45 am]

[40 CFR Part 120]

STATE OF OREGON

Navigable Water Quality Standards; Correction

In FR Doc. 74-2743 appearing at page 4486 in the issue of February 4, 1974, Paragraph 2 of the proposed standards should be read as follows:

"Section II OAR 340-41-025 (12) is amended to read as follows:

"The concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection to exceed one hundred ten percent (110%) of saturation, except when stream flow exceeds the 10-year, 7-day average flood."

Dated: February 15, 1974.

ROGER STRELOW,
Acting Assistant Administrator for Air and Water Programs (AW-445).

[FR Doc.74-5017 Filed 3-4-74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 231, 241]

[Release Nos. 33-5454, 34-10632]

DISCLOSURE OF EXTRACTIVE RESERVES AND NATURAL GAS SUPPLIES

Proposed Preparation and Filing of Registration Statements

Notice is hereby given that the Securities and Exchange Commission is proposing to amend Guide 28, "Extractive Reserve," of the Guides for Preparation and Filing of Registration Statements (Securities Act Release No. 4936 (Dec. 9, 1968) (33 FR 18617)) under the Securities Act of 1933 ("Securities Act"). If adopted, Guide 28 would be amended by adding a new paragraph (b) relating to disclosure by companies engaged in the gathering, transmission, or distribution of natural gas and would be captioned "Disclosure of Extractive Reserves and Natural Gas Supplies." In addition, the Commission is considering the adopton of the substance of Guide 28, as amended, as Guide 2, "Disclosure of Extractive Reserves and Natural Gas Supplies," of proposed Guides for Preparation and Filing of Reports and Registration Statements under the Securities Exchange Act of 1934 ("Exchange Act"). Paragraph (a) of proposed Guide 2, relating to extractive reserves, would apply only to registration statements on Form 10 (17 CFR 249.210) and not to annual reports on Form 10-K (17 CFR 249.310) or other periodic reports under the Exchange Act.

Guide 28 presently states that Instruction 2 to Item 10 of Form S-1 (17 CFR 239.11) and Item 5(a) of Form S-7 (17 CFR 239.26) require registrants engaged in extractive operations to include in their prospectus appropriate information regarding the quantitative amount of their estimated reserves and indicates the manner in which such information may be set forth. Pursuant to Items 9(a) ("Description of Business") and 10 ("Description of Property") of Form S-1 and Item 5(a) ("Business") of Form S-7, the proposed amendment to Guide 28 would require registrants engaged in the gathering, transmission, or distribution of natural gas to disclose adequate and appropriate information, based upon the facts and circumstances of their particular situation, with respect to the current availability (deliverability) of gas supplies. The Guide would set forth certain factors that firms in the gas industry should consider in making disclosure of their capacity to respond to users' needs for natural gas. Proposed Guide 2 would relate to similar descriptions of business and property required by Items 1(b) ("Business") and 3 ("Properties") of Forms 10 and 10-K under the Exchange Act, but would not require disclosure of extractive reserves in Form 10-K.

These proposals are designed to provide more meaningful and understandable information in registration statements filed pursuant to the Securities Act and in reports and registration statements filed pursuant to the Exchange Act. However, in light of present energy shortages and the actual or possible impact which a demand for natural gas in excess of current supply may have on the operations of firms in the gas industry, the Commission reiterates the need for prompt and accurate disclosure to the investing public with respect to information, both favorable and unfavorable, concerning such firms' current and anticipated supplies of natural gas.[1]

Guide 28 would be amended to read as follows:

[1] The Commission recently filed a complaint against Coastal States Gas Corporation ("Coastal") and an officer thereof alleging violations of the anti-fraud provisions of the Exchange Act and certain rules thereunder, including the reporting requirements of such Act. "SEC v. Coastal States Gas Corp.," Civil Action No. 73-H-1262 (S.D. Tex., September 11, 1973); Litigation Release No. 6054 (September 12, 1973). "[T]he complaint alleged that Coastal * * * had disseminated press releases and that [an officer of Coastal] had made speeches regarding Coastal's earnings goals, availability of reserves to meet long-term contractual commitments, the ability of Coastal to increase its reserves during national shortages, and Coastal's effectuation of short-term transactions while awaiting improved price conditions in long-term markets, but omitted to disclose in public statements and in filings with the Commission that defendants entered into transactions, described in the complaint, affecting deliverability, availability of gas, earnings and profitability after they recognized shrinking profit margins and an impending shortage of available natural gas, which transactions had the effect of increasing short-term profitability and depleting available gas reserves necessary to fulfill long-term commitments." Securities Exchange Act Release No. 34-10408 (September 26, 1973). See also Securities Act of 1933 Release Nos. 33-5092 (October 5, 1970) (35 FR 16733) Timely Disclosure of Material Corporate Developments; and 33-5447 (December 20, 1973) (39 FR 1511) Disclosure of the Impact of Possible Fuel Shortages on the Operation of Issuers Subject to the Registration and Reporting Provisions of the Federal Securities Laws.

GUIDE 28. *Disclosure of Extractive Reserves and Natural Gas Supplies.* (a) Instruction 2 to Item 10 of Form S-1 and Item 5(a) of Form S-7 require that registrants engaged in

extractive operations include in their prospectus, where appropriate, the quantitative amount of their estimated reserves. If appropriate, the current market price per barrel of oil, m.c.f. of gas, or the assay value per ton of ore may also be shown, but it is deemed inappropriate to show a dollar amount equal to the market price multiplied by the number of barrels of oil, m.c.f. of gas or tons of ore.

(b) Pursuant to Items 9(a) and 10 of Form S–1 and Item 5(a) of Form S–7, registrants engaged in the gathering, transmission, or distribution of natural gas are required to disclose adequate and appropriate information with respect to the current availability (deliverability) of gas supplies. Each such registrant should develop disclosure based upon the facts and circumstances of its particular situation. Where applicable, such disclosure should include, but not be limited to, statements pointing out that:

1. Estimates of gas supplies (proved reserves, whether developed or undeveloped, or other sources) owned, dedicated, or contracted to a system, whether or not based on reports of outside consultants, are not necessarily indications of the registrant's ability to meet current or anticipated market demands or immediate delivery requirements due to certain specified limiting factors, such as the physical limitations of gathering and transmission systems and of the productive capacity of wells;

2. The total gas supply available to the registrant's system may include significant amounts of gas subject to priorities which may affect deliverability to certain classes of customers, such as customers receiving services under low priority and interruptible contracts;

3. Priority allocations and price limitations imposed by federal and state regulatory agencies, as well as other factors beyond the control of the registrant, may affect the ability of the registrant to meet the delivery demands of its customers;

4. Numerous factors beyond the control of the registrant, such as other parties having control over the drilling of new wells, competition for the acquisition of gas and the availability of foreign reserves, may affect the ability of the registrant to acquire additional gas supplies, or to maintain or increase the capacity to deliver; and

5. The registrant's earnings and financing needs may be affected by either the short or long-term inability to meet the deliverability requirements of the registrant's customers.

Each registrant should describe the factors disclosed in the aforementioned statements and indicate steps available to it to respond to future supply or delivery problems. Information concerning gas supplies, delivery commitments, and customers' requirements should be presented in a form understandable to investors. The Commission believes that investors would be better informed if registrants would publish tabular presentations setting forth historical information with respect to gas obtained from all sources of supply, the sources of supply relied upon, and the amounts received from each source, together with comparable information based on estimates of gas available from present and anticipated sources for each of the next 3 years, or such other period of years as may be appropriate.

The text of proposed Guide 2:

GUIDE 2. *Disclosure of Extractive Reserves and Natural Gas Supplies.* (a) Items 1(b) and 3 of Form 10 require that companies engaged in extractive operations include, where appropriate, the quantitative amount of their estimated reserves. If appropriate, the current market price per barrel of oil, m.c.f. of gas, or the assay value per ton of ore may also be shown, but it is deemed inappropriate to show a dollar amount equal to the market price multiplied by the number of barrels of oil, m.c.f. of gas or tons of ore.

(b) Pursuant to Items 1(b) and 3 of Forms 10 and 10–K, companies engaged in the gathering, transmission, or distribution of natural gas are required to disclose adequate and appropriate information with respect to the current availability of gas supplies. Each such company should develop disclosure based upon the facts and circumstances of its particular situation. Where applicable, such disclosure should include, but not be limited to, statements pointing out that:

1. Estimates of gas supplies (proved reserves, whether developed or undeveloped, or other sources) owned, dedicated, or contracted to a system, whether or not based on reports of outside consultants, are not necessarily indications of the company's ability to meet current or anticipated market demands or immediate delivery requirements due to certain specified limiting factors, such as the physical limitations of gathering and transmission systems and of the productive capacity of wells;

2. The total gas supply available to the company's system may include significant amounts of gas subject to priorities which may affect deliverability to certain classes of customers, such as customers receiving services under low priority and interruptible contracts;

3. Priority allocations and price limitations imposed by federal and state regulatory agencies, as well as other factors beyond the control of the company, may affect the ability of the company to meet the delivery demands of its customers;

4. Numerous factors beyond the control of the company, such as other parties having control over the drilling of new wells, competition for the acquisition of gas and the availability of foreign reserves, may affect the ability of the company to acquire additional gas supplies, or to maintain or increase the capacity to deliver; and

5. The company's earnings and financing needs may be affected by either the short or long-term inability to meet the deliverability requirements of the company's customers.

Each company should describe the factors disclosed in the aforementioned statements and indicate steps available to it to respond to future supply or delivery problems. Information concerning gas supplies, delivery commitments, and customers' requirements should be presented in a form understandable to investors. The Commission believes that investors would be better informed if companies would publish tabular presentations setting forth historical information with respect to gas obtained from all sources of supply, the sources of supply relied upon, and the amounts received from each source, together with comparable information based on estimates of gas available from present and anticipated sources for each of the next 3 years, or such other period of years as may be appropriate.

The Commission proposes to amend Guide 28 and to adopt Guide 2 pursuant to authority in sections 7, 10, and 19(a) of the Securities Act, as amended, and sections 12, 13, and 23(a) of the Exchange Act, as amended.

All interested persons are invited to submit their views and comments on the foregoing proposals to amend Guide 28 and to adopt Guide 2 in writing to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, prior to March 29, 1974. All such communications will be placed in the public files of the Commission and should refer to File No. S7–511.

(Secs. 7, 10, 19, 48 State. 78, 81, 85; secs. 12, 13, 23, 205, 209, 48 Stat. 892, 894, 901, 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 8, 49 Stat. 1375, 1379; secs. 8, 202, 68 Stat. 685, 686; secs, 3, 4, 78 Stat. 565–68, 569; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; (15 U.S.C. 77 g, 77 j, 77 s, 78 l, 78 m, 78 w(a)))

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

FEBRUARY 7, 1974.

[FR Doc.74–5027 Filed 3–4–74;8:45 am]

FEDERAL ENERGY OFFICE

[10 CFR Parts 210, 211 and 212]

JET FUEL ALLOCATION AND PRICING RULES

Notice of Proposed Rulemaking

The Federal Energy Office hereby gives notice of a proposal to amend Title 10 of the Code of Federal Regulations, Parts 210, 211 and 212, concerning the allocation and pricing of jet fuel.

The current regulations of the FEO governing jet fuel allocate domestic fuel (i.e., non-bonded fuel) to international air carriers on the basis of their historical use of that fuel in 1972. Since most international carriers utilized little or no non-bonded fuel in 1972, they are, in effect, limited to the use of bonded fuel which is exempt from the allocation and price control regulations. The regulations provide that if an international carrier certifies that bonded fuel is not available, FEO may allocate domestically produced naphtha-based jet fuel to that carrier on a case-by-case basis.

This approach appears to have succeeded in maintaining adequate levels of supply to the international carriers. However, substantial price differences have developed between bonded fuel, its substitutes, and kerosene-based jet fuel, and this has greatly increased the relative fuel costs of international carriers. This increase has resulted in claims of discrimination by international carriers and may actually be diverting to the bonded market fuel which otherwise would be imported into the domestic market. International transportation is an important part of the United States economy, and the FEO believes it is important to consider meeting the fuel needs of international carriers at United States stations on the same basis as those of domestic carriers.

The proposed regulations would provide for substantially equal treatment of all carriers flying from U.S. stations. The exemption from the allocation and price rules currently provide for bonded jet fuel in § 211.33 would be removed. All carriers would be provided through allocation as necessary, 95 percent of their base-period use and no distinction would be drawn between domestic and international carriers except as necessary to assure that available supplies of naphtha-based fuel are fully utilized. Refiners supplying jet fuel will be allowed to pass

forward their increased costs on bonded jet fuel in the same manner that increased costs of other imported jet fuel are allowed to be passed on under the FEO price regulations. New contract prices charged by each supplier for bonded and domestically produced fuel would, therefore, be equalized.

Persons commenting on the proposed regulations are asked to address themselves particularly to the following questions.

(1) What effect will adoption of the regulations have on the availability of supply especially imported kerosene-based fuel, bonded fuel, and naphtha-based fuel being supplied in lieu of bonded fuel?

(2) What is the expected landed cost of imported kerosene jet fuel and bonded fuel?

(3) What effect on prices will the inclusion of bonded fuel within the price control and allocation program have?

(4) To what extent are individual carriers protected from price increase by fixed price contracts and when do such contracts expire?

(5) Whether FEO has the authority under the Emergency Petroleum Allocation Act to allocate and control supplies of bonded fuel.

Interested persons are invited to participate in the rulemaking by submitting written data, views or arguments with respect to the proposed regulation set forth in this notice to the Executive Secretariat, Federal Energy Office, Box AA, Washington, D.C. 20461. Comments should be identified on the outside envelope and on the document submitted to the Federal Energy Office Executive Secretariat with the designation "Proposed Jet Fuel Allocation and Pricing Rules." Ten copies should be submitted. All comments received by March 20, 1974, will be considered by the Federal Energy Office before final action is taken on the proposed regulations.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, E.O. 11748, 38 FR 33575; Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 47, 39 FR 24)

In consideration of the foregoing, it is proposed to amend Parts 210, 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., March 4, 1974.

WILLIAM E. SIMON,
Administrator.

1. Section 210.2 is amended to read as follows:

§ 210.2 Applicability.

Effective 11:59 p.m., d.s.t., January 14, 1974, the provisions of this part apply to all covered products produced, refined or imported into the United States. For the purpose of this part, bonded fuels shall be considered to be imported into the United States. This part does not apply to sales of natural gas.

§ 210.33 [Deleted]

2. Section 210.33 is deleted in its entirety.

3. Section 211.1(a) is amended to read as follows:

§ 211.1 Scope.

(a) *General.* This part applies to the mandatory allocation of crude oil, residual fuel oil and refined petroleum products produced in or imported into the United States. For the purposes of this part, bonded fuel shall be considered to be imported into the United States.

§ 211.141 [Amended]

4. Section 211.141(b) is deleted in its entirety.

5. Section 211.141(c) is renumbered § 211.141(b).

6. Section 211.145(c) is amended to read as follows:

§ 211.145 Method of allocation.

* * * * *

(c) Suppliers of aviation fuel to International Air Carriers shall meet the requirements of such carriers in the following order: (i) By supplying bonded aviation fuel to those carriers which have traditionally used bonded fuel to the maximum extent practicable, (ii) by making up shortfalls of bonded fuel with nonbonded, naphtha-base jet fuel to the extent practicable, and (iii) by supplying domestically produced aviation fuel or imported kerosene based fuel only as a last resort and only to the extent needed to reach the allocation level provided for in § 211.143(b)(ii).

7. Section 212.2 is amended to read as follows:

§ 212.2 Applicability.

This part applies to each sale, lease or purchase of a covered product in the United States, and leases of real property used in the retailing of gasoline. For the purposes of this part, a sale of a bonded fuel shall be considered a sale in the United States.

8. Section 212.53 is amended by adding a new paragraph (c) to read as follows:

§ 212.53 Exports and imports.

* * * * *

(c) Fuel uplifted in the United States for international flights departing from the United States (whether bonded or non-bonded) shall not be considered an export for the purposes of this part.

[FR Doc.74-5274 Filed 3-4-74;12:16 pm]

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

NORTHWEST ATLANTIC FISHERIES ADVISORY COMMITTEE

Notice of Meeting

The United States Commissioners to the International Commission for the Northwest Atlantic Fisheries (ICNAF) and the Northwest Atlantic Fisheries Advisory Committee will hold a meeting on Thursday, March 14, 1974 in Room 1507 of the JFK Federal Building in Boston, Massachusetts. The meeting, which will commence at 10:00 a.m. and run as long as necessary, will be open to the general public to the capacity of the meeting room. The primary purpose of the meeting is a review and discussion of the results of the Fourth Special Meeting of ICNAF which was held in Rome, Italy from January 22 through 30, 1974, including scientific, regulatory, and enforcement aspects. If time permits a general discussion will also be held on future ICNAF activities, including preliminary consideration of the Twenty-fourth Annual Meeting of ICNAF which will be held in June. This notice is given in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463).

Dated: February 26, 1974.

WILLIAM L. SULLIVAN, Jr.,
Assistant Coordinator of Ocean Affairs.

[FR Doc.74-5015 Filed 3-4-74;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of the Mint

CONSTRUCTION OF NEW UNITED STATES MINT, DENVER, COLORADO

Notice of Availability of Draft Revised Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of the Mint in the Department of the Treasury has prepared a Draft Revised Environmental Impact Statement for the location and, in general terms, the construction of a new United States Mint at Denver, Colorado.

The Treasury Department is considering two possible sites, without favoring either location until comments on the proposed action have been received and evaluated. The two sites are (1) the northwest corner of the Park Hill Golf Course, in Denver, and (2) the northwest corner of the Denver Federal Center in Lakewood.

The Mint is being planned for a production capacity of 10.5 billion domestic coins per year and 25 million proof coins and medals per year. It would be designed to provide space for expansion of critical operations and to make possible reasonable expandability of the facility to accommodate increased production requirements as they develop in future years. Although detailed design of the facilities has not yet been started, it has been determined that building space of approximately 700,000 square feet would be needed. The structures would reflect the importance of the governmental function to be performed.

Copies of the Statement are available for inspection during regular working hours at the office of the:

Facilities Project Manager
Bureau of the Mint
Denver Mint
320 West Colfax Avenue
Denver, Colorado 80204

and at the

Office of the Director
Bureau of the Mint
Room 2064
U.S. Treasury Department
15th St. & Pennsylvania Avenue NW.
Washington, D.C. 20220

Copies will also be available from the National Technical Information Service, United States Department of Commerce, Springfield, Virginia 22151.

Copies of the Environmental Impact Statement have been sent to various Federal, state and local agencies and citizens' groups as outlined in the Guidelines of the Council on Environmental Quality. Comments are invited from any state and local agencies which are authorized to develop and enforce environmental standards and from any Federal agencies having jurisdiction by law and by special expertise with respect to any environmental impact of the proposed facility from which comments have not been requested specifically. Comments from the public are also invited.

Comments concerning the proposed action and any requests for additional information should be addressed to:

Facilities Project Manager
Bureau of the Mint
Denver Mint
320 West Colfax Avenue
Denver, Colorado 80204

Comments must be received by April 22, 1974 in order to be considered in the preparation of the Final Environmental Impact Statement.

[SEAL] WARREN F. BRECHT,
Assistant Secretary of the Treasury.

[FR Doc.74-4997 Filed 3-4-74;8:45 am]

Bureau of Engraving and Printing

ENVIRONMENTAL IMPACT STATEMENT

Notice of Preparation

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Engraving and Printing in the Department of the Treasury is preparing an environmental impact statement concerning a proposal for the location and, in general terms, the construction of an addition to its facilities in Southwest Washington, D.C. Draft legislation to authorize the facility is being prepared.

The proposed additional facility would be located on those parcels of land commonly referred to as the Portal and North Portal Site bounded by D Street on the north, 12th Street on the east, Main Avenue on the south and 14th Street on the west. The facility would be planned to provide space for early expansion of operations and would make possible a reasonable increase of production capacity as requirements develop in future years. Although detailed design of the facility has not yet been started, it has been determined that approximately 1.75 million square feet of additional floor space will be required to provide for predicted increase in demand for Bureau produced items. The structures would reflect the importance of the governmental function to be performed and their architecture would be consistent with that of the location to be occupied.

Observations or information which might be pertinent to the preparation of the statement would be welcomed from any interested governmental agencies and members of the public. Communications should be sent in duplicate, not later than March 29, 1974, to:

R. C. Sennett, Chief
Office of Engineering
Bureau of Engraving and Printing
Room 107 Main Building
14th & C Streets, SW.
Washington, D.C. 20228

Any additional information which may be desired about the proposed project in order to facilitate observations may be obtained from Mr. Sennett.

[SEAL] WARREN F. BRECHT,
Assistant Secretary for Administration.

FEBRUARY 28, 1974.

[FR Doc.74-5041 Filed 3-4-74;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

ARMY AND AIR FORCE EXCHANGE AND MOTION PICTURE SERVICES CIVILIAN ADVISORY COMMITTEE

Notice of Meeting

MARCH 6, 1974.

The Civilian Advisory Committee to the Board of Directors, Army and Air Force Exchange and Motion Picture Services, will hold a closed meeting on March 6, 1974 at Headquarters, Army and Air Force Exchange Service, Dallas, Texas 75222.

The purpose of the meeting is to furnish commercial and financial information and advice of a privileged or confidential nature to the Board of Directors on one or more matters under consideration by the Board.

Any persons desiring information about the committee may telephone (202–697–3336) or write the Executive Secretary, Board of Directors, Army and Air Force Exchange and Motion Picture Services, Room 5E479, The Pentagon, Washington, D.C. 20310.

HARLAN W. TUCKER,
Colonel, USA,
Executive Secretary, AAFEMPS.

[FR Doc.74–5068 Filed 3–4–74;8:45 am]

AIR UNIVERSITY BOARD OF VISITORS

Notice of Meeting

FEBRUARY 27, 1974.

The Air University Board of Visitors will hold a closed meeting on March 13, 1974, at 10:30 a.m., in the Air University Headquarters Conference Room, Building 800, Maxwell Air Force Base, Alabama 36112.

The purpose of the meeting is to give the board an opportunity to present to the Commander, Air University, a report of findings and recommendations concerning Air University educational programs. The meeting will be closed to protect matters which fall within Title 5 U.S.C. 552(b)(2).

For further information on this meeting contact Henry E. Patrick, Secretary, Air University Board of Visitors, Office of the Deputy Chief of Staff, Education, Headquarters, Air University (EDCI), telephone 205–293–5163 or 205–293–7423.

STANLEY L. ROBERTS,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.74–5024 Filed 3–4–74;8:45 am]

Department of the Army

U.S. ARMY COASTAL ENGINEERING RESEARCH BOARD

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the U.S. Army Coastal Engineering Research Board on 26–27 March 1974.

The meeting will be held at the Coastal Engineering Research Center, Kingman Building, Fort Belvoir, Virginia, from 0830 hours to 1600 hours on 26 March 1974 and from 0830 hours to 1300 hours on 27 March.

The 26 March session will be devoted to technical discussions of tidal inlet research studies, dredged materials research studies, jet pump sand bypassing studies, the split hull dump barge and research planning.

The 27 March session will be closed to the public is precluded because of the are specifically exempted from public disclosure will be discussed.

The 26 March session will be open to the public subject to the following limitations:

1. Seating capacity of the meeting room limits public attendance to not more than 80 people. Advance notice of intent to attend is requested in order to assure adequate and appropriate arrangements.

2. Written statements may be submitted prior to, or up to 30 days following the meeting, but oral participation by the public is precluded because of the time schedule.

Inquiries may be addressed to Colonel James L. Trayers, Commander and Director, U.S. Army Coastal Engineering Research Center, Kingman Building, Fort Belvoir, Virginia 22060; telephone 202–325–7000.

By Authority of the Secretary of the Army.

R. B. BELNAP,
Special Advisor to TAG, Liaison Officer with the Federal Register.

[FR Doc.74–5008 Filed 3–4–74;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RED ROCK CANYON RECREATION LANDS AREA, NEVADA

Draft Environmental Statement; Extension of Comment Period and Notice of Public Hearing

Notice is hereby given of extended comment period for the Bureau of Land Management's Draft Environmental Impact Statement for the Red Rock Canyon Recreation Lands which was filed with the Council on Environmental Quality January 31, 1974. Notice of Availability was issued by the Department of the Interior in the FEDERAL REGISTER Thursday, February 7, 1974 (39 FR 4791).

The period of comment will now be closed April 25, 1974, not on March 25, 1974, as indicated in the earlier publication.

A public hearing to consider the impact of various alternatives for the management and development of the Red Rock Recreation Lands will be held on Tuesday, April 16, 1974, at 7:00 p.m. in the Commissioners Chambers, Clark County Courthouse, Las Vegas, Nevada. Testimony submitted at this hearing will be a part of the official comments on the Red Rock Canyon Recreation Lands Environmental Impact Statement.

CURT BERKLUND,
Director.

FEBRUARY 26, 1974.

[FR Doc.74–5025 Filed 3–4–74;8:45 am]

Fish and Wildlife Service

IMPORTERS AND EXPORTERS OF FISH AND WILDLIFE

Temporary Permission To Do Business

This is to notify all persons engaged in business as an importer or exporter of fish or wildlife that they shall be considered as having the permission of the Secretary to continue in such business, pursuant to section 9(d) of the Endangered Species Act of 1973 (hereinafter called the Act) until such time as regulations are promulgated establishing a system for obtaining such permission on a more permanent basis.

Regulations to provide a system for any importer or exporter of fish or wildlife, within the meaning of section 9(d) of the Act, to obtain such permission are now being prepared within the Bureau of Sport Fisheries and Wildlife.

As soon as the regulations are ready, they shall be promulgated in accordance with the requirements of the Act.

Dated: February 27, 1974.

LYNN A. GREENWALT,
Director, Bureau of Sport Fisheries and Wildlife.

[FR Doc.74–4993 Filed 3–4–74;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, and Corrections

By notice in the FEDERAL REGISTER of February 19, 1974, Part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 915 (16 U.S.C. 470).

Correction

The cumulative list of properties in the February 19 FEDERAL REGISTER, Part II, included all properties on the National Register as of January 1, 1974. The February 1, 1973, date was in error.

The following properties have been added to the National Register since February 19, 1974:

Alabama

Barbour County

Clayton, *Petty-Roberts-Beatty House (Octagon House)*, 103 North Midway (1-21-74).

Chambers County

LaFayette, *Oliver, Ernest McCarty, House*, North LaFayette Street (U.S. 431) (1-21-74).

Marengo County

Demopolis, *Glover Mausoleum*, Riverside Cemetery (1-21-74).
Demopolis, *Lyon-LaMar House*, 102 South Main Avenue (1-21-74).
Demopolis vicinity, *Foscue-Whitfield House*, west of Demopolis on U.S. 80 (1-21-74).
Linden, *Old Courthouse (Veterans' Hall)*, 300 West Cahaba Avenue (1-18-74).

Arkansas

Ouachita County

Camden, *Powell, Benjamin T., House*, 305 California Avenue (1-21-74).
Camden, *Smith, Rowland B., House*, 234 Agee Street (1-21-74).

Randolph County

Black Rock vicinity, *Old Davidsonville State Historic Monument*, north-northeast of Black Rock on Black River (1-18-74).

California

Los Angeles County

Chatsworth vicinity, *Santa Susana Stage Road*, west-northwest of Chatsworth off California 18 (1-10-74).
Long Beach, *Puvunga Indian Village Sites*, East Bixby Hill Road and East Seventh Street (1-21-74).

Napa County

Napa, *Goodman Library*, 1219 First Street (1-21-74).

Orange County

Newport Beach, *Lovell Beach House*, 1242 West Ocean Front (2-5-74).

Colorado

Boulder County

Boulder, *Chautauqua Auditorium*, in Chautauqua Park (1-21-74).

Delaware

Kent County

Kenton vicinity, *Clow's Cheyney, Rebellion (Scene of)*, west of Kenton on Delaware 300 (1-14-74).

District of Columbia

St. Matthews Cathedral and Rectory, 1725-1739 Rhode Island Avenue NW. (1-24-74).
U.S. Court of Military Appeals, 450 E Street NW. (1-21-74).
U.S. Department of Agriculture Administration Building, 12th and Jefferson Drive SW. (1-24-74).

Florida

Alachua County

Gainesville, *Buckman Hall*, Northwest 17th Street, University of Florida campus (1-11-74).

Franklin County

Apalachicola vicinity, *Pierce Site*, northwest of Apalachicola (1-11-74).

St. Lucie County

Fort Pierce, *Fort Pierce Site*, South Indian River Drive (1-11-74).

Georgia

Bibb County

Macon, *Slate House*, 931-945 Walnut Street (1-21-74).

Chatham County

Savannah, *Green-Meldrim House*, Macon and Bull Streets (1-21-74).

Hawaii

Honolulu County

Waianae vicinity, *Waianae Complex*, north of Waianae off Farrington Highway (1-21-74).

Idaho

Ada County

Boise, *GAR Hall*, 714 West State Street (1-21-74).

Illinois

Fayette County

Vandalia, *Vandalia State House*, 315 West Gallatin (1-21-74).

Stephenson County

Freeport, *Stephenson County Courthouse*, Courthouse Square (1-17-74).

Indiana

Marion County

Indianapolis, *U.S. Courthouse and Post Office*, 46 East Ohio Street (1-11-74).

Tippecanoe County

Lafayette vicinity, *Indiana State Soldiers Home*, north of Lafayette off Indiana 43 (1-2-74).

Iowa

Johnson County

Coralville, *Coralville Public School*, 402-404 Fifth Street (1-11-74).

Lee County

Keokuk, *U.S. Post Office and Courthouse*, 25 North Seventh Street (1-24-74).

Scott County

McCausland vicinity, *Cody Homestead*, south of McCausland (1-24-74).

Winneshiek County

Decorah, *Painter-Bernatz Mill*, 200 North Mill Street (1-11-74).

Kentucky

Boyd County

Ashland, *Indian Mounds in Central Park*, Central Park, Carter Avenue (1-21-74).
Catlettsburg vicinity, *Stone Serpent Mound* (1-21-74).

Nelson County

Bardstown, *St. Joseph Proto Cathedral*, West Stephen Foster Avenue (1-9-74).

Scott County

Georgetown vicinity, *Stone-Grant House*, east of Georgetown on East Main Street extended (1-11-74).

Todd County

Elkton, *Edwards Hall*, Goebel Avenue (1-11-74).

Louisiana

Terrebonne Parish

Houma vicinity, *Southdown Plantation*, southwest of Houma off Louisiana 311 (1-18-74).

Maine

Lincoln County

Waldoboro, *U.S. Custom House and Post Office (Waldoboro Public Library)*, Main Street (1-18-74).

Oxford County

Hiram vicinity, *Wadsworth Hall*, south of Hiram (1-21-74).

Penobscot County

Bangor, *Smith, Zebulon, House*, 55 Summer Street (1-21-74).

Somerset County

Fairfield, *Connor-Bovie House*, 22 Summit Street (1-18-74).

York County

Kennebunkport, *U.S. Custom House (Louis T. Graves Memorial Public Library)*, Main Street (1-18-74).

Massachusetts

Norfolk County

Stoughton, *Stoughton Railroad Station*, 53 Wyman Street (1-21-74).

Worcester County

Uxbridge vicinity, *Friends Meetinghouse*, south of Uxbridge on Massachusetts 146. (1-24-74).

Minnesota

Crow Wing County

Pine River vicinity, *Hay Lake Mound District*, southeast of Pine River off U.S. 371 (1-21-74).

Kanabec County

Mora vicinity, *Knife Lake Historic District*, north of Mora off Minnesota 65 (1-21-74).

Mississippi

Wilkinson County

Fort Adams vicinity, *Fort Adams Site*, south of Fort Adams (1-11-74).

Missouri

Dunklin County

Hornersville vicinity, *Langdon Site*, north of Hornersville (1-11-74).

Monroe County

Holliday vicinity, *Holliday Petroglyphs*, northeast of Holliday (1-11-74).

Nebraska

Gage County

Barneston Site (1-21-74).

Hooker County

Humphrey Archeological Site (1-21-74).
Kelso Site (1-21-74).

Lancaster County

Schrader Archeological Site (1-21-74).

Platte County

Feye Archeological Site (1-21-74).

Sarpy County

Bellevue, Fontenelle Forest Historic District (1-21-74).

New Jersey

Hunterdon County

Clinton, *McKinneys, David, Mill*, 56 Main Street (1-8-74).

Mercer County

Trenton, *Watson, Isaac, House*, 151 Westcott Street (1-21-74).

Monmouth County

Farmingdale vicinity, *Allaire Village (Howell Works, Monmouth Furnace)*, 3 miles southeast of Farmingdale on New Jersey 524 (1-11-74).

Passaic County

West Milford vicinity, *Long Pond Ironworks*, northeast of West Milford on New Jersey 511 (1–11–74).

Union County

Cranford, *Droeschers Mill (Rahway River Mill)*, 347 East Lincoln Avenue (1–8–74).

New Mexico

Santa Fe County

Santa Fe vicinity, *Nambe Pueblo*, about 16 miles north of Santa Fe off New Mexico 4 (1–21–74).

New York

Albany County

Albany, *First Reformed Church*, 56 Orange Street (1–21–74).

Albany vicinity, *Onesquethaw Valley Historic District*, about 10 miles southwest of Albany off New York 43 (1–17–74).

Watervliet, *Schuyler Flatts*, west side of Hudson River on New York 2 (1–21–74).

Dutchess County

Fishkill vicinity, *Fishkill Supply Depot Site* (1–21–74).

Erie County

Buffalo, *Delaware Avenue Historic District*, west side of Delaware Avenue between North and Bryant Streets (1–17–74).

Green County

Catskill, *Susquehannah Turnpike*, beginning at Catskill follows the Mohican Trail (New York 145) and county routes 20, 22 northwest to the Schoharie County line (1–2–74).

Monroe County

Rochester, *Mt. Hope-Highland Historic District*, bounded roughly by the Clarissa Street Bridge, Genesee River, Grove and Mount Hope Avenues, plus the entire Highland Park properties (1–21–74).

Nassau County

Oyster Bay, *Seawanhaka Corinthian Yacht Club*, Centre Island Road (1–8–74).

Roslyn, *Main Street Historic District*, Main Street from North Hempstead Turnpike to East Broadway, including Tower Street and portions of Glen Avenue and Paper Mill Road (1–21–74).

Niagara County

Lewiston, *Lewiston Mound*, Lewiston State Park (1–21–74).

Niagara Falls, *Whitney Mansion*, 335 Buffalo Avenue (1–17–74).

Orange County

Goshen vicinity, *Dutchess Quarry Cave Site* (1–18–74).

Highland Mills vicinity, *Smith Clove Meetinghouse*, north of Highland Mills off New York 32 (1–11–74).

Suffolk County

Cutchogue vicinity, *Fort Corchaug Site* (1–18–74).

Westchester County

Yonkers, *Untermyer Park*, Warburton Avenue and North Broadway (1–17–74).

North Carolina

Cabarrus County

Concord vicinity, *McCurdy Home Place*, south of Concord off U.S. 601 (1–21–74).

Caswell County

Leasburg vicinity, *Garland-Buford House*, north of Leasburg on State Road 1561 (1–24–74).

Hoke County

Fayetteville vicinity, *Long Street Church*, west of Fayetteville on State Road 1300 (1–21–74).

Iredell County

Statesville, *U.S. Post Office and County Courthouse (Statesville City Hall)*, 227 South Center Street (1–24–74).

Ohio

Butler County

Hamilton, *Anderson-Shaffer House*, 404 Ross Avenue (1–18–74).

Cuyahoga County

Cleveland, *Cozad, Justus L., House*, 11508 Mayfield Road (1–18–74).

Cleveland, *Detroit-Superior High Level Bridge*, between Detroit and Superior Avenues (1–18–74).

Cleveland, *Division Avenue Pumping Station*, Division Avenue and West 45th Street (1–18–74).

Cleveland, *Hoyt Block*, 608 West St. Clair (1–18–74).

Cleveland, *May Company*, 158 Euclid Avenue (1–18–74).

Cleveland, *St. Ignatius High School*, 1911 West 30th Street (1–21–74).

Cleveland, *St. Michael the Archangel Catholic Church*, 3114 Scranton Road (1–18–74).

Cleveland, *St. Theodosius Russian Orthodox Cathedral*, 733 Starkweather Avenue (1–18–74).

Cleveland, *Winslow Block (Upson-Walton and Company; Samsel Rope and Marine Supply Company)*, 1310 Old River Road (West 11th Street) (1–21–74).

Fayette County

Washington Court House, *Sharp, Morris, House*, Columbus Street (1–21–74).

Franklin County

Columbus, *Franklin Park Conservatory*, 1547 East Broad Street, Franklin Park (1–18–74).

Columbus, *Union Station Entrance*, 348 North High Street (1–17–74).

Hamilton County

Cincinnati, *St. Paul Church Historic District*, bounded roughly by Spring and 12th Streets, and Dodt Alley (1–18–74).

New Haven vicinity, *Whitewater Shaker Settlement*, 11813, 11347, and 11081 Oxford Road (1–21–74).

Lucas County

Maumee, *Maumee Historic District*, bounded roughly by Allen, W. Harrison, Rosamond, West Broadway, Cass, and West Dudley (1–18–74).

Ross County

South Salem vicinity, *Kinzer Mound*, west of South Salem (1–17–74).

Oklahoma

McCurtain County

Bethel vicinity, *Pine Creek Mound Group*, southwest of Bethel (1–21–74).

Oregon

Clacamas County

Oregon City, *McCarver, Morton Matthew House*, 554 Warner-Parrot Road (1–21–74).

Lane County

Eugene, *Smeede Hotel*, 767 Willamette Street (1–17–74).

Linn County

Brownsville, *Moyer, John M., House*, 204 Main Street (1–21–74).

Stayton vicinity, *Mt. Pleasant Presbyterian Church*, south of Stayton on Stayton-Jordan Road (1–24–74).

Marion County

Jefferson, *Conser, Jacob, House*, 114 Main Street (1–21–74).

Salem, *Bush, Asahel, House*, 600 Mission Street SE. (1–21–74).

Pennsylvania

Allegheny County

Pittsburgh, *Pittsburgh & Lake Erie Railroad Station*, Smithfield and Carson Streets (1–11–74).

Pittsburgh, *Union Trust Building*, 435 Grant Street (1–21–74).

Berks County

Douglassville, *Old Swede's House*, Old Philadelphia Pike (1–21–74).

Bradford County

Troy, *Van Dyne Civic Building*, Main and Elmira Streets (1–21–74).

Bucks County

New Hope vicinity, *Chapman, John, House*, south of New Hope off Pennsylvania 232 on Eagle Road (1–24–74).

Newtown vicinity, *Makefield Meeting (Makefield Monthly Meeting)*, northeast of Newtown at Mount Eyre and Dolington Roads (1–18–74).

Chester County

Kimberton vicinity, *Kennedy Bridge*, north of Kimberton off Pennsylvania 23 on Seven Stars Road (1–21–74).

Cumberland County

Shippensburg, *Widow Piper's Tavern (Old Courthouse)*, southwest corner of King and Queen Streets (1–17–74).

Franklin County

Chambersburg, *Franklin County Courthouse*, 1 North Main Street (1–18–74).

Montgomery County

Pottstown vicinity, *Pottsgrove Mansion*, west of Pottstown on Benjamin Franklin Highway (High Street) (1–18–74).

Washington County

Blainsburg vicinity, *Malden Inn*, west of Blainsburg on U.S. 40 (1–24–74).

Rhode Island

Kent County

Coventry vicinity, *Hopkins Mill*, south of Coventry on Rhode Island 3 at Nooseneck River (1–11–74).

Warwick, *Forge Farm*, 40 Forge Road (1–11–74).

West Warwick, *Lippitt Mill*, 825 Main Street (1–11–74).

Providence County

North Scituate, *Old Congregational Church*, off U.S. 6 on Greenville Road (Rhode Island 116) (1–11–74).

South Carolina

Charleston County

Adams Run vicinity, *Willtown Bluff*, southwest of Adams Run off County Road 55 on bank of South Edisto River (1–8–74).

South Dakota

Jackson County

Interior vicinity, *Prairie Homestead*, north of Interior on U.S. 16A/South Dakota 40 (1–11–74).

Tennessee

Hawkins County

Surgoinsville vicinity, *Long Meadow*, north of Surgoinsville off U.S. 11W (1-11-74).

Robertson County

Cross Plains vicinity, *Cornsilk (Thomas Stringer House)*, north of Cross Plains on Highland Road (1-11-74).

Youngville vicinity, *Sudley Place*, north of Youngfield on State Line Road (1-11-74).

Texas

Bell County

Belton, *Old St. Luke's Episcopal Church*, 401 north Wall (1-17-74).

Galveston County

Galveston, *Grand Opera House*, 2012-2020 Avenue E (1-2-74).

Kenedy County (also in Willacy County)

Port Isabel vicinity, *Mansfield Cut Underwater Archeological District*, north of Port Isabel off South Padre Island (1-21-74).

Red River County

Kiomatia vicinity, *Kiomatia Mounds Archeological District*, north of Kiomatia (1-11-74

Willacy County

Mansfield Cut Underwater Archeological District (See Kenedy County).

Utah

Millard County

Delta vicinity, *Topaz War Relocation Center Site*, 16 miles northwest of Delta (1-2-74).

Fairfield vicinity, *Camp Floyd Site*, 0.5 mile south of Fairfield (1-11-74).

Vermont

Franklin County

St. Albans, *Central Vermont Railroad Headquarters*, bounded roughly by Federal, Catherine, Allen, Lower Welden, Houghton, and Pine Streets (1-21-74).

Rutland County

North Clarendon vicinity, *Brown Covered Bridge*, 2.9 miles east of North Clarendon across Cold River (1-21-74).

Pittsford vicinity, *Cooley Covered Bridge*, 1.2 miles south of Pittsford across Furnace Brook (1-24-74).

Pittsford vicinity, *Depot Covered Bridge*, 0.8 mile west of Pittsford across Otter Creek (1-21-74).

Pittsford vicinity, *Hammond Covered Bridge*, northwest of Pittsford across Otter Creek (1-21-74).

Virginia

Alleghany County

Earlhurst vicinity, *Sweet Charybeate Springs*, south of Earlhurst on Virginia 311 (1-21-74).

Botetourt County

Glen Wilton vicinity, *Callie Furnace*, 1.5 miles north of Glen Wilton in George Washington National Forest (1-21-74).

Brunswick County

Lawrenceville vicinity, *Bentfield*, southwest of Lawrenceville off U.S. 58 and Virginia 656 (1-24-74).

Caroline County

Port Royal vicinity, *Hazelwood*, northwest of Port Royal off U.S. 17 (1-11-74).

Chesterfield County

Colonial Heights vicinity, *Swift Creek Mill*, north of Colonial Heights on U.S. 1 (1-11-74).

Gloucester County

Gloucester, *Gloucester Woman's Club* (Long Bridge Ordinary), on U.S. 17 (1-24-74).

Henry County

Martinsville vicinity, *Martinsville Fish Dam*, off U.S. 220 south of Martinsville in Smith River (1-21-74).

Highland County

Monterey, *Monterey Hotel*, Main Street (U.S. 250) (1-18-74).

Page County

Newport vicinity, *Catherine Furnace*, 2 miles west of Newport in George Washington National Forest (1-21-74).

Stafford County

Falmouth vicinity, *Hunter's Iron Works*, west of Falmouth off U.S. 17 (1-18-74).

York County

Yorktown vicinity, *Gooch, William, Tomb and York Village Archeological Site*, east of Yorktown on U.S. Coast Guard Reserve Training Center (1-18-74).

Washington

Clallam County

LaPush vicinity, *Ozette Indian Village Archeological Site*, north of LaPush on Cape Alava (1-11-74).

Garfield County

Pomeroy vicinity, *Lewis and Clark Trail-Travois Road*, 5 miles east of Pomeroy off U.S. 12 (1-11-74).

Grant County

Warden vicinity, *Lind Coulee Archeological Site*, northeast of Warden (1-21-74).

Lewis County

Chehalis vicinity, *Jackson, John R., House*, south of Chehalis on U.S. 12 (1-11-74).

Spokane County

Spokane, *Spokane County Courthouse*, West 1116 Broadway (1-21-74).

Wisconsin

Ashland County

Ashland, *Old Ashland Post Office*, northwest corner of Second Street and Sixth Avenue West (1-21-74).

Dane County

Madison, *Old Spring Tavern (Gorham's Hotel)*, 3706 Nakoma Road (1-21-74).

Dunn County

Menomonie, *Tainter, Mabel, Memorial*, 205 Main Street (1-18-74).

Lincoln County

Merrill, *Scott, T. B., Free Library*, East First Street (1-21-74).

Milwaukee County

Milwaukee, *Milwaukee-Downer Quad*, northwest corner of Hartford and Downer Avenues (1-17-74).

Outagamie County

Appleton, *Main Hall, Lawrence University*, 400-500 East College Avenue (1-18-74).

Walworth County

Burlington vicinity, *Strang, James Jesse, House*, west of Burlington on Wisconsin 11 (1-24-74).

Waukesha County

Eagle vicinity, *Hinkley, Ahira R., House*, northeast of Eagle off Wisconsin 59 (1-21-74).

Winnebago County

Oshkosh, *Oshkosh Grand Opera House*, 100 High Avenue (1-21-74).

Wyoming

Uinta County

Evanston vicinity, *Bridger Antelope Trap*, east of Evanston off U.S. 189 (1-21-74).

The following are corrections to previous listings in the "Federal Register":

Illinois

Cook County

Oak Park, *Frank Lloyd Wright-Prairie School of Architecture Historic District*, bounded roughly by Harlem Avenue, Division, Cuyler, and Lake Streets (12-4-73).

St. Clair County

Collingsville vicinity, **Cahokia Mounds*, 7850 Collinsville Road, Cahokia Mounds State Park.

The following property has been demolished and removed from the National Register:

Illinois

Cook County

Chicago, *Francisco Terrace Apartments*, 253-261 North Francisco Avenue.

Historic properties which are either (1) eligible for nomination to the National Register of Historic Places or (2) nominated but not yet listed are entitled to protection under Executive Order 115932 before an agency of the Federal government may undertake any project which may have an effect on such a property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal. Authorizations for such comment are in section 1(3) and section 2(b) of Executive Order 11593.

The Secretary of the Interior has determined that the following properties may be eligible for inclusion in the National Register of Historic Places and are therefore entitled to protection under section 1(3) and section 2(b) of Executive Order 11593 and other applicable Federal legislation. This list is not complete. As required by Executive Order 11593, an agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion in the National Register.

Alabama

Dallas County

Selma, *Gill House*, 1109 Selma Avenue.

Madison County

Huntsville, *Lee House*, Redstone Arsenal.

Alaska

Northwestern District

Little Diomede Island, *Iyapana, John, House.*

Arizona

Cochise County

Sierra Vista, *Garden Canyon Petroglyphs*, along Garden Canyon Road.

Yuma County

Yuma, *Southern Pacific Depot.*

California

Modoc County

Canby vicinity, *Core Site*, southeast of Canby.
Canby vicinity, *Cuppy Cave*, in Modoc National Forest.

Connecticut

Hartford County

Hartford, *Church of the Good Shepherd and Parish House*, corner of Wyllys Street and Van Block Avenue.
Hartford, *Colt, Colonel Samuel, Armory and related factory buildings*, Van Dyke Avenue.
Hartford, *Colt Factory Housing*, Huyshope Avenue between Sequassen and Weehasset Streets.
Hartford, *Colt Factory Housing (Potsdam Village)*, Curcombe Street between Hendriexsen Avenue and Locust Street.
Hartford, *Colt Park*, bounded by Wethersfield Avenue, Stonington Street, Wawarme, Curcombe, and Marseek Streets, and Huyshope and Van Block Avenues.
Hartford, *Flat-iron Building (Motto Building)*, corner of Congress Street and Maple Avenue.
Hartford, *Houses on Charter Oak Place.*
Hartford, *Houses on Congress Street.*
Hartford, *Houses on Wethersfield Avenue*, between Morris and Wyllys Streets.

Middlesex County

Middletown, *Mather - Douglas - Santangelo House*, 11 South Main Street.

New London County

New London, *Thames Shipyard*, west bank of Thames River north of the U.S. Coast Guard Academy.

Florida

Hillsborough County

Tampa, *Federal Building, U.S. Courthouse, Downtown Postal Station*, 601 Florida Avenue.
Tampa, *Firehouse No. 10*, Ybor City.

Georgia

Chatham County

Skidaway Island, *Archeological Site*, Skidaway Island.

Heard County

Philpott Homesite and Cemetery, above Chattahoochee River near Grayson Trail.

Sumter County

Americus, *Aboriginal Chert Quarry*, Souther Field.

Idaho

Ada County

Boise, *Ada Theater*, 700 Main Street.
Boise, *Alexanders*, 826 Main Street.
Boise, *Falks Department Store*, 100 North Eighth Street.
Boise, *Idaho Building*, 216 North Eighth Street.
Boise, *Idanha Hotel*, 928 Main Street.
Boise, *Simplot Building (Boise City National Bank)*, 805 Idaho Street.
Boise, *Union Building*, 712½ Idaho Street.

Illinois

Cook County

Chicago, *Delaware Building*, 155 North Dearborn.
Chicago, *McCarthy Building (Landfield Building)*, northeast corner of Dearborn and Washington.
Chicago, *Methodist Book Concern*, 12 West Washington.
Chicago, *Ogden Building*, 130 West Lake Street.
Chicago, *Oliver Building*, 159 North Dearborn Street.
Chicago, *Springer Block (Bay, State, and Kranz Building)*, 126–146 North State Street.
Chicago, *Unity Building*, 127 North Dearborn Street.

De Kalb County

De Kalb, *Haish Barbed Wire Factory*, corner of Sixth and Lincoln Streets.

Lake County

Fort Sheridan, *Water Tower, Building 49*, Leonard Wood Avenue.

Indiana

Monroe County

Bloomington, *Carnegie Library.*

Kansas

Geary County

Junction City, *Main Post Area, Fort Riley*, northeast of Junction City on Kansas 18.

Kentucky

Carter County

Grayson vicinity, *Van Kitchen Home*, south of Grayson off Kentucky 7.

Estill County

Lexington vicinity, *Fitchburg Iron Furnace*, on Kentucky 975 in Daniel Boone National Forest.

Jefferson County

Louisville, *Old Louisville Historic District*, bounded on the north by Broadway, on the west by Seventh Street and the Louisville/Nashville Railroad tracks, on the east by I–65 and Brook Street, on the south by Eastern Parkway and Gaulbert Avenue.

Maine

Waldo County

Frankfort, *Mosquito Mountain. Waldo Granite Works.*

Maryland

Frederick County

Fort Detrick, *Nallin Farm House* (Fort Detrick Building 1652).

Harford County

Aberdeen vicinity, *Gunpowder Meeting House* (Building E–5715), Magnolia Road, Aberdeen Proving Ground.
Aberdeen vicinity, *Presbury House (Quiet Lodge*, Building E–4730), Austin and Parrish Roads, Aberdeen Proving Ground.

St. Marys County

St. Inigoes, *Priest House (St. Inigoes Manor House)*, Naval Electronic Systems Test and Evaluation Facility.

Michigan

Livingston County

Fenton, *Fenton Downtown Historic District*, both sides of Leroy Street between Ellen on the south and Silver Lake on the north; north side of Caroline and east side of River Street.

Missouri

Jackson County

Kansas City, *Folly's (Standard) Theater*, 12th and Central Streets.

Montana

Lewis and Clark County

Marysville, *Marysville Historic District.*

Park County

Mammouth, *Chapel at Fort Yellowstone*, Yellowstone National Park.

Nebraska

Madison County

Norfolk, *Federal Building (U.S. Post Office and Courthouse)*, corner of Fourth Street and Madison Avenue.

Nevada

Storey County (also in Washoe County)

Sparks vicinity, *Derby Diversion Dam (Truckee River Diversion Dam)*, 19 miles east of Sparks on I–80.

New Hampshire

Grafton County

Bedell Covered Bridge.

New York

Westchester County

White Plains, *Westchester County Courthouse Complex*, corner of Main and Court Streets.

North Carolina

Brunswick County

Southport, *Fort Johnston*, Moore Street.

Jones County

Trenton, *Trenton Historic District.*

New Hanover County

Wilmington, *Market Street Mansions District*, both sides of Market Street between 17th and 18th Streets.
Wilmington, *Wilmington Historic District.*

Oregon

Klamath County

Crater Lake National Park, *Crater Lake Lodge.*

Pennsylvania

Allegheny County

Bruceton, *Experimental Mine*, off Cochran Mill Road.
Pittsburgh, *Pittsburgh Experiment Station, Main Building*, 4800 Forbes Avenue.

Clinton County

Lockhaven, *Apsley House*, 302 East Church Street.
Lockhaven, *Hawey, Judge, House*, 29 North Jay Street.
Lockhaven, *McCormick, Robert, House*, 234 East Church Street.
Lockhaven, *Mussina, Lyons, House*, 23 North Jay Street.

Cumberland County

Carlisle, *Hessian Guardhouse*, corner of Guardhouse Lane and Garrison Lane.

Tennessee

Gibson County

Milan, *Browning House*, Milan Army Ammunition Plant.

Texas

Bexar County

Fort Sam Houston, *Pershing House*, Staff Post Road.
Fort Sam Houston, *Post Chapel*, Wilson Street.

Hill County

Lake Whitney Estates vicinity, *Pictograph Cave*, north of Lake Whitney Estates.

Vermont

Windsor County

Windsor, *Post Office Building.*

Virginia

Augusta County

Waynesboro vicinity, *Mt. Torry Furnace,* southwest of Waynesboro on Virginia 664 in George Washington National Forest.

Washington

Clark County

Vancouver, *Officers Row, Fort Vancouver Barracks.*

Kittitas County

CleElum vicinity, *Salmon La Sac Guard Station,* north of CleElum on County Road 9235.

Pierce County

Fort Lewis Military Reservation, *Captain Wilkes July 4, 1841, Celebration Site.*

West Virginia

Marion County

Prickett's Fort, *Prickett Bay Boat Launching Site,* State Road 72 off West Virginia 73.

Wood County

Parkersburg, *Wood County Courthouse.*

Wisconsin

Door County

Chambers Island, *Chambers Island Lighthouse Dwelling,* northern tip of Chambers Island in Green Bay, Lake Michigan.

Wyoming

Goshen County

Torrington, *Union Pacific Depot.*

ERNEST A. CONNALLY,
Associate Director,
Professional Services.

[FR Doc.74-4677 Filed 3-4-74;8:45 am]

Office of the Secretary

[INT FES 74-10]

MOORES CREEK NATIONAL MILITARY PARK, NORTH CAROLINA, PROPOSED BOUNDARY ADJUSTMENT

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of tne National Environmental Policy Act, the Department of the Interior has prepared a final environmental statement for proposed boundary adjustment for Moores Creek National Military Park, North Carolina.

The environmental statement considers boundary adjustments on the east, west and north sides of the park in Pender County, North Carolina and the relocation of State Highway 210.

Copies are available from or for inspection at the following locations:

Office of the Regional Director
Southeast Region
National Park Service
3401 Whipple Avenue
Atlanta, Georgia 30344

Office of the Superintendent
Blue Ridge Parkway
P.O. Box 7606
Asheville, North Carolina 28807

Office of the Superintendent
Moores Creek National Military Park
Currie, Pender County
North Carolina 28435

See footnotes at end of document.

Dated: February 26, 1974.

WILLIAM A. VOGELY,
Acting Deputy Assistant
Secretary of the Interior.

[FR Doc.74-4941 Filed 3-4-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[PPQ 639]

SOIL SAMPLES

List of Approved Laboratories Authorized To Receive Interstate and Foreign Shipments for Processing, Testing, or Analysis

This document revises the regulation listing laboratories authorized to receive interstate and foreign shipments of soil samples for processing, testing, or analysis by deleting reference to laboratories which no longer receive interstate shipments of soil samples for analysis, and by deleting reference to laboratories whose permits to receive foreign soil samples have expired. It further revises the regulation by adding laboratories approved since the last amendment of the list to receive soil samples shipped interstate and shipped from foreign sources. It also reflects the new import permit expiration dates for laboratories whose permits to receive foreign soil samples have been extended since the last revision of the list. Various other changes were also made.

Under the Japanese Beetle, Whitefringer Beetle, Witchweed, Imported Fire Ant, and Golden Nematode Quarantines (Notices of Quarantine Nos. 48, 72, 80, 81, and 85; 7 CFR 301.48, 301.72, 301.80, 301.81, and 301.85), under 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), the list of laboratories (37 FR 7813) operating under a compliance agreement and approved under said quarantines to receive interstate and foreign shipments of soil samples for processing, testing, or analysis is hereby revised as follows:

LABORATORY AND ADDRESS

A

A & H Corp., Consulting Engineers, Carbondale, IL
A & H Corp., Consulting Engineers, Champaign, IL
A & H Corp., Consulting Engineers, Chicago, IL
A & H Corp., Consulting Engineers, Peoria, IL
A & H Engineering Corp., Springfield, IL
A & L Laboratory, Memphis, TN
ATS, DiGiorgio, CA[2] (6-30-76)
Abbott Laboratories, North Chicago, IL[3] (6-30-76)
Ackenheil, A. C., & Associates, Inc., Pittsburgh, PA
Agrico Chemical Co., Washington Courthouse, OH
Agricultural Service Laboratories, Pharr, TX[3] (6-30-77)
Alfred Agricultural and Technical Institute, State University of New York, Department of Agronomy, Alfred, NY
Allied Chemical Corp., Morristown, NJ
Ambric Testing & Engineering Associates, Inc., Testing Laboratories, Arlington, VA
American Cyanamide Co., Princeton, NJ
American Oil Co., Soil Laboratories, Rochelle, GA
American Oil Co., Soil Laboratories, Holland, TX
American Oil Co., Soil Testing Laboratory, Yoder, IN
American Testing Institute, San Diego, CA[2] (6-30-74)
Ameron, South Gate, CA
Analysis Laboratories, Inc., Metairie, LA
Analytical Development Corp., Monument, CO[2] (6-30-74)
Anco Testing Laboratory, Inc., St. Louis, MO
Arco Chemical Co., Fort Madison, IA
Arizona State University, Tempe, AZ
Arizona State University, Department of Anthropology, Tempe, AZ[2] (6-30-74)
Arizona Testing Laboratory, Phoenix, AZ
Arizona, University of, Department of Agricultural Chemistry and Soils, Tucson, AZ[2] (6-30-75)
Arizona, University of, Department of Geosciences, Tucson, AZ[2] (6-30-74)
Arizona, University of, Department of Plant Pathology, Tucson, AZ[2] (6-30-77)
Arkansas, University of, Experiment Station, Fayetteville, AR
Arkansas, University of, Experiment Station, Marianna, AR
Arkansas Highway Department, Materials and Testing Laboratory, Little Rock, AR
Asphalt Institute, College Park, MD
Asphalt Technology, Bellmawr, NJ
Astrotech, Inc., Harrisburg, PA
Atkins Farmlab, Chico, CA
Atlanta Testing & Engineering Co., Atlanta, GA
Auburn University, Soil Testing Laboratory, Auburn, AL

B

Babcock, Edward S., & Sons, Riverside, CA
Baker, Michael, Inc., Rochester, PA
Barbot, D. C., & Associates, Inc., Florence, SC
Barrow-Agee Laboratories, Inc., Memphis, TN[1]
Beckman, Inc., Microbics Operations, La Habra, CA
Bethany Laboratory of Uni-Royal Chemical, Division of Uni-Royal, Inc., Bethany, CT
Biological Testing and Research Laboratory, Lindsay, CA
Boring Soils & Testing Co., Inc., Harrisburg, PA
Boswell, J. G., Co., Corcoran, CA[3] (6-30-76)
Bowes & Associates, Strawberry Park Road, Steamboat Springs, CO[2] (6-30-76)
Bowser-Morner Testing Laboratories, Inc., Dayton, OH
Brandley, Reinard W., Sacramento, CA[2] (6-30-74)
Braun, Skaggs, and Kevorkian Engineering, Inc., Fresno, CA
Brigham Young University, Department of Anthropology & Archaeology, Provo, Utah[2] (6-30-74)
Bristol Laboratories, Syracuse, NY[2] (6-30-74)
Broeman, F.C., & Co., Cincinnati, OH
Brookside Laboratory, Division of Chemical Service Laboratory, Inc., New Knoxville, OH
Brown and Root-Northrop IRL, Houston, TX
Brucker & Associates, St. Louis, MO

C

CIBA-Geigy Corp., Greensboro, NC[2] (6-30-77)
CPC International, Inc., Argo, IL
California Department of Food & Agriculture, Chemistry Laboratories, Sacramento, CA
California Department of Public Works, Division of Highways Materials and Research, Sacramento, CA

California Institute of Technology, Jet Propulsion Laboratory, Pasadena, CA [3] (6–30–74)
California State Polytechnic College, Department of Biological Sciences Pomona, CA [3] (6–30–75)
California Testing Laboratories, Los Angeles, CA
California, University of, Agricultural Extension Laboratory, Agricultural Extension Service, Riverside, CA
California, University of, Department of Agronomy & Range Science, Davis, CA [3] (6–30–75)
California, University of, Department of Civil Engineering, Davis, CA [3] (6–30–77)
California, University of, Department of Food Science & Technology, Davis, CA [3] (6–30–77)
California, University of, Department of Plant Pathology, Davis, CA [3] (6–30–74)
California, University of, Department of Soil Science & Agricultural Engineering, Riverside, CA [3] (6–30–75)
California, University of, Department of Soils & Plant Nutrition, Berkeley, CA [3] (6–30–75)
California, University of, Soils and Plant Nutrition, Riverside, CA [3] (6–30–74)
California, University of (Los Angeles), Laboratory of Nuclear Medicine and Radiation Biology, Los Angeles, CA
California, University of, Lawrence Livermore Laboratory, Livermore, CA [3] (6–30–74)
California State College San Bernardino, Department of Biology, San Bernardino, CA [3] (6–30–75)
Calspan Corp., Buffalo, NY
Campbell Institute for Agricultural Research, Riverton, NJ [3] (6–30–74)
Capozzoli, Jouis J., & Associates, Inc., Baton Rouge, LA
Carnegie-Mellon University, Civil Engineering Department, Pittsburgh, PA [3] (6–30–75)
Carpenter Construction Co., Inc., Virginia Beach, VA
Cascade Agricultural Service Co., Mt. Vernon, WA.
Central Michigan University, Department of Biology, Mount Pleasant, MI [3] (6–30–75)
Central Valley Laboratory, Fresno, CA
Chemagro Corp., Kansas City, MO [3] (6–30–77)
Chembac Laboratories, Charlotte, NC
Chemical Service Laboratory, Inc., Jeffersonville, IN
Chemical Service Laboratory, Inc., New Knoxville, OH [3] (6–30–76)
Chemonics Industries, Phoenix, AZ [3] (6–30–78)
Chevron Chemical Co., Fresno, CA
Chevron Chemical Co., Richmond, CA
Chevron Oil Field Research Co., La Habra, CA
Citizens National Bank of Paris Soil Testing Laboratory, Paris, IL
Clarkson Laboratory & Supply, Inc., San Diego, CA [3] (6–30–75)
Clemson University, Clemson, SC
Clinton Corn Processing Co., Clinton, IA [3] (6–30–74)
Coenen and Associates—Engineers, Newport News, VA
Coles County Farm Bureau, Charleston, IL
Colorado State University, College of Veterinary Medicine & Biomedical Sciences, Fort Collins, CO [3] (6–30–74)
Colorado School of Mines, Research Institute, Golden, CO [3] (6–30–74)
Colorado State University, Department of Agronomy, Fort Collins, CO [3] (6–30–75)
Colorado State University, Department of Economics, Fort Collins, CO
Colorado, University of, Department of Geological Sciences, Boulder, CO [3] (6–30–74)
Columbia University, R. W. Carlton Materials Laboratory, New York, NY [3] (6–30–74)
Commercial Laboratory, Inc., Richmond, VA
Commercial Testing & Engineering Co., Chicago, IL [1]

See footnotes at end of document.

Connecticut, University of, Soil Testing Laboratory, Plant Science Department, College of Agriculture and Natural Resources, Storrs, CT
Consolidated Cigar Corp., Glastonbury, CT [3] (6–30–74)
Construction Aggregates Corp., Ferrysburg, MI
Contractors & Engineers Service, Inc., Fayetteville, NC
Contractors & Engineers Service, Inc., Goldsboro, NC
Cook Research Laboratories, Inc., Menlo Park, CA
Cookwell Strainer, Cincinnati, OH
Cooper-Clark & Associates, Palo Alto, CA
Coors Spectro-Chemical Laboratory, Denver, CO
Core Laboratories, Inc., Aurora, CO
Core Laboratories, Inc., Houma, LA
Core Laboratories, Inc., Lafayette, LA
Core Laboratories, Inc., New Orleans, LA
Core Laboratories, Inc., Shreveport, LA
Core Laboratories, Inc., Farmington, NM
Core Laboratories, Inc., Hobbs, NM
Core Laboratories, Inc., Dallas, TX
Core Laboratories, Inc., Casper, WY
Cornell University, Department of Agronomy, Ithaca, NY [3] (6–30–74)
Cornell University, Department of Floriculture and Ornamental Horticulture, Ithaca, NY [3] (6–30–76)
Craig Testing Laboratories, Mays Landing, NJ
Crobaugh Laboratories, Cleveland, OH
Crop Chemical Testing Services, Inc., Arcola, IL
Custom Farm Services, Inc., East Point, GA [1, 3] (6–30–75)

D

Dade County Soils Laboratory, Homestead, FL
Dames & Moore, Los Angeles, CA [3] (6–30–76)
Dames & Moore, Redwood City, CA
Dames & Moore, San Francisco, CA [3] (6–30–77)
Dames & Moore, Atlanta, GA [3] (6–30–76)
Dames & Moore, Park Ridge, IL [3] (6–30–78)
Dames & Moore, Cranford, NJ [3] (6–30–75)
Dames & Moore, Houston, TX [3] (6–30–75)
Dames & Moore, Seattle, WA [3] (6–30–74)
D'Appolonia, E., Consulting Engineers, Inc., Pittsburgh, PA [3] (6–30–77)
Darwin, Charles, Research Institute, Dana Point, CA [3] (6–30–75)
Davey Tree Expert Co., Kent, OH
Daylin Laboratories, Inc., Los Angeles, CA
Del Monte Corp., San Leandro, CA
Del Monte Corp., Walnut Creek, CA
Delta Testing and Inspection, Inc., Baton Rouge, LA
Delta Testing and Inspection, Inc., Lafayette, LA
Delta Testing and Inspection, Inc., New Orleans, LA
Denver, University of, Department of Geography, Denver, CO [3] (6–30–77)
Diamond Shamrock Corp., Painesville, OH
Dickinson Laboratories, Inc., El Paso, TX [3] (6–30–74)
Dickinson Laboratories, Inc., Mobile, AL
Dixie Laboratories, Inc., Mobile, AL
Dow Chemical Co., Walnut Creek, CA [3] (6–30–77)
Dow Chemical Co., Midland, MI [3] (6–30–76)
du Pont de Nemours, E. I. & Co., Industrial and Biochemicals Department, Foreign Sales, Wilmington, DE [3] (6–30–76)
Duke University, Durham, NC
Duke University, Department of Botany, Durham, NC [3] (6–30–75)
Duke University, Department of Zoology, Durham, NC [3] (6–30–76)

E

EFCO Laboratories, Tucson, AZ [3] (6–30–78)
Eagle Iron Works, Des Moines, IA [3] (6–30–77)
Earlham College, Department of Biology, Richmond, IN [3] (6–30–75)
Eli Lilly & Co., Lilly Research Laboratories, Indianapolis, IN [3] (6–30–75)
Eisenhauer Laboratories, Los Angeles, CA
Ellerbe Architect, St. Paul, MN
Elmira College, Department of Botany, Elmira, NY [3] (6–30–75)
El Paso Chemical Laboratories, El Paso, TX [3] (6–30–78)
Empire Soils Investigations, Groton, NY
Engineers Laboratories, Inc., Jackson, MS
Engineers Testing Laboratories, Phoenix, AZ
Environmental Science & Engineering Corp., Mt. Juliet, TN
Esso Research & Engineering Co., Esso Agricultural Products Laboratory, Linden, NJ [3] (6–30–74)
Eustis Engineering Co., Metairie, LA
Evans, Jay, Testing Laboratory, Albany, GA
Evans, L. T., Inc., Los Angeles, CA

F

FEC Fertilizer Co., Homestead, FL
Farm Clinic, West Lafayette, IN [3] (6–30–76)
Federal Chemical Co., Columbus, OH
Federal Chemical Co., Nashville, TN
Fertilizers, John Taylor, Sacramento, CA
Florida Department of Agriculture and Consumer Services, Division of Plant Industry Laboratory, Gainesville, FL [3] (6–30–75)
Florida Department of Agriculture and Consumer Services, Pesticide Residue Program, Tallahassee, FL
Florida State University, Department of Geology, Tallahassee, FL [3] (6–30–75)
Florida State University, Department of Oceanography, Tallahassee, FL [3] (6–30–75)
Florida Technological University, Department of Biological Sciences, Orlando, FL [3] (6–30–74)
Florida Testing Laboratories, Inc., St. Petersburg, FL
Florida, University of, Agricultural Research & Education Center, Belle Glade, FL [3] (6–30–74)
Florida, University of, Department of Geology, Gainesville, FL [3] (6–30–74)
Florida, University of, Gulf Coast Experiment Station, Bradenton, FL [3] (6–30–76)
Florida, University of, Soils Department, McCarthy Hall, Gainesville, FL [3] (6–30–74)
Florida, University of, Soils Department, Newell Hall, Gainesville, FL [3] (6–30–74)
Florida, University of, Lake Alfred, FL
Foley, Hubert L., Jr., New Albany, MS
Flowers Chemical Laboratories, Altamonte Springs, FL
Foundation Test Services, Inc., Bethesda, MD
Franklin, R. T., & Assoc., Burbank, CA
Fresno Field Station, Fresno, CA
Froehling & Robertson, Inc., Richmond, VA [1]
Fruco & Associates, St. Louis, MO
Fugro, Inc., Long Beach, CA [3] (6–30–75)
Fuller Co., Allentown, PA [3] (6–30–74)
Fuller Co., Catasaqua, PA [3] (6–30–74)

G

GHT Laboratories of Imperial Valley, Inc., Brawley, CA
GREFCO, Inc., Torrance, CA [3] (6–30–78)
GREFCO, Inc., Lompoc, CA [3] (6–30–74)
GX Laboratories, Inc., Golden, CO [3] (6–30–77)
General Foods Corp., Birds Eye Division, Woodburn, OR [3] (6–30–74)
General Testing Laboratory, Kansas City, MO
Geo-Survey, Inc., Camp Hill, PA [3] (6–30–75)
Geo-Testing, Inc., San Rafael, CA [3] (6–30–74)
Geochemical Surveys, Dallas, TX [3] (6–30–74)
Geologic Associates, Franklin, TN
Geocon Incorporated, San Diego, CA [3] (6–30–74)
Geologic Associates, Knoxville, TN
Georgia Department of State Highways, Forest Park, GA [1]
Georgia State Department of Transportation, Forest Park, GA [3] (6–30–74)
Georgia Testing Laboratory, Atlanta, GA
Georgia, University of, Department of Agronomy, Athens, GA [3] (6–30–78)

Georgia, University of, Institute of Ecology, Athens, GA [2] (6-30-75)
Georgia, University of, Experiment, GA
Georgia, University of, Tifton, GA
Geotechnical Consultants, Inc., Glendale, CA
Gillen Engineering Co., Inc., Metairie, LA
Girdler Foundation & Exploration Co., Lenexa, VA
Glassmire, S. H., & Associates, Metairie, LA [3] (6-30-75)
Gooch, George W., Laboratory, Ltd., Los Angels, CA
Gore Engineering, Inc., Metairie, LA
Grace, W. R., & Co., Fort Pierce, FL [3] (6-30-76)
Grace, W. R., & Co., Washington Research Center, Clarksville, MD [2] (6-30-77)
Grace, W. R., & Co., Nashville, TN
Green Engineering Co., Sewickley, PA
Green Giant Co., Agricultural Research Department, Le Sueur, MN [2] (6-30-75)
Grimes, Walter B., & Associates, Chico, CA
Growers Chemical Corp., Milan, OH
Grubbs Consulting Engineers, Little Rock, AR
Gulf Coast Testing Laboratory, Inc., Corpus Christi, TX
Gulf South Research Institute, Baton Rouge, LA
Gulf South Research Institute, New Orleans, LA

H

Hales Testing Laboratories, San Jose, CA
Hales Testing Laboratories, Oakland, CA
Hamilton Company, Soil Testing Laboratory, McLeansboro, IL
Hampton Roads Testing Laboratories, Newport News, VA
Hanks, Abbot A., Testing Laboratory, San Francisco, CA
Hanson Engineers, Inc., Springfield, IL [3] (6-30-78)
Harding, Miller, Lawson, & Associate, San Rafael, CA [3] (6-30-75)
Harris, Inc., Frederick R., Woodbridge, NJ [3] (6-30-76)
Harris Laboratories, Inc., Phoenix, AZ [1 3] (6-30-77)
Harris Laboratories, Inc., Lincoln, NE
Harvard School of Public Health, Department of Microbiology, Boston, MA [2] (6-30-74)
Harvard University, Peabody Museum, Cambridge, MA [2] (6-30-78)
Harvard University, Soil Mechanics Laboratory, Cambridge, MA
Harza Engineering Co., Chicago, IL [3] (6-30-77)
Hawley & Hawley, Division of Skyline Labs, Inc., Tucson, AZ [3] (6-30-75)
Haynes, John H., Consulting Engineer, Dallas, TX
Hazen Research Inc., Golden, CO [3] (6-30-78)
Hazelton Laboratories, Inc., Falls Church, VA
Hector Supply Co., Miami, FL
Heinrichs Geoexploration Co., Tucson, AZ [3] (6-30-76)
Heinz, H. J., Bowling Green, OH
Hemphill Corp., Tulsa, OK
Herbert & Associates, Virginia Beach, VA
Hercules, Inc., Wilmington, DE
Hess, John D., Testing Corp., El Centro, CA
Hill-Harned & Associates, Redding, CA
Hill Top Research, Inc., Miamiville, OH
Hoffman-LaRoche, Inc., Nutley, NJ [3] (6-30-78)
Hollywood Testing Laboratories, Hollywood, CA
Horvitz Research Laboratories, Houston, TX
Hunt, Robert W., Co., Chicago, IL
Hunter College, Department of Anthropology, New York, NY
Hurst-Rosche Engineers, Inc., Hillsboro, IL

I

IIT Research Institute, Chicago, IL
IRI Research Institute, Inc., New York, NY
Illinois Division of Highways, Bureau of Materials, Chicago, IL
Illinois Division of Highways, Bureau of Materials, Dixon, IL
Illinois Division of Highways, Bureau of Materials, Effingham, IL.
Illinois Division of Highways, Bureau of Materials, Elgin, IL
Illinois Division of Highways, Bureau of Materials, Effingham, IL
Illinois Division of Highways, Bureau of Materials, Springfield, IL
Illinois Division of Highways, Carbondale, IL
Illinois Division of Highways, East St. Louis, IL
Illinois Division of Highways, Ottawa, IL
Illinois Division of Highways, Peoria, IL
Illinois, University of, Department of Agronomy, Urbana, IL [2] (6-30-74)
Illinois, University of, Department of Anthropology, Urbana, IL [2] (6-30-75)
Illinois, University of, at Chicago Circle, Department of Geography, Chicago, IL [2] (6-30-78)
Indiana Farm Bureau Co-op, Indianapolis, IN
Indiana State Highway Commission, Division of Materials and Testing, Indianapolis, IN
Indiana University, Department of Geology, Bloomington, IN
Industrial Bio-Test Laboratories, Inc., Northbrook, IL
Institute for Research, Inc., Houston, TX
International Agriculture Services, San Francisco, CA [2] (6-30-77)
International Mineral & Chemical Corp., Libertyville, IL
International Mineral & Chemical Corp., Mulberry, FL
International Mineral Engineers, Inc., Golden, CO [3] (6-30-74)
International Research Corp., Mattawan, MI
Interpace Corp., Los Angeles, CA [2] (6-30-75)
Iowa State Highway Commission Soil Laboratory, Ames, IA
Iowa State University, Department of Agronomy, Ames, IA [2] (6-30-74)
Iowa State University, Engineering Research Institute, Ames, IA [2] (6-30-75)

J

Jennings Laboratories, Virginia Beach, VA
Jersey Testing Laboratories, Atco, NJ
Jersey Testing Laboratories, Newark, NJ
Jewell, G. K., & Associates, Columbus, OH
Johnson Soil Engineering Laboratory, Palisades Park, NJ

K

Kaiser Agricultural Chemical Co., Sullivan, IL
Kaiser Agricultural Chemicals Corp., Liberty, IN
Kaiser Agricultural Chemicals Corp., Savannah, GA
Kaiser Aluminum and Chemical Corp., Pleasanton, CA [3] (6-30-74)
Kalo Laboratories, Inc., Quincy, IL [3] (6-30-74)
Kansas City Testing Laboratory, Inc., Kansas City, MO
Kansas State University, Department of Agronomy, Manhattan, KS [2] (6-30-74)
Kansas, University of, Department of Geography, Lawrence, KS [2] (6-30-75)
Kentucky, University of, Department of Agronomy, Lexington, KY [2] (6-30-76)
Kentucky, University of, Division of Regulatory Services, Lexington, KY
Kleinfelder, J. H., & Associates, Fresno, CA
Kleinfelder, J. H., & Associates, Merced, CA
Kleinfelder, J. H., & Associates, Oakland, CA
Kleinfelder, J. H., & Associates, Sacramento, CA
Kleinfelder, J. H., & Associates, Stockton, CA

L

LFE Environmental Analysis Laboratory, Richmond, CA
Lake Ontario Environmental Laboratory, Oswego, NY
Langan Engineering Associates, Clifton, NJ
Langford & Meredith Laboratories, Division of The Analysts, Inc., The Analysts, Inc., New Orleans, LA
Larsen, Herluf T., Enola, PA
Larutan, Anaheim, CA [2] (6-30-77)
Larutan of the South, Hiram, GA
La Salle County Farm Bureau, Soil Testing Laboratory, Ottawa, IL
Law Engineering Testing Co., Atlanta, GA [1 3] (6-30-78)
Law Engineering Testing Co., McLean, VA [2] (6-30-74)
Layne-Western Co., Kansas City, MO
Layne-Western Co., Kirkwood, MO
Lederle Laboratories, Pearl River, NY [3] (6-30-75)
LeRoy Crandall & Associates, Los Angeles, CA [2] (6-30-77)
Lewin, David W., Corp., Geotechnical Engineering, The Arcade, Cleveland, OH
Libby, McNeill, & Libby, Janesville, WI [3] (6-30-76)
Lilly, Eli, & Co., Greenfield, IN [3] (6-30-74)
Lilly, Eli, & Co., Lilly Research Laboratories, Indianapolis, IN [3] (6-30-75)
Louisiana Department of Highways, Baton Rouge, LA
Louisiana State University, Department of Agronomy Laboratory, Baton Rouge, LA
Louisiana State University, Coastal Studies Institute, Baton Rouge, LA
Louisiana State University, New Orleans, LA
Lowry Testing Laboratory, Sacramento, CA

M

M & T Chemicals, Inc., Rahway, NJ
Maine State Highway Commission, Bangor, ME
Maine, University of, Orono, ME
Manchester College, Biology Department, North Manchester, IN
Mapco, Inc., Indiana Point Division, Athens, IL
Maryland, University of, Department of Agronomy, College Park, MD [2] (6-30-74)
Mason-Johnston & Associates, Inc., Dallas, TX
Massachusetts Department of Public Works, Wellesley Hills, MA
Massachusetts Institute of Technology, Soil Mechanics Division, Cambridge, MA [3] (6-30-75)
Massachusetts, University of, Department of Plant and Soil Sciences, Amherst, MA
Maurseth Howe Lockwood & Associates, Los Angeles, CA [2] (6-30-75)
McCallum Inspection Co., Chesapeake, VA [1]
McClellan Engineers, Clayton, MO
McClelland Engineers, Inc., Houston, TX [3] (6-30-74)
McGauthy, Marshall, and McMillian, Norfolk, VA
Memphis State University, Department of Biology, Memphis, TN
Memphis State University, Department of Civil Engineering, Memphis, TN
Merck Institute for Therapeutic Research, Rahway, NJ [3] (6-30-78)
Merck & Co., Inc., Agri Chemical Development, Rahway, NJ
Michigan Department of Public Health, Bureau of Laboratories, Division of Antibiotics and Fermentation, Lansing, MI [3] (6-30-78)
Michigan State University, Department of Botany and Plant Pathology, East Lansing, MI [3] (6-30-77)
Michigan State University, Soil Science Department, East Lansing, MI [2] (6-30-76)
Michigan State University, Soil Testing Laboratory, East Lansing, MI

See footnotes at end of document.

Michigan Testing Engineers, Inc., Michigan Drilling Division, Detroit, MI
Midwest Soil Testing Service, Danforth, IL
Mier, Ezra, Raleigh, NC
Miles Laboratories, Inc., Marschall Division, Elkhart, IN [3] (6–30–77)
Miles Laboratories, Inc., Miles Research Division, West Haven, CT [2] (6–30–77)
Milwaukee, City of, Sewage Commission, Milwaukee, WI
Minnesota Department of Transportation, St. Paul, MN
Minnesota, University of, Department of Geology, Minneapolis, MN [2] (6–30–74)
Minnesota, University of, Department of Soil Science, St. Paul, MN [3] (6–30–75)
Mississippi State University, State College, MS
Mississippi, University of, University, MS
Missouri Highway Commission, Jefferson City, MO
Missouri, University of, Department of Food Sciences and Nutrition, Columbia, MO [3] (6–30–75)
Missouri, University of, Division of Biology, Columbia, MO [2] (6–30–76)
Mitchell & Associates, Dallas, TX [2] (6–30–74)
Monsanto Co., Agricultural Division, St. Louis, MO [3] (6–30–78)
Morse Laboratories, Sacramento, CA
Mountain State Research & Development, Tucson, AZ [2] (6–30–74)
Mueser, Rutledge, Wentworth, and Johnston, New York, NY [2] (6–30–74)

N

Na-Churs Plant Food Co., Marion, OH [3] (6–30–75)
Na-Churs, Red Oak, IA
National Bulk Carriers, Inc., New York, NY
National Laboratories, Evansville, IN
Natural Resources Laboratory, Golden, CO
National Soil Services, Inc., Dallas, TX
National Soil Services, Inc., Houston, TX [2] (6–30–75)
Nebraska Department of Roads, Soil Testing Laboratory, Lincoln, NE
Nebraska, University of, Department of Agronomy, Heim Hall, Lincoln, NE [3] (6–30–78)
Nelson Laboratories, Stockton, CA [2] (6–30–75)
Nevada State Highway Department Laboratory, Carson City, NV
New Jersey Department of Transportation, Trenton, NJ
New Mexico State Highway Department, Sante Fe, NM
New Mexico State University, Soil Testing Laboratory, Las Cruces, NM [2] (6–30–76)
New Mexico, University of, Anthropology Department, Albuquerque, NM [3] (6–30–74)
New Mexico, University of, Department of Geology, Albuquerque, NM [3] (6–30–74)
New York State University College, Biology Department, Geneseo, NY
New York, State University of, College of Environmental Sciences and Forestry, Syracuse, NY [2] (6–30–74)
New York, State University of, Department of Biological Sciences, Brockport, NY [3] (6–30–74)
New York, State University of, State University College at Brockport, Brockport, NY [3] (6–30–74)
Niagara Chemical Division of FMC Corp., Middleport, NY
North Carolina Department of Agriculture, Raleigh, NC
North Carolina Department of Geology, Raleigh, NC
North Carolina State University, Department of Soil Science, International Soil Testing Project, Raleigh, NC [2] (6–30–75)
North Carolina, University of, Department of Botany, Chapel Hill, NC (Dr. J. N. Couch)
North Carolina, University of, Department of Botany, Chapel Hill, NC (Dr. N. G. Miller)
North Carolina, University of, Department of Botany, Chapel Hill, NC [2] (6–30–75) (Dr. Edward G. Barry)
North Dakota State Highway Department, State Highway Department Laboratory, Bismarck, ND
Norvell Plowman Laboratories, Little Rock, AR
Nu-ag, Inc., Rochelle, IL
Nutting, H. C., Co., Cincinnati, OH

O

Ohio Florist Assoication, Columbus, OH
Ohio State University, Botany Department, Columbus, OH [3] (6–30–76)
Ohio State University, Department of Agronomy, Columbus, OH [3] (6–30–74)
Ohio State University, Institute of Polar Studies, Columbus, OH [3] (6–30–76)
Ohio State University, Zoology Department, Columbus, OH [3] (6–30–76)
Oklahoma State Highway Department, Materials Division, Oklahoma City, OK
Oklahoma State University, Stillwater, OK
Oklahoma State University, Department of Agronomy, Stillwater, OK [2] (6–30–74)
Oklahoma State University, School of Civil Engineering, Stillwater, OK [2] (6–30–74)
Oklahoma Soil Testing Laboratories, Oklahoma City, OK
Oklahoma, University of, School of Civil Engineering and Environmental Science, Norman, OK [2] (6–30–74)
Old Dominion University, Norfolk, VA
Olson Management Service, Freeport, IL
O'Neal, Carl, & Associates, Dallas, TX
Onondaga Soil Testing, Inc., East Syracuse, NY
Oregon State Highway Department, Salem, OR [1]
Oregon State University, Soils Department, Corvallis, OR [2] (6–30–76)
Osborne Laboratories, Inc., Los Angeles, CA

P

Pacific Environmental Laboratory, San Francisco, CA [2] (6–30–75)
Pacific Spectro Chemical Laboratory, Los Angeles, CA
Parke, Davis, & Co., (Joseph Campau at the River), Detroit, MI
Parke, Davis, & Co., Medical and Science Affairs Division, Detroit, MI [2] (6–30–75)
Parrill, Irwin H., Edwardsville, IL
Pattison's Laboratories, Inc., Harlingen, TX [2] (6–30–75)
Penniman & Browne, Inc., Baltimore, MD
Penniman & Browne, Inc., Richmond, VA
Pennsylvania State University, Department of Agronomy, University Park, PA [2] (6–30–76)
Pennsylvania, University of, Department of Geology, Philadelphia, PA [2] (6–30–78)
Pennwalt Corp., Tacoma, WA [2] (6–30–74)
Perry Laboratory, Los Gatos, CA [2] (6–30–75)
Peters, Robert B., Co., Allentown, PA
Pfeiffer Foundation, Inc., Threefold Farm, Spring Valley, NY [2] (6–30–78)
Pfizer, Charles, & Co., Inc., Groton, CT [2] (6–30–75)
Phifer, Allen, Thorofare, NJ
Pickett, Ray, and Silver, St. Charles, MO
Pioneer Testing Laboratory, Inc., Redlands, CA
Pittsburgh Testing Laboratory, Pittsburgh, PA [1 2] (6–30–75)
Plains Laboratory, Lubbock, TX
Plantation Field Laboratory, Fort Lauderdale, FL
Pope, W. I., Mobile, AL
Portland Cement Association, Skokie, IL
Portland State College, Department of Biology, Portland, OR [2] (6–30–77)
Princeton University, Department of Geological & Geophysical Sciences, Princeton, NJ [2] (6–30–76)
Purdue University, Department of Agronomy, Lafayette, IN [2] (6–30–74)
Purdue University, Department of Biological Sciences, Lafayette, IN [2] (6–30–74)
Purdue University, Department of Entomology, Lafayette, IN
Purdue University, Laboratory for Applications of Remote Sensing, West Lafayette, IN [2] (6–30–74)

Q

Queens College, Flushing, NY

R

Rabe, Fred N., Engineering, Inc., Fresno, CA
Raymond International, St. Louis, MO
Reitz and Jens, Clayton, MO
Resources International, Fresno, CA [3] (6–30–74)
Rhode Island, University of, Agricultural Experiment Station, Department of Food and Resources, Chemistry, Kingston, RI [2] (6–30–74)
Rhode Island, University of, Department of Botany, Kingston, RI [3] (6–30–74)
Rice University, Department of Biology, Houston, TX [2] (6–30–74)
Richfield Oil Corp., Long Beach, CA
Ringel and Associates, Chico, CA
Rochester, University of, Department of Biology, Rochester, NY [2] (6–30–79)
Rocky Mountain Geochemical Corp., Midvale, UT
Rocky Monutain Geochemical Corp., Prescott, AZ
Rocky Mountain Geochemical Corp., West Jordan, UT [2] (6–30–74)
Rocky Mountain Technology, Inc., Golden, CO
Royster Co., Norfolk, VA [1]
Rummel, Klepper, & Kahl, Lansdowne, MD
Rutgers, the State University, Department of Soils and Crops, New Brunswick, NJ [3] (6–30–76)
Rutgers, the State University, International Agricultural Programs, New Brunswick, NJ [2] (6–30–76)
Rutgers, the State University, Soils Extension Specialist, New Brunswick, NJ

S

San Fernando Valley State College, Department of Biology, Northridge, CA
Sayre, Robert D., Richmond, VA
Schering Corp., Bloomfield, NJ [2] (6–30–74)
Scientific Associates, Inc., St. Louis, MO [3] (6–30–78)
Scott, O. M., & Sons, Seed Co., Marysville, OH
Scottland Soil Laboratory, Chrisman, IL
Seabrook Farms, Seabrook, NJ
Shankman Laboratories, Los Angeles, CA
Shannon & Wilson Co., Burlingame, CA
Shannon & Wilson, Inc., Portland, OR
Shannon & Wilson Co., Seattle, WA [2] (6–30–75)
Shawnee College Soils Laboratory, Ullin, IL
Shell Development Co., Biological Sciences Research Center, Modesto, CA
Shilstone Testing Laboratory, Inc., Baton Rouge, LA
Shilstone Testing Laboratory, Corpus Christi, TX
Shilstone Testing Laboratory, Inc., Houston, TX
Shilstone Testing Laboratory, Inc., Lafayette, LA
Shilstone Testing Laboratory, Inc., Monroe, LA
Shilstone Testing Laboratory, Inc., New Orleans, LA
Signal Oil & Gas Co., Los Angeles, CA [2] (6–30–74)
Skyline Laboratories, Inc., Wheat Ridge, CO [3] (6–30–77)
Smith-Douglas, Chesapeake, VA
Smith, Kline, & French Laboratories, Philadelphia, PA [2] (6–30–74)

See footnotes at end of document.

Smithsonian Institution, Department of Mineral Sciences, Washington, DC[2] (6-30-74)
Snohomish Farm Veterinary Service, Snohomish, WA
Soil and Materials Engineers, Detroit, MI
Soil and Plant Laboratory, Inc., Santa Ana, CA[2] (6-30-77)
Soil and Plant Laboratory, Inc., Santa Clara, CA[2] (6-30-75)
Soil Consultants, Inc., Charleston, SC
Soil Consultants, Inc., Merrifield, VA
Soil Control Laboratory, Watsonville, CA
Soil Engineering Services, Decatur, IL
Soil Engineering Services, Inc., Minneapolis, MN
Soil Exploration Co., St. Paul, MN
Soil Services, Inc., Mountain View, CA[2] (6-30-78)
Soil Test, Moorestown, NJ
Soil Testing, Burlington, WA
Soil Testing Services, Inc., Northbrook, IL[2] (6-30-75)
Soilab Enterprises, Lancaster, CA
Soils Mechanics Services, Mt. Vernon, NY[2] (6-30-75)
South Alabama, University of, Department of Geology, Mobile, AL[2] (6-30-74)
South Carolina, University of, Columbia, SC
South Carolina, University of, Department of Anthropology and Sociology, Columbia, SC[2] (6-30-75)
South Dakota State Highway Department, Materials and Testing Department, Pierre, SD
South Dakota, University of, Department of Zoology, Vermillion, SD[2] (6-30-75)
Southern California, University of, Department of Geological Sciences, Los Angeles, CA[2] (6-30-74)
Southern Illinois Farm Foundation, Vienna, IL
Southern Illinois University, University Museum, Carbondale, IL[2] (6-30-74)
Southern Laboratories, Mobile, AL
Southern Technical Services, Inc., Jackson, MS
Southern Testing and Research Laboratories, Wilson, NC
Southwest Research Institute, San Antonio, TX[2] (6-30-74)
Southwestern Agricultural Testing Co., Fabens, TX[2] (6-30-75)
Southwestern Assayers & Chemists, Inc., Tucson, AZ[2] (6-30-74)
Southwestern Irrigation Field Station, Brawley, CA
Southwestern Laboratories, Dallas, TX[2] (6-30-74)
Southwestern Laboratories, Inc., Houston, TX[1]
Southwestern Laboratories of Louisiana, Inc., Alexandria, LA
Southwestern Laboratories of Louisiana, Inc., Baton Rouge, LA
Southwestern Laboratories of Louisiana, Inc., Monroe, LA
Southwestern Laboratories of Louisiana, Inc., Shreveport, LA
Southeastern Materials Laboratory, Phoenix, AZ
Squibb, E. R., & Sons, Department of Microbiology, Lawrenceville, NJ[2] (6-30-74)
St. Louis Testing Laboratories, Inc., St. Louis, MO
Stabilization Chemicals, Anaheim, CA[2] (6-30-77)
Standard Fruit Co., New Orleans, LA[2] (6-30-74)
Standard Laboratories, Goodfield, IL
Standard Testing & Engineering Co., Oklahoma City, OK[2] (6-30-76)
Stanford Research Institute, Menlo Park, CA[2] (6-30-77)
Stauffer Chemical Co., Mountain View, CA
Stauffer Chemical Co., Richmond, CA
Stilwell & Gladding, Inc., New York, NY
Stone & Webster Engineering Corp., Boston, MA[2] (6-30-75)
Stoner Laboratories, Campbell, CA
Strawinsky Laboratory, Long Beach, CA
Suerdrup and Parcel & Associates, Inc., St. Louis, MO[3] (6-30-74)
Syracuse University Research Corp., Syracuse, NY

T

T-M-T Chemical Co., Inc., Five Points, CA
Techlab, Inc., Cincinnati, OH
Teledyne Isotopes, Palo Alto, CA
Tennent & Associates, Memphis, TN
Tennessee, University of, Soil Testing Laboratory, Nashville, TN
Tennessee Valley Authority, Materials Engineering Laboratory, Knoxville, TN
Test, Inc., Memphis, TN
Testing Engineers, Inc., Oakland, CA
Testing Engineers, Inc., San Jose, CA
Testing Laboratories, Inc., El Paso, TX[2] (6-30-75)
Testing Service Corp., Wheaton, IL
Tetco, Trinity Engineering Testing Corp., Corpus Christi, TX
Texas A & M University, Department of Sociology and Anthropology, College Station, TX[2] (6-30-75)
Texas A & M University, Soil & Crop Sciences Department, College Station, TX[2] (6-30-75)
Texas A & M University, Soil Testing Laboratory, Agricultural Extension Service and Experiment Station, College Station, TX[2] (6-30-75)
Texas Soil Laboratory, McAllen, TX[2] (6-30-78)
Texas Technological University, Department of Agronomy, Lubbock, TX[2] (6-30-76)
Texas Testing Laboratories, Dallas, TX
Texas, University of, Department of Botany, Austin, TX[2] (6-30-75)
Texas, University of, Radiocarbon Laboratory, Balcones Research Center, Austin, TX[2] (6-30-74)
Thompson, Vester J., Jr., Inc., Mobile, AL
Thornton Laboratories, Inc., Tampa, FL[2] (6-30-76)
Three Gee Dee, Pembroke, FL
Tippetts-Abbett-McCarthy-Stratton, New York, NY[2] (6-30-76)
Tri-State Soil Laboratory, Toledo, OH
Trinity Testing Laboratories, Inc., Corpus Christi, TX
Triple S Laboratory, Inc., Loveland, CO[2] (6-30-74)
Truesdale Laboratories, Inc., Los Angeles, CA
Twin City Testing and Engineering Laboratory, Inc., St. Paul, MN[2] (6-30-75)
Twin County Services Co., Murphysboro, IL
Twining Laboratories, Inc., Fresno, CA[2] (6-30-74)
Twining Laboratory of Southern California, Long Beach, CA

U

U.S. Agricultural Consultants Laboratories, San Gabriel, CA
U.S. Borax Research Corp., Anaheim, CA
U.S. Laboratories, Inc., Oakland, CA
U.S. Plant, Soil, and Nutrition Laboratory, Ithaca, NY
U.S. Terrestrial Plants Laboratory, Hanover, NH
U.S. Testing Co., Inc., Los Angeles, CA
U.S. Testing Co., Inc., Hoboken, NJ
U.S. Testing Co., Memphis Laboratory, Memphis, TN[2] (6-30-74)
U.S. Testing Laboratory, Richland, WA
USS Agri-Chemicals, Belmond, IA
USS Agri-Chemicals, Decatur, GA
Union Carbide Corp., Grand Junction, CO
Union Carbide Corp., Niagara Falls, NY[2] (6-30-75)
Union Carbide Corp., South Charleston, WV
Union Oil Company of California, Brea, CA
United Horticulture, Inc., Apopka, FL[2] (6-30-74)
Upjohn Co., Pharmaceutical Division, Kalamazoo, MI[2] (6-30-74)
Utah State University, College of Engineering, Agriculture and Irrigration Engineering, Logan, UT
Utah State University, Department of Bacteriology and Public Health, Logan, UT[2] (6-30-74)
Utah State University, Soil Laboratory, Logan, UT
Utah State University, Soil and Water Conservation Research, Mechanic Arts, Logan, UT
Utah State University, Crops Research Laboratory, Logan, UT

U.S. GOVERNMENT

U.S. Department of Agriculture, APHIS, Cyst Nematode Laboratory, Franklin, VA
U.S. Department of Agriculture, APHIS, Environmental Quality Laboratory, Brownsville, TX
U.S. Department of Agriculture, APHIS, Golden Nematode Laboratory, Hicksville, NY
U.S. Department of Agriculture, APHIS, Gypsy Moth Laboratory, Otis AFB, MA
U.S. Department of Agriculture, APHIS, Environmental Quality Laboratory, Gulfport, MS
U.S. Department of Agriculture, APHIS, Southern Methods Development Laboratory, Gulfport, MS
U.S. Department of Agriculture, ARS, CARD, U.S. Fruit, Vegetable, Soil, and Water Laboratory, Nematology Investigation, Weslaco, TX[2] (6-30-77)
U.S. Department of Agriculture, ARS, Plant and Entomological Sciences, Washington, DC[1]
U.S. Department of Agriculture, ARS, Soil, Water, and Air Sciences, Washington, DC[1]
U.S. Department of Agriculture, ARS, Southern Piedmont Conservation Research Center, Watkinsville, GA[2] (6-30-78)
U.S. Department of Agriculture, ARS, U.S. Water Conservation Lab, Phoenix, AZ[2] (6-30-79)
U.S. Department of Agriculture, FS, Southern Forest Experiment Station, Pineville, LA
U.S. Department of Agriculture, FS, SEFES, Athens, GA[2] (6-30-75)
U.S. Department of Agriculture, FS, Washington, D.C.[1]
U.S. Department of Agriculture, FS, Wood Products Insect Laboratory, Gulfport, MS[2] (6-30-74)
U.S. Department of Agriculture, SCS, Engineering and Watershed Planning Unit, Materials Testing Section, Portland, OR[2] (6-30-74)
U.S. Department of Agriculture, SCS, Engineering Division, Washington, DC[1]
U.S. Department of Agriculture, SCS, Soil Mechanics Laboratory, Lincoln, NE[2] (6-30-74)
U.S. Department of Agriculture, SCS, Soil Survey Investigations Unit, Lincoln, NE[2] (6-30-78)
U.S. Department of Agriculture, SCS, Soil Survey Laboratory, Riverside, CA[2] (6-30-77)
U.S. Department of Agriculture, SCS, Soil Survey, Washington, DC[1]
U.S. Department of Agriculture, SCS, Survey Investigations Unit, Beltsville, MD[2] (6-30-75)
U.S. Department of Commerce, National Bureau of Standards, Health Physics Section, Gaithersburg, MD[2] (6-30-75)

See footnotes at end of document.

U.S. Department of Defense, U.S. Air Force, AFCES/DL Civil Engineering Center, Tyndall AFB, Panama City, FL [3] (6-30-78)
See footnotes at end of document.
U.S. Department of Defense, U.S. Air Force, Air Force Cambridge Research Laboratories (AFSC), Laurence G. Hanscom Field, Bedford, MA
U.S. Department of Defense, U.S. Air Force, Air Force Weapons Laboratory, Kirkland AFB, Albuquerque, NM [3] (6-30-76)
U.S. Department of Defense, U.S. Army, Construction Engineering Research Laboratory, Champaign, IL [2] (6-30-75)
U.S. Department of Defense, U.S. Army Corps of Engineers, Chicago, IL
U.S. Department of Defense, U.S. Army Corps of Engineers, Engineering Division Laboratory, Marietta, GA [3] (6-30-77)
U.S. Department of Defense, U.S. Army Corps of Engineers, Vicksburg, MS [3] (6-30-74)
U.S. Department of Defense, U.S. Army Corps of Engineers, Washington, DC [1]
U.S. Department of Defense, U.S. Army, Electronics Command, Institute for Exploratory Research, Fort Monmouth, NJ [3] (6-30-75)
U.S. Department of Defense, U.S. Army Engineer Power Group, Engineering Division, Pollution Control Laboratory, Fort Belvoir, VA [2] (6-30-74)
U.S. Department of Defense, U.S. Army, Environmental Health Agency, Building 2100, Edgewood Arsenal, MD [2] (6-30-74)
U.S. Department of Defense, U.S. Army Mobile Equipment Research Development Center, Countermine/Counter Intrusion Dept. Fort Belvoir, VA [2] (6-30-74)
U.S. Department of Defense, U.S. Army, South Pacific Corps of Engineers, Engineering Division Laboratory, Sausalito, CA [3] (6-30-78)
U.S. Department of Defense, U.S. Navy, Naval Facilities Engineering Command, Soil Mechanics and Paving Branch, Norfolk, VA
U.S. Department of Defense, U.S. Navy, Naval Weapons Center, China Lake, CA [2] (6-30-74)
U.S. Department of Health, Education, and Welfare, Center for Disease Control, Mycology Branch, Atlanta, GA [2]
U.S. Department of Health, Education, and Welfare, National Communicable Disease Center, Atlanta, GA
U.S. Department of the Interior, Bureau of Indian Affairs, Soil Testing Laboratory, Gallup, NM
U.S. Department of the Interior, Bureau of Central Environmental Geology, Denver, CO [3] (6-30-75)
U.S. Department of the Interior, Geological Survey, Albuquerque, NM
U.S. Department of the Interior, Geological Survey, Harrisburg, PA [3] (6-30-74)
U.S. Department of the Interior, Geological Survey, Washington, DC [1]
U.S. Department of Transportation, Federal Highway Administration, Fairbanks Highway Research Station, McLean, VA
U.S. Department of Transportation, Federal Highway Administration, Materials Testing Laboratory, Vancouver, WA [3] (6-30-77)
U.S. Department of Transportation, Federal Highway Administration, Washington, DC [1]
U.S. Environmental Protection Agency Laboratory, Sabine Island, Gulf Breeze, FL [3] (6-30-74)
U.S. Environmental Protection Agency, Pesticides Monitoring Laboratory, Bay St. Louis, MS
U.S. Environmental Protection Agency, Robert Kerr Laboratories, Ada, OK [3] (6-30-75)
U.S. Geological Survey, Quality of Water Laboratory, Water Resources Division, Menlo Park, CA

See footnotes at end of document.

V

Value Engineering Company, Alexandria, VA
Velsicol Chemical Corp., Chicago, IL [3] (6-30-75)
Vermillion Co., Farm Bureau, Danville, IL
Vermont, University of, Burlington, VT
Virginia Department of Highways, Richmond, VA
Virginia Polytechnic Institute, Blacksburg, VA
Virginia Truck Experiment Station, Painter, VA
Virginia Truck Experiment Station, Virginia Beach, VA
Vistron Company, Lima, OH

W

Wahler, W. A., & Associates, Palo Alto, CA [3] (6-30-75)
Walker Laboratories, Columbia, SC
Walker Laboratories, Florence, SC
Ward, J. S., & Associates, Caldwell, NJ [2] (6-30-76)
Ward Lind Engineers, Inc., Jackson, MS
Warf Institute, Inc., Madison, WI
Washington State University, Department of Agronomy and Soils, Pullman, WA [2] (6-30-75)
Washington State University, Department of Botany, Pullman, WA [2] (6-30-76)
Washington, University of, College of Forest Resources, Seattle, WA [2] (6-30-76)
Washington, University of, Department of Geological Sciences, Seattle, WA [2] (6-30-77)
Washington, University of, Laboratory of Radiation Ecology, Seattle, WA [2] (6-30-74)
Weber State College, Department of Microbiology, Ogden, UT
Western Agricultural Laboratory, Redlands, CA [2] (6-30-77)
Western Research Laboratories, Niagara Chemical Division, FMC, Richmond, CA
West Virginia Department of Highways, Charleston, WV
West Virginia, University of, Soil Testing Laboratory, Morgantown, WV
Wharton County Junior College, Soil Testing Laboratory, Wharton, TX
William and Mary, College of, Williamsburg, VA
Williams, E. V., Co., Inc., Virginia Beach, VA
Winthrop College Department of Biology, Rock Hill, SC [2] (6-30-74)
Wisconsin Department of Transportation, Madison, WI
Wisconsin, University of, Department of Anthropology, Madison, WI [2] (6-30-74)
Wisconsin, University of, Department of Anthropology, Milwaukee, WI [2] (6-30-74)
Wisconsin, University of, Department of Soil Science, Madison, WI
Wisconsin, University of, Soils Department, Madison, WI [2] (6-30-74)
Wolf's, Dr., Agricultural Laboratories, Fort Lauderdale, FL [2] (6-30-75)
Woodard Research Corp., Herndon, VA
Woodson-Tenent Laboratories, Memphis, TN [2] (6-30-74)
Woodward & Associates, Inc., Baton Rouge, LA
Woodward-Clyde-Secard & Associates, Denver, CO [2] (6-30-75)
Woodward, Clyde, & Associates, Orange, CA
Woodward, Clyde, & Associates, Clifton, NJ
Woodward, Clyde, & Associates, San Diego, CA
Woodward, Clyde, Sherard, & Associates, St. Louis, MO
Woodward-Etco & Associates, Inc., Houston, TX [2] (6-30-78)
Woodward-Gizienski & Associates, San Diego, CA [2] (6-30-74)
Woodward-Gardner & Associates, Philadelphia, PA
Woodward-Lundgren, & Associates, Oakland, CA
Woodward-Lundgren, & Associates, San Jose, CA
Woodward-McMaster & Associates, Kansas City, MO
Woodward-McMaster & Associates, Inc., St. Louis, MO
Woodward-Moorehouse & Associates, Inc., Clifton, NJ [2] (6-30-76)
Woodville Lime Products, Woodville, OH
Wyoming, University of, Department of Botany, Laramie, WY [2] (6-30-76)

Y

Yakima Testing Laboratory, Yakima, WA [2] (6-30-74)
Yale University, Department of Geology & Geophysics, New Haven, CT [2] (6-30-78)
Yale University, Greeley Laboratories, New Haven, CT [2] (6-30-77)
Yeshiva University, New York, NY
Yule, Jordan, and Associates, Camp Hill, PA

Z

Zoecon Corp., Palo Alto, CA

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33 (7 U.S.C. 161, 162, 150ee); 29 FR 16210, as amended, 37 FR 28464, 28477, 38 FR 19140; 7 CFR 301.48, 301.72, 301.80, 301.81, and 301.85)

Effective date. This amendment to the list of approved laboratories, PPQ 639, shall became effective March 5, 1974.

Under the provisions of the regulations supplemental to the notices of quarantine cited herein, soil samples for processing, testing, or analysis may be moved interstate from any regulated area specified in the regulations to laboratories approved by the Deputy Administrator and so listed by him. A laboratory may be approved if a compliance agreement is signed; samples are packaged to prevent spillage of soil; and soil residues, hazardous water residues, and shipping containers are treated in accordance with specified procedures.

The Deputy Administrator of Plant Protection and Quarantine Programs has approved the above-listed laboratories as establishments which meet the qualifications required under the regulations. The listed laboratories are, therefore, authorized to receive soil samples from the regulated areas specified in the regulations without certificates or permits attached.

With respect to establishments added to the list of approved laboratories, this revision relieves certain restrictions presently imposed and should be made effective promptly in order to be of maximum benefit to persons subject to the restrictions that are being relieved. The deletion of laboratories from such list imposes certain restrictions that are necessary to prevent the spread of the above-named pests and should be made effective promptly to prevent the interstate spread of such dangerous pests.

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

Done at Washington, D.C., this 27th day of February 1974.

T. G. DARLING,
Acting Deputy Administrator, Plant Protection and Quarantine Programs.

NOTE.—A date after a name indicates when the import permit expires.

[1] National Compliance Agreement—applies to all branch laboratories in conterminous United States.
[2] Authorized to receive unsterilized foreign samples only.
[3] Authorized to receive unsterilized foreign samples also.

[FR Doc.74-5055 Filed 3-4-74;8:45 am]

Forest Service

PROPOSAL AND DRAFT ENVIRONMENTAL STATEMENT ON ABSAROKA, BEARTOOTH, AND CUTOFF MOUNTAIN WILDERNESSES

Availability of Draft Environmental Statement and Proposal

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a proposal and draft environmental statement for Absaroka, Beartooth, and Cutoff Mountain Wildernesses, Forest Service Report Number USDA–FS–DES (Leg) R1–74–8.

The environmental statement concerns a proposal that portions of the Absaroka and the Beartooth Primitive Areas be designated as Wilderness and added to the National Wilderness Preservation System. It also proposes that certain areas of contiguous National Forest land be similarly designated and added to the System and that certain parts of both Primitive Areas be declassified. This proposal involves the Wilderness classification of 516,815 acres within the Gallatin and the Custer National Forests in Park, Sweet Grass, Stillwater, and Carbon Counties in south-central Montana.

This draft statement was filed with CEQ on February 25, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA Forest Service
South Agriculture Bldg., Room 3231
12th St. & Independence Ave., SW
Washington, DC 20250

USDA Forest Service
Northern Region
Federal Building, Room 3077
Missoula, MT 59801

USDA Forest Service
Custer National Forest
P.O. Box 2556
Billings, MT 59103

USDA Forest Service
Gallatin National Forest
P.O. Box 130
Bozeman, MT 59715

USDA Forest Service
Shoshone National Forest
P.O. Box 961
Cody, WY 82414

A limited number of single copies are available upon request to Regional Forester Steve Yurich, USDA Forest Service, Federal Building, Missoula, MT 59801.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Regional Forester Steve Yurich, USDA Forest Service, Federal Building, Missoula, MT 59801. Comments must be received by April 30, 1974, in order to be considered in the preparation of the final environmental statement.

KEITH M. THOMPSON,
Regional Forester
Northern Region, Forest Service.

FEBRUARY 25, 1974.

[FR Doc.74-5002 Filed 3-4-74;8:45 am]

MULTIPLE USE PLAN—SKALKAHO-GIRD AND SLEEPING CHILD PLANNING UNIT

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Multiple Use Plan—Skalkaho-Gird and Sleeping Child Planning Unit, Forest Service Report Number USDA–FS–FES (Adm) 73–69.

The environmental statement concerns the proposed implementation of a revised Multiple Use Plan for the Skalkaho-Gird and Sleeping Child Planning Unit, Darby Ranger District, Bitterroot National Forest, Ravalli County, Montana. About 121,000 acres of National Forest land are affected. The planning unit is divided into 13 subunits of similar resource potential and limitations to management. Significant values, management direction, and specific statements to guide land management have been developed for each subunit.

This final environmental statement was filed with CEQ on February 25, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3231
12th St. & Independence Ave. SW.
Washington, D.C. 20250

USDA, Forest Service
Northern Region
Federal Building, Room 3077
Missoula, Montana 59801

USDA, Forest Service
Bitterroot National Forest
316 North Third Street
Hamilton, Montana 59840

USDA, Forest Service
Darby Ranger District
Darby, Montana 59829

A limited number of single copies are available upon request to:

Orville L. Daniels, Forest Supervisor
Bitterroot National Forest
316 North Third Street
Hamilton, Montana 59840

Darby District Ranger
Darby Ranger District
Darby, Montana 59829

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

KEITH M. THOMPSON,
Regional Forester,
Northern Region, Forest Service.

FEBRUARY 25, 1974.

[FR Doc.74-5001 Filed 3-4-74;8:45 am]

NORTH RIVER UNIT

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the North River Planning Unit, George Washington National Forest, Virginia, USDA–FS–R8–DES (Adm.)–74–4.

This environmental statement concerns the proposed management direction and resource allocation for a portion of the George Washington National Forest, known as the North River Planning Unit.

This draft environmental statement was transmitted to CEQ on February 22, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. & Independence Ave. SW.
Washington, D.C. 20250

USDA, Forest Service
1720 Peachtree Road NW., Room 804
Atlanta, Georgia 30309

USDA, Forest Service
District Ranger
Bridgewater, Virginia 22812

A limited number of single copies are available upon request to Robert W. Cermak, Forest Supervisor, George Washington National Forest, P.O. Box 233, Harrisonburg, Virginia 22801.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

Comments are invited from the public, and from state and local agencies which

are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor, Robert W. Cermak, George Washington National Forest, Roanoke, Virginia. Comments must be received by April 22, 1974 in order to be considered in the preparation of the final environmental statement.

HANS R. RAUM,
Acting Regional Forester.

[FR Doc.74-5019 Filed 3-4-74;8:45 am]

Office of the Secretary

MIDAMERICA COMMODITY EXCHANGE

Order Vacating Certain Designation as a Contract Market Under the Commodity Exchange Act

Pursuant to section 7 of the Commodity Exchange Act (7 U.S.C. 11), I hereby vacate the designation of the MidAmerica Commodity Exchange of Chicago, Illinois, as a contract market for rye, effective April 1, 1974. The said exchange, which was designated as a contract market for rye on October 24, 1922, has requested that such designation be vacated.

The said exchange shall remain designated as a contract market for wheat, corn, oats, soybeans, and live hogs, after April 1, 1974, having previously been so designated.

Issued this 28th day of February 1974.

CLAYTON YEUTTER,
Assistant Secretary for Marketing and Consumer Services.

FEBRUARY 28, 1974.

[FR Doc.74-5056 Filed 3-4-74;8:45 am]

SEATTLE GRAIN EXCHANGE

Order Vacating Designation as a Contract Market Under the Commodity Exchange Act

Pursuant to section 7 of the Commodity Exchange Act (7 U.S.C. 11), I hereby vacate the designation of the Seattle Grain Exchange of Seattle, Washington, as a contract market for wheat effective May 1, 1974. The said exchange, which was designated as a contract market for wheat on January 29, 1926, has requested that such designation be vacated.

Issued this 28th day of February 1974.

CLAYTON YEUTTER,
Assistant Secretary for Marketing and Consumer Services.

FEBRUARY 28, 1974.

[FR Doc.74-5057 Filed 3-4-74;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

BATTELLE MEMORIAL INSTITUTE

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 74-00116-75-07795. Applicant: Battelle Memorial Institute, Columbus Laboratories, 505 King Avenue, Columbus, Ohio 43201. Article: 600/S/20 Imacon 600 Camera. Manufacturer: John Hadland (P.I.) Ltd., United Kingdom. Intended use of article: The foreign article is intended to be used in research designed to investigate the detailed pulse shape of a mode-locked laser with a few picosecond resolution and the proton emission from laser produced plasmas in the same time region. The phenomena to to be studied are the time dependent ionization of a variety of high-Z materials and the early time hydrodynamics of both low and high-Z materials when irradiated by a very short, high power laser pulse. The objectives of the investigations are to produce very intense fluences of X-rays from laser-generated plasmas and to achieve fusion power.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the article was ordered (May 4, 1973).

Reasons: The foreign article provides a time resolution of at least 3 picoseconds. The National Bureau of Standards (NBS) advised in its memorandum dated January 15, 1974 that the capability described above is pertinent to the applicant's use in time dependent studies.

NBS also advised that it knows of no domestic instrument of equivalent scientific value to the article which was available at the time the article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.74-4975 Filed 3-4-74;8:45 am]

TUFTS UNIVERSITY AND PRESBYTERIAN UNIVERSITY OF PENNSYLVANIA MEDICAL CENTER

Notice of Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes

The following is a consolidated decision on applications for duty-free entry of ultramicrotomes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.). (See especially § 701.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 74-00163-33-46500. Applicant: Tufts University, School of Medicine, Department of Pathology, 136 Harrison Avenue, Boston, Massachusetts 02111. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The foreign article is intended to be used in research on biological mainly mammalian tissues and cultural systems derived from experimental animals and man which exhibit both normal and pathologic structure. Specific experiments are designed to elucidate the function of basophils and mast cells in cell mediated hypersensitivity reaction, particularly with regard to an understanding of the role of these cells in immunologic tumor rejection. Application received by Commissioner of Customs: October 5, 1973. Advice submitted by Department of Health, Education, and Welfare on: January 31, 1974.

Docket Number: 74-00165-33-46500. Applicant: Presbyterian-University of Pennsylvania Medical Center, 51 N. 39th Street, Philadelphia, Pennsylvania 19104. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The foreign article is intended to be used in research on blood vessels and muscle to investigate the capability of intracellular organelles to take up calcium and the identification of fatty materials in diseased blood vessels. The objectives are to determine at the ultrastructural level the sites that regulate contraction of muscle and how they are involved in the calcification of blood

vessels. The article will also be used to train graduated students in physiology. Application received by Commissioner of Customs: October 5, 1973. Advice submitted by Department of Health, Education, and Welfare on: January 31, 1974.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, is being manufactured in the United States. Reasons: Each of the foreign articles provides a range of cutting speeds from 0.1 to 20 millimeters per second. The most closely comparable domestic instrument is the Model MT–2B ultramicrotome which is manufactured by Ivan Sorvall, Inc. (Sorvall). The Model MT–2B has a range of cutting speeds from 0.09 to 3.2 millimeters per-second. The conditions for obtaining high-quality sections that are uniform in thickness, depend to a large extent on the hardness, consistency, toughness and other properties of the specimen materials, the properties of the embedding materials, and geometry of the block. In connection with a prior application (Docket Number 69–00665–33–46500), which relates to the duty-free entry of an article that is identical to those to which the foregoing applications relate, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior application (Docket Number 70–00077–33–46500) which also relates to an article that is identical to those described above, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that the "production of ultrathin serial sections of specimens that have a great variation in physical properties is very difficult." Accordingly, HEW advises in its respectively cited memoranda, that cutting speeds in excess of 4 millimeters per second are pertinent to the satisfactory sectioning of the specimen materials and the relevant embedding materials that will be used by the applicants in their respective experiments. For these reasons, we find that the Sorvall Model MT–2B ultramicrotome is not of equivalent scientific value to the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.74–4976 Filed 3–4–74;8:45 am]

UNIVERSITY OF CALIFORNIA, LOS ALAMOS

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73–00492–75–27000. Applicant: University of California, Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, N. Mex. 87544. Article: Camera, image converter and accessories. Manufacturer: John Hadland Ltd., United Kingdom. Intended use of article: The article is intended to be used to study the interaction of ultrashort laser pulses with materials. Both the light output from the laser and the plasma resulting from interaction will be investigated. Such properties as spatial distribution and symmetry, velocity and direction of motion, and intensity of output will be measured.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capabilities for 10 nanosecond resolution and for 6 to 20 frames. The National Bureau of Standards (NBS) advised in its memorandum dated January 14, 1974 that both of the capabilities described above are pertinent to the purposes for which the article is intended to be used. NBS also advised that it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.74–4977 Filed 3–4–74;8:45 am]

UNIVERSITY OF CALIFORNIA, LOS ALAMOS

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73–00443–75–82600. Applicant: University of California, Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, N. Mex. 87544. Article: Thermovision, System, Model 680. Manufacturer: AGA, AB, Sweden. Intended use of article: The article is intended to be used to measure the distribution of the infrared radiation from released chemicals (chemical ferrocene and other compounds) and the intensity of the radiation. The objective of the experiments being conducted is to obtain data related to infrared emission from iron oxide molecules formed by chemical reaction between ferrocene and ambient ozone.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the article was ordered (August 31, 1972).

Reasons: The foreign article provides the capabilities for a horizontal resolution of 1.3 milliradians and operation in an aircraft environment. The National Bureau of Standards (NBS) advised in its memorandum dated January 14, 1974 that the capabilities described above are pertinent to the applicant's intended measurement of the spatial distribution of infrared emission from iron oxide molecules formed by chemical reaction between introduced ferrocene and ambient ozone. NBS also advised it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being

manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.74-4978 Filed 3-4-74;8:45 am]

UNIVERSITY OF CONNECTICUT

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73-00280-99-43595. Applicant: University of Connecticut, Storrs, Conn. 06268. Article: Betz Micromanometer, 250 mm range (2 each). Manufacturer: Instrumentenfabrik Van Essen N.V., Holland. Intended use of article: The article is intended to be used to determine precise pressure differences for air flows having velocities up to about 200 feet per second. Both static pressures and dynamic pressures are to be measured for air flows classed as low-speed wind-tunnel flows. The experiments in progress include:

a. Calibration of hot-wire probes with small calibration wind-tunnel.

b. Boundary layer studies where dynamic pressure probes are used to measure mean velocities and to serve as a calibration standard for hot-wire work.

c. Continuous monitoring of wind-tunnel speed-setting using a pilot tube.

d. Air flow and static pressure evaluation for a two-phase air-water wave tunnel.

In addition the article will be used in the courses Civil Engineering 266, Hydraulic Engineering Laboratory; Mechanical Engineering 264, Experimental Mechanical Engineering Graduate Study in Fluid Dynamics; Civil Engineering 399 and 499 as well as Mechanical Engineering 399 and 499; Thesis Preparation for Masters and Doctor of Philosophy candidates to perform experimental work with fluids such as air, water, oil, etc.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is capable of producing a differential pressure of from zero to 10 inches (250 millimeters) water and an accuracy of at least 0.0005 inch water. The National Bureau of Standards (NBS) in its memorandum dated January 28, 1974 advised that the capabilities described above are pertinent to the purposes for which the article is intended to be used. NBS also advised that it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.74-4979 Filed 3-4-74;8:45 am]

UNIVERSITY OF MICHIGAN

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 74-00159-33-46040. Applicant: The University of Michigan, Pathology Department, 1335 E. Catherine Street, Ann Arbor, Michigan 48104. Article: Electron Microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The foreign article is intended to be used in teaching a course entitled *Electron Microscopy and Biological Sample Preparations*. The course will teach preparatory techniques for electron microscopy and include handling different types of tissue from human biopsies such as kidney, liver and a variety of neoplasms; the handling of various blood cells; the handling of bone marrow aspirates; and the handling of cells from tissue culture. The students will also be taught to operate the article but not at a level sufficient to qualify as expert electron microscopists.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article for such purposes as this article is intended to be used, was being manufactured in the United States at the time the article was ordered (December 5, 1972).

Reasons: The applicant requires an electron microscope which is suitable for instruction in the basic principles of electron microscopy. The foreign article is a relatively simple, medium resolution electron microscope designed for confident use by beginning students with a minimum of detailed programing. The most closely comparable domestic instrument available at the time the article was ordered was the Model EMU-4C electron microscope which was formerly manufactured by the Forgflo Corporation and which is currently supplied by the Adam David Company. The Model EMU-4C electron microscope is a relatively complex instrument designed for research, which requires a skilled electron microscopist for its operation. We are advised by the Department of Health, Education, and Welfare in its memorandum dated January 31, 1974 that the relative simplicity of design and ease of operation of the foreign article is pertinent to the applicant's educational purposes. We, therefore, find that the Model EMU-4C electron microscope was not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

A. H. STUART,
Director, Special Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc.74-4980 Filed 3-4-74;8:45 am]

UNIVERSITY OF PENNSYLVANIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73-00373-65-25300. Applicant: Trustees of the University of Pennsylvania, Purchasing Department, Franklin Building Annex, 3451 Walnut Street, Philadelphia, PA 19174. Article: Electrical discharge machine. Manufacturer: Ateliers des Charmilles, Switzerland. Intended use of article: The article is intended to be used for the study of single crystals of Hf, Ni, Tl, Pr, Cu_2Au, Ni_2Al, Bi, Al, PbTe, Au and $SmCO_5$ and polycrystalline samples of Cu-Al, Ti-Al, CuMn, Al, Tm, Zrc, TiC, Tb, Si-Fe, and steel. The properties of the materials to be investigated are thermodynamic and transport mechanical, phase transformations and defects, interfaces, and electrodes, electronic and magnetic; and optical and acoustical. Experiments to be

conducted are the diffusivity of sulfur in CaO-SiO_2-Al_2O_3 melts; dislocation mobilities in ordered alloys; a study of the high temperature strength of Ni_3Al; and investigation in the hardening process of fatigue; mechanisms of metal-metal oxide electrode processes; domain structure of rare earth metals; electron energy band structure in metals and semiconductors; crystalline fields in rare earth metals and compounds; and optical and acoustical spectroscopy of solids.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a quill tracking accuracy of 0.00008 inch and a minimum introduction of strain and damage in the sample. The most closely comparable domestic instrument can be represented by the electrical discharge machine manufactured by Colt Industries Elox Division (Colt). The Colt machine, which does not introduce significant strain and damage in the sample, has a quill tracking accuracy of 0.00015 inch. The National Bureau of Standards (NBS) advised in its memorandum dated January 11, 1974 that the best available quill tracking accuracy and a minimum introduction of strain and damage in the sample are pertinent to the purposes for which the article is intended to be used. NBS also advised that it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.74-4981 Filed 3-4-74;8:45 am]

UNIVERSITY OF WASHINGTON

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73-00446-00-17500. Applicant: University of Washington, C.R. Physical Project, Department of Oceanography WB-10, Seattle, Wash. 98195. Article: Tape reader No. 2103 and accessories. Manufacturer: Ivar Aanderaa, Norway. Intended use of article: The article is intended to be used to provide the necessary translation of digital tapes produced by Aanderaa Recording Current Meter to computer compatible digital tapes for further data processing. The equipment will also be used by graduate students in the process of collecting data for their research programs.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article will be used in oceanographic research to decode and monitor tapes generated by recording current meters of the same manufacture as the article. The article is compatible with the current meter tapes to be decoded and monitored and provides computer-compatible information. The National Bureau of Standards (NBS) advised in its memorandum dated January 29, 1974, that the characteristics of the article described above are pertinent to the purposes for which the article is intended to be used. NBS also advised that it knows of no domestic instrument of equivalent scientific value to the article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.74-4982 Filed 3-4-74;8:45 am]

Maritime Administration

CONSTRUCTION OF TANKERS OF ABOUT 265,000 DWT RECOMPUTATION OF FOREIGN COST

Notice of Intent

Notice is hereby given of the intent of the Maritime Subsidy Board pursuant to the provisions of section 502(b) of the Merchant Marine Act 1936, as amended, to recompute the estimated foreign cost of the construction of tankers of about 265,000 DWT since there appears to have been a significant change in shipbuilding market conditions since the previous determination of estimated foreign cost was made.

Any person, firm or corporation having any interest (within the meaning of section 502(b)) in such computations may file written statements by the close of business of March 27, 1974, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th & E Streets, NW., Washington, D.C. 20230.

Dated: February 28, 1974.

By order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.74-5059 Filed 3-4-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

LIBRARY TRAINING PROGRAM

Notice of Closing Date for Receipt of Applications

Notice is hereby given that pursuant to the authority contained in sections 201, 221, and 222 of Title II, Part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1021, 1031, and 1033), applications are being accepted from institutions of higher education and library organizations and agencies for grants under the Library Training Program for institutes, fellowships, and traineeships.

Applications must be received by the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets, SW., Washington, D.C. 20202 (mailing address: U.S. Office of Education, Application Control Center, 400 Maryland Ave., SW., Washington, D.C. 20202, Attention: 13.468), on or before April 8, 1974.

An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than the fifth calendar day prior to the closing date (or if such fifth calendar day is a Saturday, Sunday, or Federal holiday, not later than the next following business day), as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

The regulations which govern assistance to institutions of higher education and eligible agencies and organizations to assist in training persons in librarianship are published in 45 CFR Part 132, as amended by the Office of Education General Provisions Regulations published in the FEDERAL REGISTER on November 6, 1973, 38 FR at 30660. Applicable provisions of the General Provisions Regulations apply to this program. In addition, revised regulations on the library

training program are published as a notice of proposed rulemaking in this issue of the FEDERAL REGISTER and should be used for guidance in the preparation of applications and proposals.

Application forms and other pertinent information will be sent to all institutions and agencies which have previously participated in the program. Other institutions and agencies desiring to participate may obtain such application forms, proposal formats, and other pertinent information from the Division of Library Programs, Office of Institutional Development and International Education, Bureau of Postsecondary Education, U.S. Office of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202, ATTN: Library Education and Postsecondary Resources Unit.

(20 U.S.C. 1021, 1031, 1033)

(Catalog of Federal Domestic Assistance Program No. 13.468; Training in Librarianship)

Dated: February 26, 1974.

JOHN OTTINA,
U.S. Commissioner of Education.

[FR Doc.74-5122 Filed 3-4-74;8:45 am]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON GRANT AND BENEFIT PROGRAMS

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Grant and Benefit Programs of the Administrative Conference of the United States, to be held at 10:30 a.m. on March 15, 1974 in the Conference Library, Suite 500, 2120 L Street, NW., Washington, D.C. 20037.

The Committee will meet to consider a report and proposed recommendation on Federal grant procedures, a report and proposed recommendation on anti-discrimination procedures in hiring by colleges and universities, and a pending study on representation in claims adjudications by Federal agencies.

Attendance is open to the interested public, but limited to the space available. Any member of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee Chairman may allow public presentation or oral statements at the meeting. For further information concerning this committee meeting contact William R. Shaw (phone 202-254-7065). Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

FEBRUARY 27, 1974.

[FR Doc.74-5004 Filed 3-4-74;8:45 am]

COMMITTEE ON JUDICIAL REVIEW

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States, to be held at 1:00 p.m. on March 7, 1974 in the offices of Covington and Burling, 888 16th Street NW., Washington, D.C. 20006.

The Committee will meet to consider a report and proposed recommendation on preenforcement judicial review of rules adopted pursuant to the notice-and-comment procedures of 5 U.S.C. 553.

Attendance is open to the interested public, but limited to the space available. Any member of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee Chairman may allow public presentation of oral statements at the meeting. For further information concerning this committee meeting contact Robert W. Hamilton (phone 202-254-7065). Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

FEBRUARY 27, 1974.

[FR Doc.74-5003 Filed 3-4-74;8:45 am]

ATOMIC ENERGY COMMISSION

WASTE MANAGEMENT ACTIVITIES; SAVANNAH RIVER PLANT

Notice of Meeting

Notice is hereby given by the Atomic Energy Commission and the Environmental Protection Agency of an informal meeting between staffs of the two agencies to be held in the Pine Room of the Commercial Motor Hotel, 235 Richland Avenue West, Aiken, South Carolina 29801, on March 12, 1974 at 9 a.m. The purpose of the meeting will be to discuss waste management activities at the Atomic Energy Commission's Savannah River Plant and AEC's environmental impact statement now in preparation which covers such activities. The public is cordially invited to attend these discussions.

Further information can be obtained from Mr. William R. Voigt, Deputy Director, Division of Production and Materials Management, U.S. Atomic Energy Commission, Washington, D.C. 20545 and E. David Harward, Director, Technology Assessment Division, Office of Radiation Programs, Environmental Protection Agency, Washington, D.C. 20460.

W. D. ROWE,
Deputy Assistant Administrator for Radiation Programs, Environmental Protection Agency.

FEBRUARY 26, 1974.

JAMES L. LIVERMAN,
Assistant General Manager for Biomedical and Environmental Research and Safety Programs, Atomic Energy Commission.

FEBRUARY 22, 1974.

[FR Doc.74-4998 Filed 3-1-74;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket Nos. 22859, 26460; Order 74-2-119]

ALASKA AIRLINES, INC. AND NORTHWEST AIRLINES, INC.

Order of Suspension Regarding Domestic Air Freight Rate Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of February 1974.

By tariff revisions[1] bearing the issue dates of January 29 and 30, 1974, and marked to become effective March 1, 1974, Alaska Airlines, Inc. (Alaska) and Northwest Airlines, Inc. (Northwest) propose to increase general and specific commodity bulk and container rates and charges between Alaska and the 48 contiguous states.

Alaska proposes to increase its bulk general and specific commodity rates by approximately 6.5 percent, and Northwest proposes to increase its bulk general and specific commodity and container general commodity rates by 7.5 percent.

In support of its proposal, Alaska asserts, inter alia, that the proposal is based upon recent increases in fuel costs estimated to amount to $2.0 million for the year ending February 28, 1975, and the proposal is expected to generate approximately $221,000 in added revenues, which, when combined with a concurrently proposed passenger-fare increase, is expected to offset the additional known fuel cost increases.

Northwest, in support of its proposal, asserts, inter alia, that it is experiencing rapid increases in operating costs; that fuel costs are increasing almost on a daily basis; that recent fuel cost increases add more than $1,000,000 in operating expenses annually in these markets; that Northwest's service is necessary particularly in view of Alaska's high dependency upon air freight service; that the proposed increase will generate approximately $215,000 in added revenues to offset cost increases; and that the proposed increases match those which have been filed by Alaska Airlines and Western Air Lines, Inc.

To the extent that the proposed rates apply between points in the 48 contiguous states and Anchorage, Fairbanks, Juneau, and Ketchikan, they come within the scope of the "Domestic Air Freight Rate Investigation," Docket 22859.[2] The issue now before the Board is whether to suspend the proposals or to permit them to become effective pending investigation.

In our opinion, the carriers have justified a need for higher revenues. The Board is aware of the sharp increases in fuel expenses in recent months and believes that some adjustment in rates and charges is justified to offset these higher

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariffs C.A.B. Nos. 131 and 169.

[2] Alaska Airlines also proposes to increase rates involving other Alaskan points not covered in the Domestic Case. These rates will be permitted to become effective. These points are generally served via intra-Alaskan routes, such costs being higher than domestic costs, and the carrier receives subsidy for these routes. The proposed increases do not appear excessive.

expenses. In permitting certain of the rate increases proposed, the Board is giving weight to higher fuel prices claimed by the carriers to be actually experienced or those to be shortly effected pursuant to existing contracts.

Upon consideration of all relevant matters, the Board concludes it will suspend pending investigation proposals of Alaska Airlines involving higher bulk general commodity rates between Seattle/Tacoma, on the one hand, and Anchorage, Fairbanks, and Juneau, on the other, as well as for Northwest involving bulk general commodity rates for lengths of haul of 1,500 miles or over and all general commodity container rates and charges.

The foregoing suspended increases appear excessive in relation to costs indicated by data available to the Board. Although the carriers present data indicating their need for additional revenues, they make no showing that the rates and charges proposed for various lengths of haul are in line with their costs.

The remaining portions of the general commodity bulk increases as well as all specific commodity increases for both carriers will be permitted to become effective because they do not appear out of line with costs.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof.

It is ordered, That:

1. Pending hearing and decision by the Board, the increased rates, charges, and provisions described in Appendix A hereto [2] are suspended and their use deferred to and including May 29, 1974 unless otherwise ordered by the Board and that no change be made therein during the period of suspension except by order or special permission of the Board;

2. Copies of this order shall be filed with the tariffs and served upon Alaska Airlines, Inc. and Northwest Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.74-5040 Filed 3-4-74;8:45 am]

COMMISSION ON CIVIL RIGHTS

TEXAS STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Texas State Advisory Committee (SAC) to this Commission will convene at 1:00 p.m. on March 6, 1974, in Room 350, St. Anthony Hotel, 300 East Travis, San Antonio, Texas 78205.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Southwestern Regional Office of the Commission, Room 231, New Moore Building, 106 Broadway, San Antonio, Texas 78205.

The purposes of this meeting shall be (1) to finalize plans for the National Mexican American Education Conference scheduled for March 6–9, 1974, (2) to discuss plans for a proposed fact-finding meeting on prisons, (3) to introduce new members of the Texas SAC and (4) to appoint subcommittee to the Texas SAC.

This meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 28, 1974.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.74-5151 Filed 3-4-74;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENT

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN POLAND

Entry or Withdrawal From Warehouse for Consumption

FEBRUARY 27, 1974.

On March 15, 1967, the United States Government concluded a comprehensive bilateral agreement with the Government of the Polish People's Republic concerning exports of cotton textiles and cotton textile products from Poland to the United States. On February 24, 1970, the two Governments exchanged notes amending and extending the bilateral agreement of March 15, 1967. The agreement was further amended and extended by exchange of notes dated January 22, 1974. Among the provisions of the agreement, as amended and extended, are those applying specific export limitations to Categories 19, 34, 36, 41, 42, 43, 49, 50, 60, and 62 for the fifth agreement year beginning March 1, 1974.

Accordingly, there is published below a letter of February 27, 1974 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amounts of cotton textile products in the above categories, produced or manufactured in Poland, which may be entered or withdrawn from warehouse for consumption in the United States for the twelve-month period beginning on March 1, 1974 and extending through February 28, 1975, be limited to certain designated levels. This letter and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, as amended and extended, but are designed to assist only in the implementation of certain of its provisions.

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

FEBRUARY 27, 1974.

DEAR MR. COMMISSIONER: Pursuant to the Bilateral Cotton Textile Agreement of March 15, 1967, as amended, between the Governments of the United States and the Polish People's Republic, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective March 1, 1974 and for the twelve-month period extending through February 28, 1975, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textile products in Categories 19, 34, 36, 41, 42, 43, 49, 50, 60 and 62, produced or manufactured in the Polish People's Republic, in excess of the following twelve-month levels of restraint:

Category:	*Twelve-month level of restraint*
19 ---------- square yards--	1,000,000
34 ---------- units--	112,903
36 ---------- do-----	144,928
41 ---------- dozen--	82,942
42 ---------- do-----	69,118
43 ---------- do-----	138,236
49 ---------- do-----	43,077
50 ---------- do-----	56,189
60 ---------- do-----	9,623
62 ---------- pounds--	217,391

Cotton textile products in Categories 34, 36, 41, 49 and 50 produced or manufactured in the Polish People's Republic and exported to the United States from the Polish People's Republic prior to March 1, 1974 shall not be subject to this directive.

Cotton textile products in Categories 34, 36, 41, 49 and 50 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

Entries of cotton textile products in Categories 19, 42, 43, 60 and 62, produced or manufactured in the Polish People's Republic and exported to the United States from the Polish People's Republic prior to March 1, 1974, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period March 1, 1973 through February 28, 1974. In the event that the levels of restraint established for such goods for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of March 15, 1967, as amended, between the Governments of the United States and the Polish People's Republic, which provide, in part, that within the aggregate and applicable group limits, limits on specific categories may be exceeded by not more than five percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 25, 1974 (39 FR 3430).

In carrying out the above directions, entry into the United States for consumption shall

[2] Filed as part of the original document.

be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Polish People's Republic and with respect to imports of cotton textiles and cotton textile products from the Polish People's Republic, have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.74-4994 Filed 3-4-74;8:45 am]

COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN MEXICO

Entry or Withdrawal From Warehouse for Consumption

FEBRUARY 27, 1974.

On August 26, 1971, there was published in the FEDERAL REGISTER (36 FR 16957) a letter dated August 23, 1971 from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs prohibiting entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products, produced or manufactured in Mexico and exported from Mexico to the United States on or after 30 days after the date of said publication, for which Mexico had not issued a visa. One of the visa requirements is that the visa accompanying such shipments include the signature of a Mexican official authorized to issue visas. The Government of Mexico has requested, and the Government of the United States has acceded to the request, that Lic. Pablo H. Quiroga-Garza be authorized to issue visas replacing Lic. Bernardo L. Flores, who will cease to sign. This list of officials was previously amended on August 23, 1972 (37 FR 17507).

There is published below a letter of February 27, 1974 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs further amending, effective as soon as possible, the directive of August 23, 1971 to make the requested signature change. A facsimile of the signature of Lic. Pablo H. Quiroga-Garza is filed as part of the original document with the office of the Federal Register. A complete list of Mexican officials currently designated to issue visas is published as an enclosure to the letter to the Commissioner of Customs.

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

FEBRUARY 27, 1974.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive of August 23, 1971 from the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit under certain specified conditions entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64, produced or manufactured in Mexico, for which the Government of Mexico had not issued an appropriate visa. One of the requirements is that each visa include the signature of a Mexican official authorized to issue visas. This list of signatures was previously amended by directive of August 23, 1972.

Under the provisions of the Bilateral Cotton Textile Agreement of June 29, 1971 between the Governments of the United States and Mexico and in accordance with the procedures of Executive Order 11651 of March 3, 1972, the directive of August 23, 1971 is further amended, effective as soon as possible, to authorize Lic. Pablo H. Quiroga-Garza to issue visas in place of Lic. Bernardo L. Flores, who will no longer sign. A complete list of Mexican officials currently authorized to issue visas is enclosed.

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

OFFICIALS AUTHORIZED BY THE GOVERNMENT OF MEXICO TO ISSUE VISAS

J. Guillermo Becker A.
Jose Arango Rojas
Daniel Basulto Verduzco
Melquisedec Jimenez Mendez
Hermenegildo Delgado Cardena
Raymundo Apodaca Sanchez
Cesar Franco Porras
Guillermo Ramos Uriarte
Antonio Benitez Espindola
Juventino Martinez Velez
Pablo H. Quiroga-Garza

[FR Doc.74-4973 Filed 3-4-74;8:45 am]

CERTAIN MAN-MADE FIBER TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THE REPUBLIC OF KOREA

Entry or Withdrawal From Warehouse for Consumption

FEBRUARY 27, 1974.

On May 25, 1972, there was published in the FEDERAL REGISTER (37 FR 10605) a letter of May 19, 1972, from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs announcing implementation of an administrative mechanism intended to preclude circumvention of the licensing system for exports to the United States of cotton, wool and man-made fiber textiles and textile products produced or manufactured in the Republic of Korea. The purpose of this notice is to announce a further amendment of the administrative mechanism. The administrative mechanism was previously amended on December 21, 1972 (37 FR 28917); and in 1973, on July 17 (38 FR 20117), July 18 (38 FR 19723), August 8 (38 FR 21961), and September 24 (38 FR 26830).

The present amendment provides, at the request of the Government of the Republic of Korea, that, effective as soon as possible, visas issued on and after January 1, 1974, accompanying shipments of man-made fiber textile products in Category 224 exported from the Republic of Korea, should specify a subcategory classification within Category 224. The subcategory classification should be one of the following: 1) Category 224—Suits (T.S.U.S.A. 380.8143); 2) Category 224—Coats (T.S.U.S.A. Nos. 380.8103 and 380.8107); or 3) Category 224—Other (all remaining T.S.U.S.A. numbers included in Category 224 and T.S.U.S.A. Nos. 380.0428 and 380.8165). Shipments in Category 224 which fail to coincide with the subcategory classification shown on the accompanying visa will be denied entry.

Accordingly, there is published below a letter of February 27, 1974 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs implementing the previously described amendment.

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

FEBRUARY 27, 1974.

DEAR MR. COMMISSIONER: This letter further amends, but does not cancel, the directive of May 19, 1972 from the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit, effective 30 days after publication of notice in the FEDERAL REGISTER, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1–64; wool textile products in Categories 101–126, 128, and 131–132; and man-made fiber textile products in Categories 200–243; produced or manufactured in the Republic of Korea for which the Republic of Korea had not issued a visa. The directive of May 19, 1972 was previously amended on December 21, 1972, and in 1973, on July 17, July 18, August 8 and September 24.

Under the provisions of the Wool and Man-Made Fiber Textile Agreement of January 4, 1972, as amended, between the Gov-

ernments of the United States and the Republic of Korea, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, the directive of May 19, 1972 is further amended, effective as soon as possible, to require that visas issued on and after January 1, 1974, accompanying shipments of man-made fiber textile products in Category 224 exported from the Republic of Korea, specify a subcategory classification within Category 224. The subcategory classification should be one of the following: 1) Category 224—Suits (T.S.U.S.A. 380.8143); 2) Category 224—Coats (T.S.U.S.A. Nos. 380.8103 and 380.8107); or 3) Category 224—Other (all remaining T.S.U.S.A. numbers included in Category 224 and T.S.U.S.A. Nos. 380.0428 and 380.8165). Shipments in Category 224 which fail to coincide with the subcategory classification shown on the accompanying visa are to be denied entry.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.74-4974 Filed 3-4-74;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

USE OF SAMPLING PLANS IN, AND IN ENFORCEMENT OF, MANDATORY SAFETY STANDARDS

Notice of Public Hearing

Notice is given that the Consumer Product Safety Commission will hold a public hearing on Wednesday, April 3, 1974, at 9:30 a.m. in the hearing room, 6th floor, Consumer Product Safety Commission, 1750 K Street NW, Washington, D.C., to obtain information and views concerning the use of sampling plans in mandatory safety standards issued by the Commission and in the enforcement of such mandatory safety standards.

The hearing will be held pursuant to section 27(a) of the Consumer Product Safety Act (Pub. L. 92-573, sec. 27(a), 86 Stat. 1227; (15 U.S.C. 2076(a))).

The Consumer Product Safety Commission is considering whether, as a matter of policy, it should incorporate statistically based sampling plans in some mandatory safety standards issued by the Commission. Such sampling plans would require the manufacturers of products subject to the safety standards to test their production in a predetermined manner according to the sampling plans, prior to offering the products for sale.

In addition, the Commission is considering whether, as a matter of policy, compliance market sampling plans should be used by the Commission in the enforcement of mandatory safety standards. Such plans would set requirements for identifying noncompliance with the safety standards. These compliance market sampling plans would be made public so all interested persons would know the Commission's planned method of enforcement.

Several of the Commission staff have recommended that sampling plans be incorporated in some mandatory safety standards and that the Commission use compliance market sampling plans in the enforcement of mandatory standards. These staff members believe that testing 100 percent of the items in a production lot may in some cases be unreasonable or impossible. They further state that using statistical techniques, sampling plans can be developed so that manufacturers will be able to determine the compliance of a production lot with a safety standard on the basis of the inspection results obtained by testing a relatively few items selected from that lot. They propose the development of sampling plans that would balance the risk of noncomplying items being sold against the cost and effort involved in sampling.

The Commission is aware of various objections to the use of statistically-based sampling plans. One of these objections is that if the safety standard requires sampling by the manufacturer, the standard would authorize the sale of noncomplying products. The argument is that sampling inspection cannot guarantee that items from noninspected lots will be free from defects and that even if the lot is acceptable on the basis of sampling inspection, some defective items may be offered for sale.

Some of the Commission staff also believe that compliance market sampling plans are necessary for the enforcement of mandatory safety standards. They believe statistically valid enforcement procedures must be followed to ensure that the Commission proceeds against only those in violation of safety standards.

Objections to the use of compliance market sampling plans by the Commission include the contention that such plans will delay and otherwise impede the Commission's enforcement of safety standards.

Specifically the Commission would appreciate presentations from persons or agencies on the practical problems of implementing sampling plans in standards. Accordingly, the Commission is seeking the widest possible range of information and views from representatives of industry; the safety and quality control fields; the scientific community; consumer organizations; local, state, and Federal government agencies; and any other persons who have had actual working experience with sampling plans in standards. In this regard, the Commission is particularly interested in hearing testimony from persons or groups who have experience in the enforcement aspects of sampling plans in standards.

Persons who wish to submit views on these as well as more general aspects of sampling plans are invited to do so. All interested persons are invited to observe the hearing.

Persons interested in presenting testimony, or in attending the hearing as observers, are requested to write or call Mr. Russell Smith, Office of Standards Coordination and Appraisal, Consumer Product Safety Commission, Washington, D.C. 20207; phone (301) 496-4197.

Those who wish to make an oral presentation must submit a copy or outline of their presentation and request a specific amount of time for such presentation by March 27, 1974. The Commission invites anyone, including persons unable to attend the hearing, to present written comments for the Commission's consideration. Such written material must be accompanied by a summary of not more than 250 words. All comments submitted for the hearing record must be received by close of business March 27, 1974, so that the Commission may have an opportunity to study them.

In the event the space available for the hearing will not accommodate everyone wishing to attend, attendance will be determined on the basis of the order in which requests for attendance are received.

Dated: February 28, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.74-5074 Filed 3-4-74;8:45 am]

COMMITTEE FOR PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1974

Notice of Proposed Additions

Notice is hereby given pursuant to section 2(a)(2) of Pub. L. 92-28; 85 Stat. 79, of the proposed additions of the following commodities to Procurement List 1974, November 29, 1973 (38 FR 33038).

COMMODITIES

Class 5510:
Stakes (For Regions 6 and 8 only):
5510-171-7701.
5510-171-7700.
5510-171-7734.
5510-171-7733.
5510-171-7732.

Comments and views regarding these proposed additions may be filed with the Committee not later than April 4, 1974. Communications should be addressed to the Executive Director, Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

By the Committee.

CHARLES W. FLETCHER,
Executive Director.

[FR Doc.74-4967 Filed 3-4-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

USE OF DDT TO CONTROL THE DOUGLAS-FIR TUSSOCK MOTH

Order on Request for an Emergency Exemption

On June 14, 1972, the Administrator of the Environmental Protection Agency (EPA) issued an order cancelling most uses of DDT. This order was issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 135 et seq.) following seven months of hearings. The use of DDT for control of the tussock moth was not specifically addressed in that order, but there is no present registration of DDT for this purpose. Use of DDT for control of the tussock moth is therefore presently prohibited.

On January 3, 1974, the U.S. Forest Service requested an exemption from this prohibition for the contingency use of DDT to control a potential emergency outbreak of the Douglas-fir tussock moth on Federal, State, and private lands in Oregon, Idaho, and Washington. The States of Washington and Oregon have made separate similar requests. These requests are made pursuant to Section 18 of FIFRA as amended by Pub. L. 92-516 (86 Stat. 973) which provides that the Administrator of EPA "may, at his discretion, exempt any Federal or State agency from any provision of this Act if he determines that emergency conditions exist which require such exemption."

This order sets forth the Agency's disposition of these requests.

I. *Background.* A. *The 1974 Request.* The U.S. Forest Service requests an exemption from the registration requirements of FIFRA on a contingency basis. If the exemption is granted, the Forest Service will determine in May and early June whether DDT use is necessary to control the tussock moth, given conditions at that time. The Forest Service presently estimates that perhaps as many as 650,000 acres will require spraying in order to prevent serious tree damage. At a rate of 0.75 pounds per acre, approximately 490,000 pounds of DDT might therefore be required. This compares with the more than 150 million pounds of DDT which were used worldwide, and the 20 milliion pounds used in the United States at the time of the 1972 Order.

The Forest Service made its request for the use of DDT conditional upon a finding that emergency conditions exist after the 1974 egg hatch, and that natural controls will not reduce the larval populations to tolerable levels.[1] The Forest Service requested that EPA decide on this contingency request before March 1, 1974, to allow sufficient planning and contractual lead time. Application of DDT, if authorized, would occur in late May or early June when the moth larvae emerge from the egg masses.

B. *The 1973 Request.* In the spring of 1973, EPA received similar requests for emergency exemptions for the use of DDT to control the tussock moth from the U.S. Forest Service, several towns in the Blue Mountains area of Oregon and Washington, and from the Boise-Cascade Corporation. An Environmental Impact Statement was filed by the Forest Service covering last year's proposed DDT Spray Program.

EPA denied all of the 1973 requests for the emergency use of DDT. Many forests and entomology experts predicted that the tussock moth population would collapse as a result of the presence of a nuclear polyhedrosis virus, a natural enemy of the moth. EPA recognized that some tree damage would result before the collapse could occur, but this damage was not expected to be large enough to outweigh the risks of DDT use. While the virus may have caused collapse in certain areas of the infestation, the 1973 damage exceeded expectations, and significant new infestations developed in the summer of that year.

C. *EPA's Processing of the 1974 Request.* In addition to the contingency request of January 3, 1974, the U.S. Forest Service, in cooperation with the U.S. Department of the Interior, prepared a Draft Environmental Impact Statement (DEIS) which was submitted to the Council on Environmental Quality on December 28, 1973. The Forest Service has requested comments on this Draft Statement, and has stated that it intends to file the final Environmental Impact Statement sometime in March, 1974.

The DEIS covers only the actual application of the chemical by the Forest Service, and in no way is binding upon the EPA decision. The EPA decision need not, and cannot, because of the lead time required to prepare for the 1974 control program, await the filing of the final EIS. The DEIS was prepared pursuant to the requirements of the National Environmental Policy Act (83 Stat. 852), while the Environmental Protection Agency decision is governed by the provisions of the FIFRA. The Draft Environmental Impact Statement has provided EPA with considerable information to support the Forest Service request, but the Agency was not limited to this or any other source of information in making its decision.

In fact, the Agency has conducted extensive investigations of the entire issue ranging far beyond the DEIS. Agency officials have attended meetings of the Interagency Tussock Moth Steering Committee, an intergovernmental group which has made efforts to determine the need for and the methods of tussock moth control. EPA sponsored a Technical Information Seminar to examine the means for control of the tussock moth on November 16, 1973 in Seattle, Washington. EPA held four public hearings on the issues raised by the Forest Service's request for the use of DDT and by the Draft Environmental Impact Statement between January 14 and January 30, 1974, in the Pacific Northwest, and a final hearing in Washington, D.C. on February 1, 1974. Members of the public were invited to testify or submit written statements, and the record of these hearings were held open until February 4 to receive public comments. Numerous public officials testified at these hearings and many others submitted statements.

After initial review of the DEIS, EPA felt that additional information was needed from the Forest Service. Accordingly, by letter of January 21, 1974, the Agency requested response from the USDA-Forest Service to numerous detailed questions. A reply was received from the Head of the Forest Service dated February 5, 1974, which provided some additional information. In further response to the EPA letter and subsequent meetings with the Forest Service, USDA has made available to EPA copies of preliminary work plans, monitoring plans, and draft research designs for continuing Forest Service work on tussock moth control.

Additionally, EPA officials met with Forest Service research and field personnel in the Pacific Northwest during the month of January. At these meetings, EPA reviewed and discussed the methodology and criteria used by the Forest Service to survey egg, larvae, parasite and virus populations, and the status of development of alternatives to DDT.

D. *The Douglas-fir Tussock Moth—Description and Biology.* The Douglas-fir tussock moth (*Orgyia pseudotsugata* McDonnough) is a native insect of the Northwest and a natural component of the forests in that area. Under usual circumstances it exists in endemic numbers, but periodically increases to epidemic proportions and defoliates large acreages of its host trees. The Douglas-fir tussock moth produces one generation per year. Egg masses are laid on tree branches and trunks in the fall, and remain there through the winter; the larvae emerge from the egg masses in late May or early June after the host trees have begun new growth. The larvae feed on new foliage first, and, as they grow larger, begin feeding on the older foliage. It is during their five to seven larval states, particularly from the second instar on, that severe defoliation may occur. When mature, usually from late July to the end of August, the larvae pupate and emerge in 10 to 18 days as adult moths. Mating takes place on the cocoon where the female deposits a mass of eggs, averaging about 200 eggs per mass. Adult moths do not feed, and die within a few weeks. Because the female moth cannot fly, the population can spread only by wind dispersal of the larvae.

The tussock moth is most susceptible to control during the early larval stages (late May or early June). The tussock moth has many natural enemies, including disease organisms, insect parasites, predators, and birds. A nuclear polyhedrosis virus appears to be the major natural mortality factor in the dramatic population collapses that have terminated many previous outbreaks. This virus usually become significantly active in the third year of the population outbreak.

The exact relationship between the presence of tussock moth larvae and tree damage is not clear. We are certain that as the larvae population decreases toward

[1] January 3, 1974, letter to Russell E. Train from Paul A. Vander Myde, Deputy Assistant Secretary, Conservation, Research and Education, USDA.

zero, the amount of defoliation and tree mortality decreases. Exactly where the threshold points are, however, has not been clearly established. Even if these threshold points were known for certain, the task of determining exactly what the population of larvae is at any one time on a tree or on a group of trees is subject to serious measurement difficulties. Also relevant in forecasting the amount of damage which may occur from a particular population of larvae are: the extent of the virus population and other natural enemies of the larvae; whether the population of larvae is increasing or decreasing; and whether or not the trees have suffered previous damage. In short, although we know a considerable amount about the biology of the tussock moth, and its relationship to the forest on which it preys, there are still many areas where further knowledge is needed.

E. *Previous Outbreaks.* The first recorded tussock moth outbreak occurred in 1918 near Chase, British Columbia. Since then, major epidemics have occurred every decade in the fir forests of Western North America. Outbreak periods of the tussock moth seem to compress into three year cycles, but have been known to continue into a fourth and fifth year, and in one instance, up to 10 years. The outbreaks appear to develop explosively, in place, rather than a result of a spread from one geographical area to another. Detection of tussock moth populations at endemic, or low levels, is difficult. Visible defoliation is not usually detectable or adequately assessed until the second year of the outbreak making early detection of epidemic populations difficult.

F. *The Current Outbreak.* Although often referred to as one, there are presently several distinct outbreaks in the Northwest: one in the Blue Mountains of Eastern Washington and Oregon, one in the Colville Indian Reservation, and two in Idaho. In the years 1972 and 1973, the tussock moth defoliated trees on 800,000 acres. Of these, 17,000 acres of forest were completely killed; on an additional 71,000 acres, at least 50 percent of the Douglas fir were killed. In 1974 the Forest Service predicts that 650,000 acres will suffer serious damage if treatment with DDT is not approved. Some of this damage will occur on acreage which has not previously suffered defoliation. This projection is based on the finding of a number of new egg masses in the infested areas. While the number of egg masses is not determinative with regard to the intensity, extent, and possible danger of the infestation, it does indicate a potential for serious damage to the forest resources and environment in 1974.

The age of infestations in the various areas differs, and therefore the moth populations are at different stages of the infestation cycle. The infestation in the Blue Mountains is older and further advanced than those in the Colville area or Idaho. There are probably subinfestations within the larger infestations which may be at different levels of development. It is possible that the nuclear polyhedrosis virus occurred signficantly in those populations which were three years old in 1973, but that it did not affect the newer infestations. The varying ages of the moth populations contributes to the difficulty of assessing the impact of the virus.

Approximately two-thirds of the infested area is Federal land; the remainder is owned either by the respective States or private landowners. Indian land comprises 17 percent of the infested area.

G. *Possible Control Methods.* 1. *General Requirements.* In discussing the effectiveness of any control agent for the tussock moth, the following factors should be kept in mind: (1) tests which show conclusively that a substance will kill tussock moth larvae are not necessarily conclusive on the point that the substance will prevent or control tree damage; (2) the effectiveness of control measures depends, in part, upon the intensity of the infestation, particularly the number of larvae per thousand square inches of foliage. This second factor is illustrated by the following example: If the number of larvae per thousand square inches which will cause tree damage or mortality is determined to be 20, then the effectiveness of the control must be measured by its ability to reduce the larvae population below that number. If the level of infestation is 400 larvae per 1000 square inches, a control which is 96 percent effective will reduce the population to 16 larvae per unit. However, if the infestation level is 800 larvae per 1000 square inches, then 96 percent effectiveness will yield a reduction to only 32 per 1000 square inches—a level which could be expected to produce tree damage. Consequently, even a control agent with a relatively high capability to kill larvae (96 percent) may not be effective in preventing losses in a heavy infestation, but would be in a light infestation.

2. *Chemical Controls.* A number of chemical alternatives to DDT have been tested in the past. Tests on the current infestation, carried out in 1973, showed the following results:

(a) *Zectran:* tested on 70,000 acres in 1973, Zectran achieved larval mortality up to 93 percent, but did not provide satisfactory tree protection under the conditions used and the larvae present;

(b) *Carbaryl (Sevin):* in smaller tests, a carbaryl formulation achieved larval mortality up to 90 percent. In one case, where the intensity of infestation was lower, some tree protection was afforded;

(c) *Trichlorfon (Dylox):* 1973 tests showed larval mortality up to 98 percent, and some foliage protection; however, new growth was seriously defoliated;

(d) *Bioethanomethrin and resmethrin:* these synthetic pyrethrins are highly promising results in 1973 tests; however, the adaptation of the most effective application technology to forest uses has not yet been made;

(e) *DDT:* DDT was registered against the tussock moth in 1947. The Forest Service discontinued its use in forests in 1968. Laboratory tests show DDT to be toxic to tussock moth larvae. Field experiments have shown larval mortality to range up to 100 percent when compared to unsprayed check plots in the same infestation. Since DDT was not tested in the field during the 1973 infestation along with the other chemical controls, there is no statistical evidence correlating the use of DDT with prevention of tree mortality. However, there is qualitative evidence from competent authorities based on past use that DDT will control the tussock moth and afford tree protection.

3. *Biological controls.* Biological controls have been tested against the tussock moth in recent years. 1973 tests on two of these showed the following results:

(a) *Bacillus thuringiensis* (BT): already registered against a number of forest pests, BT was tested on 20 acre plots in 1973, and showed larval kill ranging from 80 to 98 percent in a new formulation;

(b) *Polyhedrosis virus:* this is the natural virus which normally causes collapse of tussock moth infestations. Applied artificially in 1973, the virus achieved larval kill up to 97 percent. The safety of artificially cultivating and distributing the virus on a wide-scale basis is still under considerable debate.

H. *Uncertainties.* From the foregoing discussion, it should be clear that the Agency presently lacks considerable data which, ideally, should be assessed before a decision is made. Unfortunately, this is very often the case in decisions concerning the protection of the environment given the complexities of the ecological system and uncertainties surrounding the environmental impacts of change introduced by man.

In the present case uncertainties occur in the following areas:

(1) The relationship between the intensity of larval populations and damage to trees;

(2) The efficacy of controls to prevent damage;

(3) The exact economic and social impact of a decision not to control the infestation;

(4) The extent of the virus population this year and its relationship to the potential collapse of some or all the infestations.

II. *The Decision.* Although under optimum conditions this Agency would postpone the decision on the Forest Service's contingency request until more of the uncertainties could be resolved, this option is not realistically open. A decision must be made at this time in order that planning and contractual arrangements for the 1974 control program may be made. If the EPA decision is positive, the Forest Service must know early in order to obtain supplies of DDT in the proper formulations, to contract for the application of the material, and to initiate the necessary research and monitoring planning, and design the operational procedures and the performance training which would ensure that the most environmentally sound application procedures are used. On the other hand, if the EPA decision is negative, the Forest Service and the involved State agencies must now begin to evaluate the practicality of fall-back actions which might be desirable.

If a dramatic decrease in the level of these uncertainties were possible or likely

during the next one to two months, the Agency would be more disposed toward delaying this decision despite the severe difficulties this could cause in the structuring of the 1974 control program. This is not, however, the case, and EPA is reluctantly persuaded that a decision must be made now as to whether the present situation qualifies for an exemption under section 18 of the FIFRA.

A. *Legal Parameters of the Decision*

Section 18, in its entirety, reads as follows:

> The Administrator may, at his discretion, exempt any Federal or State agency from any provision of this Act if he determines that emergency conditions exist which require such exemption.

On December 3, 1973, EPA published final regulations for this Section setting forth general requirements and the procedures to be followed (38 FR 33303). Section 166.1 of these regulations sets forth the parameters of decisions under this Section of the Act:

> An emergency will be deemed to exist when: (a) A pest outbreak has or is about to occur and no pesticide registered for the particular use, or alternative method of control, is available to eradicate or control the pest, (b) significant economic or health problems will occur without the use of the pesticide, and (c) the time available from discovery or prediction of the pest outbreak is insufficient for a pesticide to be registered for the particular use. In determining whether an emergency condition exists, the Administrator will also give consideration to such additional facts requiring the use of section 18 as are presented by the applicant.

In applying these criteria to the Forest Service request, the Agency has determined that emergency conditions do exist which require such an exemption from the requirements of FIFRA. This exemption is not a directive from this Agency that DDT should be used this summer against tussock moth. It is the hope of the EPA that an actual emergency will not arise in the Northwest at the time of egg hatch and that spraying of DDT will not be necessary. This Agency's decision to grant this contingency request is based on the following findings:

1. *A pest outbreak has or is about to occur and no pesticide registered for the particular use, or alternative method of control, is available to eradicate or control the pest.*

(a) *Occurrence of an Outbreak.* The law does not require EPA to find that an actual emergency exists at the time of the decision. Instead the Agency must find that emergency conditions exist. This is an important distinction which embodies Congress' recognition that there are times when EPA's decision cannot await the actual start of an emergency since this would delay, and thereby effectively deny, the requested relief. This distinction is reflected in the regulations by the specification that EPA may find that a pest outbreak has or is about to occur (emphasis added). In the case of the pending Forest Service request, it is clear that the tussock moth activity is not, today, causing an emergency. The moths are in the egg stage, and no defoliation is now occurring. It is known, however, that when the eggs hatch, the larvae possess the potential for severe defoliation or tree mortality, and that the extent of that potential can only be determined very near the time when control measures would have to be taken in order to avoid tree damage.

(b) *Effective Means of Control.* The regulations also require EPA to examine alternative means of control. Clearly, if a registered pesticide, or other means of control which the Agency is prepared to recommend as a substitute, could afford practical, effective control, the need for an exemption under section 18 would be obviated. A number of controls which are not registered have, however, been considered by the Forest Service and EPA. These are the various chemical and biological controls discussed earlier in this Order. Although the Agency would wish to have better data on the efficacy of all of these controls, available evidence indicates that DDT will give better assurance of effectively controlling tussock moth damage than any of the alternatives available at this time.

2. *Significant economic or health problems will occur without the use of the pesticide.*

The Forest Service is projecting losses of $67 million this year if the emergency develops and no control is instituted. Although these projections can vary substantially depending on alternative accounting procedures which could be used, they are significantly higher than the April 1973 projection of $12.9 million which formed part of the basis for the Agency's decision last year that the risks outweighed the benefits of DDT use against the tussock moth. The fact that the Forest Service now estimates that the 1973 actual losses were $77 million illustrates a crucial point. The biology of the tussock moth, our ability to predict the extent of the infestation and the resulting damage, and the volatility of the supply and demand of timber make economic impact projections uncertain until the infestation takes its toll.

The decision last year was based to a large extent on the expectation that the natural virus would bring about the collapse of the moth population and thereby reduce the damage and the threat of future losses. Although the surveys this Spring will provide more definitive data on the extent of the virus population, it is already clear that last year the impact of the virus was less than was necessary to bring the infestation under control. In addition, new egg masses have been found since last year.

The projected economic impact, though perhaps small when seen from a national point of view, can be catastrophic on a regional or local level. Even if the actual economic impact were to prove to be considerably smaller than the total now projected by the Forest Service, the local impact would most probably be severe. Of particular concern are the Indian lands which comprise 17 percent of the infested area. Forty to 50 percent of Indian employment is directly in the forestry industry, and this industry generates about 95% of tribal income.

Any consideration of the economic and health impact of this infestation must consider the potential fire hazards resulting from defoliation. Forest fires are related to soil temperatures, water content, and fuel, all of which may be affected by severe defoliation.

While there is no way of estimating the probability of a major forest fire in the watershed area, the Forest Service estimates that, in areas of total defoliation, available fuel is four times greater than normal. This will change the nature of any fire outbreak, and will increase the speed at which a fire can spread from about four acres per hour to 25 acres or more per hour.

In light of the above factors, EPA concludes that the economic and health impact which will occur without the use of the pesticide will be significant.

3. *The time available from discovery or prediction of the pest outbreak is insufficient for a pesticide to be registered for the particular use.*

DDT was registered for use against the tussock moth at a time when its potential effects on man and wildlife were not known. FIFRA as amended in 1972 requires the Agency to find as a condition of registration under section 3 that the pesticide will perform its intended function without unreasonable adverse effects on the environment. Because exemptions under section 18 are given only when emergency conditions exist, are limited to time, and can be made very specific with regard to time, place, and manner of application, the information requirements for a section 18 exemption can be less than registration requirements under section 3 of the Act.

Registration of a pesticide under section 3 for use against the tussock moth would require extensive and replicated data on the efficacy and the environmental effects of such use. The biology of the tussock moth and the conditions necessary for determining the effectiveness of a pesticide in preventing tree damage (as contrasted with killing larvae), make it very difficult to conduct meaningful research on the efficacy of a particular pesticide except during a large infestation. As a result, last year was the first time since the 1972 order that field research on the efficacy of alternative control methods could have been initiated. The amount of research done at that time fell far short of what, in hindsight at least, was clearly required. Nevertheless, it is unlikely that any research program, no matter how extensive, would have produced in the space of one year evidence adequate to register a pesticide for use against the tussock moth, given the inconclusive results for the various alternative controls in the research program last year. The Agency finds therefore, that there has not been sufficient time for the Forest Service or others to obtain registration for a pesticide for use against the tussock moth since the 1972 Order of this Agency.

4. *Risks and Benefits.* In determining whether emergency conditions exist which require an exemption under section 18, extensive balancing of risks and benefits, and determination of no unreasonable adverse effects on the environ-

ment, are not required as they are in other sections of the Act. Nevertheless, a consideration of the risks and benefits is desirable when, as in this case, a significant quantity of a cancelled pesticide is proposed for use.

In order to find guidance for consideration of the risks and benefits of DDT, this Agency has turned to the June 14, 1972, EPA Order which cancelled most uses of DDT after a seven month hearing. This decision has been upheld by the U.S. Court of Appeals for the District of Columbia. Even though this decision was made under a different section of FIFRA, one which required extensive risk/benefit balancing, this order provides a lens through which the Forest Service request may be viewed.

The 1972 order found substantial risks associated with DDT. Specifically, the order found that DDT has acute and subacute effects on aquatic and avian species and that it can have adverse reproductive impacts on certain birds. Laboratory tests indicate that DDT produces tumors in test animals and is a potential carcinogen to man. The persistence of the chemical in the environment increased the Agency's concern about these effects.

The order concluded that the use of DDT on cotton and most other crops should be cancelled so as to stop the major contribution of DDT to the global ecology by the United States. The order recognized, however, that there would have to be exceptions to this general policy. These exceptions are for those situations where the benefits outweigh the risks because of such factors as:

(a) the unavailability of practical alternative means of control;

(b) the temporary nature of the use because of the need for a transition period to an alternative control method or to an alternative crop;

(c) the possibility of minimizing the impact on the environment because of restrictions which could be imposed on the specific use.

These guidelines are helpful in analyzing the Forest Service's request:

(a) EPA finds no reason to depart from the findings of the 1972 order with regard to the potential risks of DDT.

(b) As discussed above, there is no clear alternative means of control for the tussock moth.

(c) The proposed use is temporary. The Forest Service has asked for an exemption to use DDT only for the 1974 control season. It is EPA's expectation that alternative means of control will be available for post-1974 outbreaks. While substantial quantities of DDT would be introduced into the environment, the proposed Forest Service use would be only short-term.

(d) The risks to the environment in this instance can be minimized by placing controls on the way the program is conducted. In addition, prespray surveys and assessment of the viability of the egg populations after the winter can aid in holding to a minimum necessary the acreage where control is needed. It is possible that the egg masses will overwinter poorly, or that the virus will increase such that the need for chemical control is reduced. Careful assessment of these indicators can be made to insure that no unnecessary application of DDT would be made.

III. *Conclusions.* For all of the foregoing reasons, this Agency concludes that the 1974 tussock moth situation in the Northwest meets the requirements of section 18 of FIFRA and that the Forest Service should be granted its contingency request for an exemption from the provisions of FIFRA which prohibit the use of cancelled pesticides, specifically, the use of DDT. As noted above, it is the Agency's hope that an actual emergency requiring the use of DDT this summer will not occur. Against the very real possibility, however, that the conditions needed to prevent an emergency will not develop, the EPA has granted the Forest Service an exemption from the prohibitions of the FIFRA so that contingency preparations for the use of DDT can be made. In the interest of achieving a uniform program embodying consistent criteria for the identification of areas to be sprayed and standard operational controls which minimize the environmental impact of DDT use, the requests of the States of Washington and Oregon are denied. It is this Agency's understanding and expectation that the Forest Service will meet the control needs in these States. The Forest Service's exemption is granted subject to the following restrictions and requirements:

A. *Spray Restrictions.* 1. The laboratory hatch of egg masses shall be carried out, and all acreage eliminated where larval incidence is too low to justify DDT use or where viral incidence will control the outbreak without such use. The validity of the laboratory data shall be verified by field surveys carried out at the time of natural egg hatch. The Forest Service should be make every effort to refine both laboratory and field criteria for the above factors so that no acreage is sprayed unnecessarily;

2. An unsprayed buffer strip of at least 200 feet shall be left along live streams and waterways. Helicopter applicators shall take meteorological conditions into account and adjust spray courses and timing to ensure that DDT does not drift into these buffer strips.

3. Live streams and waterways shall be clearly marked on maps and photo aids for pilots. In addition, these water areas shall be marked with flags, balloons, and kytoons to avoid accidental spraying of water;

4. Payment of applicators shall be related to amount of spray actually reaching the target areas.

5. No spraying is to take place where winds exceed 6 m.p.h., or where temperature inversions exist. Meteorological conditions shall be verified by competent meteorologists on the ground at the spray site;

6. To the extent possible, livestock and other domestic animals shall be removed from the treatment area; hunters shall be informed as to the possibility of DDT residues in game animals taken from the spray area;

7. Warnings shall be prominently placed in public places within all areas to be sprayed, giving the date, time and duration of the spray project;

8. Applicators shall be licensed by their respective States, and shall be trained both on general procedures and in the field at the site of the spray project. Demonstrable familiarity with the geographical features of the spray area, especially waterways, is essential;

9. Deposition of spray at the target shall be monitored during the actual spray, using appropriately sensitized cards;

10. Spray boundaries shall be indicated by the use of flags, balloons and kytoons;

11. Complete records of the spray project shall be kept, including locations, quantity, times and places, and shall be furnished to EPA and the public within ten days of completion of the project.

B. *Research Requirements.* The development of reliable, registerable alternatives to DDT for forest pest management must become a first priority for the Forest Service. Consequently, before the commencement of any spray program, the Forest Service shall take whatever steps are necessary to assure that research will be carried out which, if successful, will be sufficient to support a registration request for the possible alternatives to DDT. This research must be completed in time to submit the necessary documents to EPA no later than December 1, 1974. This research must not be limited to the determination of whether alternative chemicals kill tussock moth larvae, but must be designed to meet the effects and efficacy requirements of the FIFRA. Specifically, data must be developed which can be used to assess the capability of a control mechanism to prevent tree defoliation and or tree mortality.

In addition the research program must include:

1. Further testing of Zectran to follow up on the 1973 tests. Particular attention should be paid to development and use during the test of the most effective methodology;

2. Further testing of resmethrin and bioethanomethrin with emphasis upon solving problems in application methodology;

3. Expanded testing of carbaryl and trichlorfon on larger test plots;

4. Conduct of statistical evaluations of the efficacy of DDT in preventing tree damage and mortality. In addition, experiments shall be conducted which test the efficacy of DDT at lower application rates. While it is the Agency's belief that with a conscientious effort to find an alternative to DDT, the use of this chemical will not be sought in the future, it would be foolish not to develop definitive data on the efficacy of this use;

5. Research designed to better define the correlation between the intensity of egg mass and larval populations, virus incidence, and tree damage and/or mortality. This research effort should have particular emphasis on improving ability to predict infestation intensity and resultant tree damage from early indicators.

The Agency is willing to work with the Forest Service and others in the development of the final research plan, particu-

larly in giving guidance on experimental design as it relates to registration requirements.

C. *Monitoring Requirements.* The Forest Service and affected State agencies must adhere to the general requirements of the monitoring plan which has been submitted to EPA. In addition to the program put forth in that plan, the Forest Service shall conduct pre- and post-spray sampling of forest litter and vegetation.

D. *Labelling.* In accordance with § 166.11 of the regulations (38 FR 33307) adopted pursuant to section 18 of the FIFRA as amended, Montrose Chemical is hereby authorized to ship not to exceed 500,000 pounds of DDT for use by the U.S. Forest Service as provided by this Order, under a label to be specified by this Agency.

E. *Other Considerations.* EPA reminds the Forest Service of the requirements of the Wild and Scenic Rivers Act (82 Stat. 906), the Bald and Golden Eagle Protection Act (16 USC 668), and the Endangered Species Act of 1973 (87 Stat. 884). While the granting of this exemption under section 18 of FIFRA is not incompatible with these statutes, the geographic area involved in the proposed spray program contains features significant in terms of each of these laws and their requirements must be met.

RUSSELL E. TRAIN,
Administrator.

FEBRUARY 28, 1974.

[FR Doc.74-5067 Filed 3-4-74;8:45 am]

[OPP-32000/19]

RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 979), and its procedures for implementation. This policy provides that EPA will, upon receipt of every application, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available for examination at the Environmental Protection Agency, Room EB-37, East Tower, 401 M Street, S.W., Washington, D.C. 20460.

On or before May 6, 1974, any person who (a) is or has been an applicant, (b) desires to assert a claim for compensation under section 3(c)(1)(D) against another applicant proposing to use supportive data previously submitted and approved, and (c) wishes to preserve his opportunity for determination of reasonable compensation by the Administrator must notify the Administrator and the applicant named in the FEDERAL REGISTER of his claim by certified mail. Every such claimant must include, at a minimum, the information listed in this interim policy published on November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy in regard to usage of existing supportive data for registration will be processed in accordance with existing procedures. Applications submitted under 2(c) will be held for the 60-day period before commencing processing. If claims are not received, the application will be processed in normal procedure. However, if claims are received within 60 days, the applicants against whom the particular claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after May 6, 1974.

APPLICATIONS RECEIVED

EPA File Symbol 3837-GI. LuBar Company, 1708 Campbell, Kansas City, Missouri 64108. *Sewer Line Root Killer.* Active Ingredients: Sodium Nitrate 17%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 1021-RGNE. McLaughlin Gormley King Company, 8810 Tenth Avenue North, Minneapolis, Minnesota 55427. *Pyrocide Fogging Formula 7207.* Active Ingredients: Pyrethrins 2.0%; Piperonyl Butoxide 2.5%; N-octyl bicycloheptene dicarboximide 2.5%; Petroleum distillate 8.0%; Mineral Oil 85.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 9779-ERL. Riverside Chemical Company, P.O. Box 16902, Memphis, Tennessee 38116. *Riverside 20% Heptachlor Granules.* Active Ingredients: Heptachlor 20.0%; Related Compounds 7.4%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 3743-GGA. Southern Agricultural Chemicals, Inc., P.O. Drawer 527, Kingstree, South Carolina 29556. *Royal Brand M-M 2-4 Cabbage Dust.* Active Ingredients: Methomyl S-methyl-N-((methylcarbamoyl) oxy) thioacetimidate 2%; Maneb (manganese ethylenebisdithiocarbamate) 4%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 3372-U. Tex-Ag Company, Inc., P.O. Box 633, Mission, Texas 78572. *Parathion 4 LB Emulsifiable Concentrate.* Active Ingredients: Parathion: O-O-diethyl O-p-nitrophenyl phosphorothioate 46.53%; Xylene-range aromatic solvent 48.40%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 33722-G. Tex-Ag Company, Inc., P.O. Box 633, Mission, Texas 78572. *Rid-A-Mite Emulsifiable Concentrate.* Active Ingredients: Dioxathion 2,3-p-diozanedithiol S,S-bis (O,O-diethyl phosphorodithioate) 24.0%; Related Compounds 10.2%; Ethyl 4,4-Dichlorobenzilate 12.4%; Xylene Range Aromatic Hydrocarbon Solvent 44.1%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 9782-GU. Woodbury Chemical Company of Homestead, P.O. Box 4319, Princeton, Florida 33030. *Potato Seed-Piece Fungicide dust.* Active Ingredients: A coordination product of zinc ion and manganese ethylenebisdithiocarbamate 8%. Method of Support: Application proceeds under 2(c) of interim policy.

Dated: February 26, 1974.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.74-4933 Filed 3-4-74;8:45 am]

WASTE MANAGEMENT ACTIVITIES; SAVANNAH RIVER PLANT

Notice of Meeting

CROSS REFERENCE: For a document issued jointly by the Atomic Energy Commission and the Environmental Protection Agency concerning a meeting to be held on waste management activities at the Savannah River Plant, see FR Doc 74-4998, *supra.*

FEDERAL HOME LOAN BANK BOARD

FEDERAL ADVISORY COMMITTEE ACT

Notice of Meeting

FEBRUARY 26, 1974.

Pursuant to section 10(a) of Pub. L. 92-463, entitled the Federal Advisory Committee Act, notice is hereby given of the meeting of the Federal Savings and Loan Advisory Council on Monday, Tuesday, and Wednesday, March 18, 19, 20, 1974. The meeting will commence at 9 a.m. on March 18, at 9 a.m. on March 19, and at 9 a.m. on March 20 at the Madison Hotel, 15th & M Streets, NW., Washington, D.C. in the Arlington Room.

MONDAY, MARCH 18

9 to 11 a.m.— General discussion.
2:30 p.m.— Deferred loan fees.
Increase AID loan percentage.
Increase improvement loans to $10,000.
Mergers.
Mortgage backed bonds guaranteed by FHLBB.
Over 80 percent loans on multifamily housing.

TUESDAY, MARCH 19

Service corporations:
a. Examinations and Supervision for single and multiple ownership.
b. Authorize activities for above.
c. Expansion of fields of activity.
Elimination of all percentage of assets category for residential loan portfolios.
Simplification of regulations as they pertain to term certificates.
Planning for the effect of inflation on savings and loan industry.
Advances policy to maintain current levels of FHL Banks assets.
Variable rate mortgage.
Mobile home lending.
EFTS—what role should FHL Bank System play.

WEDNESDAY, MARCH 20

9 to 11 a.m.— General discussion.

The meeting will be open to the public on March 18 from 9–5, on March 19 from 9–5, and on March 20 from 9–5.

THOMAS R. BOMAR,
Chairman,
Federal Home Loan Bank Board.

[FR Doc.74-5000 Filed 3-4-74;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. E-8445]

CAMBRIDGE ELECTRIC LIGHT CO.

Notice of Extension of Time

FEBRUARY 25, 1974.

On February 21, 1974, Commission Staff Counsel filed a motion for an ex-

tension of the procedural dates established by the order issued December 13, 1973, in the above-designated matter. Staff Counsel states that all interested parties have been contacted and there is no opposition to the motion.

Upon consideration, notice is hereby given that the procedural dates in the above-designated matter are modified as follows:

Prehearing Conference, April 1, 1974 (10:00 a.m. e.d.t.).
Service of evidence by Staff, April 4, 1974.
Service of evidence by Intervenors, May 4, 1974.
Service of rebuttal evidence, June 4, 1974.
Hearing, June 25, 1974, 10:00 a.m. (e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc. 74-4957 Filed 3-4-74;8:45 am]

[Docket No. E-8626]

CONNECTICUT LIGHT AND POWER CO.

Proposed Purchase Agreement

FEBRUARY 25, 1974.

Take notice that Connecticut Light and Power Company (CL&P), on February 14, 1974, tendered for filing a proposed Purchase Agreement With Respect to Montville Unit No. 6 between CL&P and the Hartford Electric Light Company (HELCO).

CL&P asserts that the filing is made pursuant to part 35 of the Commission's regulations. The Purchase Agreement, CL&P alleges, provides for sales to HELCO of specified percentages of capacity and energy from CL&P's Montville Unit No. 6 generating unit during the period from November 1, 1973 through April 30, 1974, providing HELCO with an alternate source of generation for sales by HELCO to the Public Service Company of New Hampshire under a separate agreement between those two companies filed by HELCO on February 14, 1974.

CL&P requested an effective date for the Purchase Agreement of November 1, 1973.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 8, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4946 Filed 3-4-74;8:45 am]

[Docket No. CP74-203]

EL PASO NATURAL GAS CO.

Notice of Application

FEBRUARY 25, 1974.

Take notice that on February 5, 1974, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP74-203 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain field transmission pipeline and metering facilities located in Hockley and Loving Counties, Texas, and Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to abandon approximately 5.06 miles of 6⅝-inch O.D. field transmission pipeline and one 4½-inch standard orifice meter station installed under budget-type authorization issued in Docket No. CP67-60 on December 6, 1966 (36 FPC 979), for the receipt of gas by Applicant from American Petrofina Company of Texas, (APCT) No. 1 Wilder well in Loving County, Texas. Applicant states that APCT has informed it that due to decline in deliverability this well must be plugged and abandoned. Applicant, therefore states it has no further need for the facilities and requests permission to abandon them.

Applicant requests further authorization to abandon one standard positive displacement-type meter station located at a point on Applicant's Dumas line in Hockley County, Texas (the Pep Meter station). Applicant states that this station was originally installed for the purpose of serving West Texas Gas Company (West Texas), at Pep, Texas, which purchased and resold the natural gas to Phillips Petroleum Company (Phillips), for fuel in gas compressors utilized in oil pumping operations in Hockley County, Texas. Pioneer Natural Gas Company (Pioneer), as successor in interest to West Texas, has advised Applicant that Phillips has removed its pumps from this area, making the natural gas service rendered to Pioneer by Applicant unnecessary and thereby eliminating the need for Applicant's Pep Meter Station.

Applicant proposes to abandon the before described field transmission pipeline and metering facilities, together with the natural gas service heretofore rendered by means thereof, by removal and placement into stock pending a future need for such equipment. The total cost of the proposed abandonment is estimated to be $29,350.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided, for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4959 Filed 3-4-74;8:45 am]

[Docket Nos. RP73-104 etc.]

EL PASO NATURAL GAS CO.

Notice of Postponement of Prehearing Conference

FEBRUARY 26, 1974.

On February 20, 1974, Staff Counsel filed a motion for a postponement of the prehearing conference scheduled for February 27, 1974, by order issued February 8, 1974, because of a conflict in schedules of the Administrative Law Judge. The motion states that El Paso has no objection to this motion.

Upon consideration, notice is hereby given that the prehearing conference is postponed to June 18, 1974, at 10:00 a.m. (e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4954 Filed 3-4-74;8:45 am]

[Docket No. E-8008]

FLORIDA POWER & LIGHT CO.

Notice of Extension of Time and Postponement of Hearing

FEBRUARY 26, 1974.

On February 15, 1974, Florida Power and Light Company filed a motion for revision of the procedural dates fixed by the Presiding Administrative Law Judge. The motion states that the intervenors and staff have expressed no objection to this motion.

Upon consideration, notice is hereby given that the procedural dates in the above matter are further modified as follows:

Service of Evidence by New Smyrna, February 21, 1974.
Hearing, February 28, 1974 (10:00 a.m. e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4955 Filed 3-4-74;8:45 am]

[Docket No. E-8625]

HARTFORD ELECTRIC LIGHT CO.

Notice of Proposed Amended Purchase Agreement

FEBRUARY 26, 1974.

Take notice that on February 14, 1974 Hartford Electric Light Company (HELCO) tendered for filing proposed Amendment To Purchase Agreement With Respect To Middletown Unit No. 4, between HELCO and Public Service Company of New Hampshire.

HELCO asserts that the filing is made pursuant to part 35 of the Commission's regulations. HELCO asserts that the amended purchase agreement represents a modification of a previously filed rate schedule. The amended purchase agreement, HELCO alleges, seeks to improve reliability and availability of service for both HELCO and Public Service Company of New Hampshire by providing a portion of the capacity and energy called for under the original agreement from a source other than the Middletown Unit No. 4 of HELCO.

HELCO requested an effective date for the amended purchase agreement of November 1, 1973.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 8, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4945 Filed 3-4-74;8:45 am]

[Docket No. CI74-433]

J. S. ABERCROMBIE MINERAL CO., INC., ET AL.

Notice of Application

FEBRUARY 26, 1974.

Take notice that on February 11, 1974, J. S. Abercrombie Mineral Company, Inc., et al. (Applicants), c/o Jerome M. Alper, Esquire, Bernstein, Alper, Schoene & Friedman, 818 18th Street, NW., Washington, D.C. 20006, filed in Docket No. CI74-433 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Company (El Paso) from the Antelope Ridge Area, Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they commenced the sale of natural gas to El Paso from the subject acreage within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and propose to continue said sale for 16 months from the end of the emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicants propose to sell approximately 600,000 Mcf of gas per month at 55.0 cents per Mcf at 14.65 psia, subject to upward and downward Btu adjustment.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4951 Filed 3-4-74;8:45 am]

[Docket No. RP74-70]

MICHIGAN GAS STORAGE CO.

Notice of Proposed Changes in FPC Gas Tariff

FEBRUARY 25, 1974.

Take notice that Michigan Gas Storage Company on February 15, 1974, tendered for filing proposed changes in its FPC Gas Tariff, original volume No. one, second revision. The proposed changes would increase revenues from jurisdictional sales and service by $1,256,510 based on the 12 month period ending November 30, 1973, as adjusted.

Michigan Gas Storage Company (Storage Company) proposes to increase the allowable annual rate of return on depreciated investment plus working capital from 8.10 to 10.22 percent. Storage Company alleges that the proposed change in the rate of return is required because the present long-term note of Storage Company, which has an interest cost of 6.375 percent, matures on April 30, 1974 and will be refinanced through the issuance of a new three-year bank note in the amount of $7,500,000 bearing interest at the rate of not more than 8.375 percent. Storage Company also alleges that it is necessary to increase the allowed return on equity from 9.42 percent to 11.00 percent to reflect the increased costs of equity and to avoid a material decline in its interest coverage before and after taxes.

The company asserts that copies of the filing were served upon Storage Company's sole customer, Consumers Power Company, and the Michigan Public Service Commission in accordance with requirements of § 1.17 of the Commission's rules of practice and procedure.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426 in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 8, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4944 Filed 3-4-74;8:45 am]

[Docket No. E-8172]

KENTUCKY UTILITIES CO.

Notice of Further Extension of Time and Postponement of Prehearing Conference

FEBRUARY 26, 1974.

On February 15, 1974, the Electric and Water Plant Board of the City of Frankfort, et al.,* filed a motion for a further

extension of time to file testimony as required by notice issued February 6, 1974.

Upon consideration, notice is hereby given that the procedural dates in the above matter are further modified as follows:

Service of Intervenor evidence, March 5, 1974.
Service of Company rebuttal, March 21, 1974.
Prehearing Conference, April 1, 1974.
Hearing (Unchanged), April 2, 1974 (10:00 a.m. e.d.t.).

KENNETH F. PLUMB,
Secretary.

*City Utilities Commission of Barbourville, the City of Bardstown, Bardwell City Utilities, the Electric Plant Board of Benham, Berea College, the City Utilities Commission of Corbin, the City of Falmouth, the City of Madisonville, the City of Nicholasville, and the Municipal Light and Water Plant of Providence, Kentucky.

[FR Doc.74-4963 Filed 3-4-74;8:45 am]

[Docket No. RP74-69]

MIDWESTERN GAS TRANSMISSION, A TENNECO CO.

Filing of Proposed Plan for Curtailment of Deliveries (Northern System)

FEBRUARY 27, 1974.

Take notice that on February 12, 1974, Midwestern Gas Transmission Company (Midwestern) tendered for filing proposed changes to Third Revised Volume No. 1 of its FPC Gas Tariff, consisting of the following tariff sheets:

Original Sheet Nos. 95A, 95B, 95C, 95D, 95E, 95F and 95G
First Revised Sheet Nos. 94 and 95
Second Revised Sheet Nos. 11, 16, 19, 27, and 76
Third Revised Sheet No. 5

Midwestern states that the purpose of the tariff sheets is to (1) include in the general terms and conditions of Midwestern's tariff a new Article XX entitled curtailment of deliveries (Northern System), (2) revise the form of Sheet No. 5 to accommodate the rate adjustments provided by section 9 of Article XX and (3) make certain minor changes in wording on the other tariff sheets filed to conform to the inclusion of Article XX. Midwestern further states that the proposed curtailment plan is being filed pursuant to the Commission's Order No. 431 in Docket No. R-418 and pursuant to and in conformity with the Commission's Order No. 467-B, Docket No. R-469 as modified as to priority-of-service Category 2 by the Commission's opinion No. 647-A. Midwestern further states that the definitions utilized are those adopted by the Commission's Order Nos. 493 and 493-A in Docket No. R-474. Additionally, Midwestern states that the provisions of its Northern System curtailment plan are substantially identical to its Southern System curtailment plan which became effective without suspension in Docket No. RP74-29.

Midwestern indicates that the filing of its Northern System curtailment plan is necessary because the requirements of its Northern System customers, based on normal weather conditions, will be approximately 1,000,000 Mcf greater than the gas supply available from TransCanada, the Northern System's sole supplier, under three long-term contracts and related export licenses. Additionally, Midwestern states it has been advised by TransCanada that TransCanada is not in a position to provide the short-term sales as in the past because of the restraints of its export licenses and the present policies of the National Energy Board. Therefore, as a result of the foregoing circumstances Midwestern states it may not be able to meet its Northern System requirements for the twelve month period ending October 31, 1974.

Midwestern requests that its filing be made effective on the proposed effective date of March 15, 1974, without suspension, however, should the Commission suspend such tariff filing, Midwestern requests that the suspension be limited to a period of one day.

Midwestern's filing includes provision for an overrun penalty of $10.00 per Mcf for volumes taken in excess of curtailment volumes under the curtailment plan. The filing also eliminates the demand charge credits for curtailment of affected transportation services and for the inclusion of demand charge credits for curtailment under sales rate schedules in a new deferred account by semi-annual adjustments to the commodity rates for sales under such rate schedules.

Midwestern states that copies of its filing have been mailed to all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 C.F.R. 1.8, 1.10). All such petitions or protests should be filed on or before March 11, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-4943 Filed 3-4-74;8:45 am]

[Docket No. G-4283, etc.]

MITCHELL ENERGY CORP., ET AL.

Notice of Petition To Amend

FEBRUARY 27, 1974.

In the matter of Mitchell Energy Corporation (Operator), et al. (successor to George Mitchell & Associates, Inc., Agent for Anne W. Alexander, Executrix, et al.).

Take notice that on February 19, 1974, Mitchell Energy Corporation (Petitioner), 3900 One Shell Plaza, Houston, Texas 77002, filed in Docket No. G-4283 et al., a petition to amend the orders issuing certificates of public convenience and necessity in said dockets pursuant to section 7(c) of the Natural Gas Act by substituting Petitioner in lieu of George Mitchell & Associates, Inc., as certificate holder, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that effective February 1, 1974, it merged George Mitchell & Associates, Inc., that it has assumed all rights and obligations of the latter, and that it proposes to continue sales of natural gas in interstate commerce authorized to be made by the latter.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4961 Filed 3-4-74;8:45 am]

[Docket No. CI74-426]

NORTHCOTT EXPLORATION CO., INC.

Notice of Application

FEBRUARY 26, 1974.

Take notice that on February 7, 1974, Northcott Exploration Company, Inc. (Applicant), Suite 1042, 210 Baronne Street, New Orleans, Louisiana 70112, filed in Docket No. CI74-426 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Trunkline Gas Company (Trunkline) from the Esther Field, Vermilion Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on January 7, 1974, from the subject acreage to Trunkline within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for two years from the end of the 180-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell approximately 6,000 Mcf of gas per month at 45.0 cents per Mcf at 15.025 psia.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4952 Filed 3-4-74;8:45 am]

[Docket No. RP73-48]

NORTHERN NATURAL GAS CO.

Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

FEBRUARY 25, 1974.

Take notice that Northern Natural Gas Company (Northern) on February 19, 1974 tendered for filing third revised sheet no. 3a of its F.P.C. Gas Tariff, Volume No. 4. Northern alleges that the proposed change, to become effective March 1, 1974, would increase annual revenues from jurisdictional sales and service by $28,769. The increase of 2.46¢ per Mcf reflects an increase of the wholesale F-2 rate for gas purchased from Colorado Interstate Gas Company. This rate increase filing is being made pursuant to paragraph 19 of the General Terms and Conditions contained in Northern's F.P.C. Gas Tariff, Original Volume No. 4.

Copies of the filing were served upon the Gas Utility Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 11, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4947 Filed 3-4-74;8:45 am]

[Docket No. RP74-12]

NORTHERN NATURAL GAS CO. (PEOPLES DIVISION)

Notice of Motion To Vacate Suspension Period and Terminate Proceedings

FEBRUARY 26, 1974.

Take notice that on February 20, 1974, Commission staff filed a motion in these proceedings to vacate the suspension period ordered by the Commission in this docket on October 16, 1974 and to terminate these proceedings. Staff states that upon its review of Northern Natural Gas Company, Peoples Division (Northern) filing it concludes that Northern's proposed rates are just and reasonable.

Staff states in the motion that only Northern and Staff are parties to this proceeding. The motion also states that Northern supports Staff's position.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 11, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4948 Filed 3-4-74;8:45 am]

[Docket No. CI74-264 and Docket No. CI74-408]

PENNZOIL CO. AND ANADARKO PRODUCTION CO.

Order Consolidating Proceedings, Providing for Interventions and Testimony In Support Thereof, and Amending Date for Issuance of Initial Decision

FEBRUARY 25, 1974.

By order entitled order granting intervention and setting hearing issued January 25, 1974, the Commission set for hearing an application filed on October 18, 1973, by Pennzoil Company for certificate authorization pursuant to § 2.75 of the Commission's general policy and interpretations (§ 2.75) to sell natural gas in interstate commerce to Panhandle Eastern Pipeline Company.

On February 1, 1974, Anadarko Production Company (Anadarko) filed a motion to consolidate a similar application filed pursuant to § 2.75 on January 30, 1974. The Anadarko application requests certificate authorization pursuant to § 2.75 to sell and deliver natural gas in interstate commerce to Panhandle from previously dedicated acreage in Hemphill County, Texas, the Hugoton-Anadarko Area, at an initial rate of 50 cents per Mcf, with 1.0 cent per Mcf escalation, Btu adjustment, and tax reimbursement for any additional taxes assessed after January 31, 1972. The Anadarko contract is on file as Anadarko's FPC gas rate schedule no. 178.

Analysis of Anadarko's application indicates that it is virtually identical to the application in the Pennzoil Company, Docket No. CI74-264 proceeding. The two applications involve the identical purchaser, acreage, and contract pricing provisions.

Although the Commission did not act on the February 1, 1974, motion to consolidate prior to the February 8, 1974; date established for filing direct testimony in Docket No. CI74-264, Anadarko nevertheless complied with the service date and filed its direct testimony as if the two dockets had been consolidated.

Inasmuch as Anadarko has complied with the service date for filing its direct testimony, and the Anadarko application involves the same or similar questions of fact, we deem it appropriate to consolidate the two dockets for purposes of hearing and to provide a period of sufficient duration for the filing of interventions which have not previously been filed in the Pennzoil Company, Docket No. CI74-264 proceeding.

In Ordering Paragraph (H) of the above-mentioned order in Pennzoil Company, Docket No. CI74-264, we established a date for the issuance of the Administrative Law Judge's initial decision as well as the dates for briefs on exceptions and replies thereto. We deem it necessary and appropriate in the public interest and for the orderly administration of the Natural Gas Act to change these procedural dates.

The Commission orders:

(A) Docket No. CI74-264 and Docket No. CI74-408 are consolidated for purposes of hearing and disposition.

(B) Any person desiring to be heard or to make any protest with reference to said consolidated applications should on or before March 8, 1974, file the Federal Power Commission, Washington, D.C. 20426, a petition to intervene with testimony and evidence, if any. Testimony and evidence in rebuttal thereto shall be due on or before the date and time of the hearing scheduled in these consolidated proceedings, i.e., March 14, 1974, at 10:00 a.m. (e.d.t.).

(C) Paragraph (H) of the above-mentioned order in Pennzoil Company, Docket No. CI74–264, issued January 25, 1974, is amended to read as follows:

(H) The Administrative Law Judge's decision shall be rendered on or before April 19, 1974. All briefs on exceptions shall be due on or before April 26, 1974, and replies thereto shall be due on or before March 5, 1974.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74–4949 Filed 3–4–74;8:45 am]

SUN OIL CO.

[Docket No. CI74–432]

Notice of Application

FEBRUARY 26, 1974.

Take notice that on February 8, 1974, Sun Oil Company (Applicant), P.O. Box 2880, Dallas, Texas 75221, filed in Docket No. CI74–432 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Northern Natural Gas Company (Northern) from the Emperor Field, Winkler County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on February 1, 1974, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for two years from the end of a 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell approximately 1,000 Mcf of gas per day to Northern at 45.0 cents per Mcf at 14.65 psia, subject to Btu adjustment.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.74–4953 Filed 3–4–74;8:45 am]

TRANSCONTINENTAL GAS PIPE LINE CORP.

[Docket No. RP73–3]

Notice of Proposed Changes in Rates and Charges

FEBRUARY 25, 1974.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on February 13, 1974, tendered for filing third substitute fifth revised sheet no. 5 and third substitute third revised sheet no. 6 to its FPC Gas Tariff, First Revised Volume No. 1. These tariff sheets were filed pursuant to Transco's PGA clause to reflect a net increase of .6¢ per Mcf for Transco's CD, G, OG, E, PS, S–2, and ACQ rate schedules. According to Transco, copies of the filing were mailed to the appropriate state agencies. The proposed effective date is April 1, 1974.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 13, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc. 74–4958 Filed 3–4–74;8:45 am]

[Docket No. RP72–128]

TRANSWESTERN PIPELINE CO.

Notice of Proposed Changes in FPC Gas Tariff

FEBRUARY 26, 1974.

Take notice that Transwestern Pipeline Company (Transwestern) on February 14, 1974, tendered for filing as part of its FPC Gas Tariff, First Revised Volume No. 1 the following sheets:

Fourth Revised Sheet PGA–1
Second Substitute Thirty-second Revised Sheet No. 4
Second Substitute Twenty-seventh Revised Sheet No. 6–A
Second Substitute Eleventh Revised Sheet No. 6–D
Second Substitute Twenty-first Revised Sheet No. 7

These sheets are issued pursuant to Transwestern's Purchased Gas Cost Adjustment provision set forth in section 19 of the general terms and conditions of its FPC Gas Tariff, First Revised Volume No. 1. This provision was approved by order of the Federal Power Commission dated September 19, 1972 in Docket No. RP72–128. This change in Transwestern's rates reflects a cost of gas adjustment to track increased purchased gas costs and a surcharge adjustment to clear the balance of the Gas Cost Adjustment Account.

Transwestern proposes these tariff sheets become effective on April 1, 1974.

According to Transwestern, copies of the filing were served upon the company's jurisdictional customers and the interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8, 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 13, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.74–4950 Filed 3–4–74;8:45 am]

[Docket No. RP74–21]

UNITED GAS PIPE LINE CO.

Extension of Time and Postponement of Hearing; Correction

FEBRUARY 25, 1974.

In the notice of extension of time and postponement of hearing, issued February 13, 1974 and published in the FEDERAL REGISTER February 21, 1974 (39 FR 6645):

Line 14; Change Service of Company Rebuttal Evidence from "May 21, 1974" to "May 2, 1974".

KENNETH F. PLUMB, *Secretary.*

[FR Doc.74–4964 Filed 3–4–74;8:45 am]

[Docket No. ID–1618]

WILLIAM R. BISSON

Notice of Application

FEBRUARY 26, 1974.

Take notice that on February 14, 1974, William R. Bisson (Applicant), filed a supplemental application pursuant to section 305(b) of the Federal Power Act

seeking authority to hold the following positions:

Director and Vice President, Brockton Edison Co., Public Utility.
Director and Vice President, Fall River Electric Light Co., Public Utility.
Vice President, Montaup Electric Co., Public Utility.

By Commission order dated August 11, 1970, Applicant was authorized to hold the following positions:

Vice President, Blackstone Valley Electric Co., Public Utility.
Director, Montaup Electric Co., Public Utility.

By Commission order dated November 13, 1973, Applicant was authorized to hold the following position:

Director, Blackstone Valley Electric Co., Public Utility.

Brockton Edison Company owns and operates facilities for the transmission and distribution of electric energy at retail in the City of Brockton and 16 surrounding Towns in Massachusetts. Brockton also supplies electric energy to Newport Electric Corporation and the Town of Middleborough for resale. Most of the energy sold by Brockton is purchased from Montaup Electric Company.

Fall River Electric Light Company owns and operates facilities for the distribution of electric energy at retail, in the City of Fall River and in neighboring Towns of Swansea, Somerset, the major part of Dighton, and a part of Westport, all in Massachusetts. Fall River also supplies electric energy to the Narragansett Electric Company for resale. Most of the energy sold by Fall River is purchased from Montaup Electric Company.

Montaup Electric Company's principal place of business is in Somerset, Massachusetts. It owns and operates facilities in that town for the generation of electric energy, and elsewhere in Massachusetts for the transmission of such energy. Most of the electric energy which it generates, together with additional energy which it purchases, is sold to Blackstone, Brockton and Fall River which companies together own all of Montaup's outstanding securities except short-term notes representing bank borrowings.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 21, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-4956 Filed 3-4-74;8:45 am]

[Docket No. E-8621]

ARIZONA PUBLIC SERVICE CO.

Notice of Filing of Supplement to Rate Schedule

FEBRUARY 27, 1974.

Take notice that on February 6, 1974, Arizona Public Service Company (Arizona) tendered for filing Supplement No. 5 to FPC Rate Schedule No. 32, relating to a Power Coordination Agreement containing various automatic escalation clauses and this filing accounts for a purported total yearly estimated increase of $33,604.80.

Arizona requests that the notice requirement of § 35.11 of the Commission's regulations be waived for this filing and that the current escalations be permitted to become effective at the beginning of each billing month. Arizona states that the reasons for these requests are the impossibility of anticipating an escalation prior to the end of a month and the elimination of multiplicity of monthly filings.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 5, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5044 Filed 3-4-74;8:45 am]

FEDERAL RESERVE SYSTEM

CEGROVE CORP.

Order Approving Acquisition of Bank

Cegrove Corporation, Wayne Township, New Jersey, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares (less directors' qualifying shares) of The Ramapo Bank, Wayne Township, New Jersey ("Bank").

On August 31, 1973, the Board issued an Order denying the subject application (38 FR 24931). On January 16, 1974, the Board granted a request by Applicant that a new proposal be treated as an amendment to the application. The amendment restructured certain financial details of the proposed transaction.

Notice of the amendment, affording opportunity for interested persons to submit comments and views, has been given. The time for filing comments and views has expired, and the Board has considered the amended application and all comments received.

Applicant controls one bank, Pilgrim State Bank, Cedar Grove, New Jersey, with deposits of $5 million, representing approximately 0.1 per cent of total deposits in commercial banks in the Greater Newark market. Bank, with deposits of approximately $35 million, operates three branches and is the 22nd largest of 35 organizations operating in the market approximated by the Paterson, New Jersey, SMSA. (All deposit data are as of December 31, 1972, and all market data are as of June 30, 1972.)

The Willowbrook office of Bank is separated from Pilgrim's office by only five miles, but penetration data show that neither bank derives a significant amount of business from the service area of the other, and it appears that this proposal would not eliminate significant competition. There has been close cooperation in the management and operation of the two banks and it seems unlikely that future competition will develop. Apparently, consummation of the proposal would not appreciably raise the barriers to entry in any relevant area nor affect adversely the competitive situation in any relevant area, and there remains available a significant number of potential "foothold" acquisitions to afford entry into the relevant markets. Competitive considerations, therefore, are regarded as consistent with approval.

The financial and managerial resources and future prospects of Applicant and Bank under the amended application are considered to be satisfactory. The new financial proposal submitted by Applicant provides for the sale of $400,000 in common stock within 30 days after the date of the acquisition, with the full proceeds of the sale being applied to reduce the acquisition debt attributable to the purchase of Bank from $1.5 to $1.1 million. Applicant further proposes to raise an additional $1 million in equity capital within 18 months to augment the capital of Bank. The Board's previous denial Order examined the possible strain on capital which might develop on the subsidiary banks in the proposed holding company system due to the high level of debt, the uncertainty of Applicant's ability to raise additional capital, and the apparent inability of Applicant to serve as a source of strength for its subsidiary banks. The new proposal tends to alleviate the Board's concern in these areas, since Applicant proposes to reduce the level of debt while maintaining acceptable capital levels at its subsidiary banks. Therefore, the Board regards such considerations as being consistent with approval of the application.

As noted in the previous Board Order with respect to this application, Applicant proposes to initiate no new services upon consummation of the proposal; however, considerations relating to the convenience and needs of the community are consistent with approval of the application. It is the Board's judgment that consummation of the transaction would be in the public interest and that the proposal should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth

calendar day following the effective date of this order or (b) later than three months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of New York pursuant to delegated authority.

By order of the Board of Governors,[1] effective February 25, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-5020 Filed 3-4-74;8:45 am]

FIRST AT ORLANDO CORP.

Acquisition of Bank

First at Orlando Corporation, Orlando, 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 90 percent or more of the voting shares of (1) The Sebastian River Bank, Sebastian, Florida and (2) The Beach Bank of Vero Beach, Vero Beach, 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 views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 18, 1974.

Board of Governors of the Federal Reserve System, February 25, 1974.

[SEAL] ELIZABETH L. CARMICHAEL,
Assistant Secretary of the Board.

[FR Doc.74-5022 Filed 3-4-74;8:45 am]

WYOMING BANCORPORATION

Acquisition of Bank

Wyoming Bancorporation, Cheyenne, Wyoming, 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 100 percent of the voting shares (less directors' qualifying shares) of Bank of Wyoming, N.A., Sheridan, Wyoming. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 25, 1974.

Board of Governors of the Federal Reserve System, February 25, 1974.

[SEAL] ELIZABETH L. CARMICHAEL,
Assistant Secretary of the Board.

[FR Doc.74-5021 Filed 3-4-74;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Brimmer, Sheehan, Bucher, and Holland.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 74-15]

AD HOC SUBCOMMITTEE OF THE SPACE SCIENCE AND APPLICATIONS STEERING COMMITTEE TO REVIEW PROPOSALS FOR SCIENTIFIC EXPERIMENTS FOR THE PIONEER VENUS ORBITER MISSION

Meetings

The NASA Advisory Subcommittee named above will meet at the Goddard Space Flight Center on March 11-13, 1974, in Building 26, Room 205. The meeting will be concerned with a scientific evaluation of proposals for flight experiments on the Pioneer Venus Orbiter Mission. The meeting will be closed to the public because throughout each session the Subcommittee will be candidly discussing and appraising the professional qualifications of the proposers and their potential scientific contributions to the mission. Discussion of these matters in public session would invade the privacy of the proposers and the other individuals involved.

The Subcommittee was established by the NASA Administrator for the purpose of advising NASA on the merit of proposals received in response to the NASA general solicitation of 26 July 1973 for proposals for flight experiments on the Pioneer Venus Orbiter. The Chairman of the Subcommittee is Dr. Robert F. Fellows, NASA Headquarters, Washington, DC 20546. The Executive Secretary is Mr. John C. Beckman, also of NASA Headquarters. There are approximately 15 other members of the Subcommittee. Questions may be directed to Dr. Fellows, telephone (202) 755-3660.

DAVID WILLIAMSON, Jr.,
Acting Associate Administrator, National Aeronautics and Space Administration.

FEBRUARY 26, 1974.

[FR Doc.74-4996 Filed 3-4-74;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

VISUAL ARTS FELLOWSHIPS ADVISORY PANEL

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a closed meeting of the Visual Arts Fellowship Advisory Panel to the National Council on the Arts will be held at 10:00 a.m. on March 6 and at 10:00 a.m. on March, 1974 in the 11th floor conference room of the Shoreham Building, 806 15th Street NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of January 10, 1973, this meeting which involves matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b)(4), (5), and (6), will not be open to the public.

Further information with reference to this meeting can be obtained from Mrs. Luna Diamond, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 382-5871.

PAUL BERMAN,
Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.74-5007 Filed 3-4-74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[70-5453]

AMERICAN ELECTRIC POWER CO.

Notice of Proposed Issue and Sale of Common Stock by Holding Company Pursuant to an Underwritten Rights Offering

Notice is hereby given that American Electric Power Company, Inc. ("AEP"), 2 Broadway, New York, New York 10004, a registered holding company, has filed a declaration with this Commission designating sections 6, 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

AEP proposes to offer up to 7,000,000 authorized but unissued shares of its common stock ("additional common stock") for subscription by the holders of its outstanding shares of common stock on the basis of one share of the additional common stock for each ten (10) shares of common stock held on the record date. The record date will be March 28, 1974, or such later date as AEP's registration statement under the Securities Act of 1933 may become effective. The subscription price, to be determined by AEP's Board of Directors at about 3:45 p.m. on the day preceding the record date, will be not more than the closing price of AEP common stock on the New York Stock Exchange on the day prior to the record date and not less than 90 percent thereof. The subscription offer will expire April 19, 1974, unless the record date should be later than March 28, 1974, in which event the expiration date will be specified by amendment.

AEP further proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, such of the shares of the additional common stock as are not subscribed for pursuant to the subscription offer, together with any shares of common stock acquired by AEP pursuant to any stabilizing activities, which are also proposed to be effected by AEP in connection with the proposed transaction. The aggregate amount to be paid by AEP to the successful bidder or bidders for their commitments and obligations under the purchase contract will be determined by the

competitive bidding procedure. The purchase contract will obligate the purchasers of the unsubscribed shares to make a public offering thereof promptly after the warrant expiration date. The stabilizing transactions may be effected on the New York Stock Exchange, in the over-the-counter market, or otherwise, but in no event will AEP acquire as a result of such transactions a net long position at any one time in excess of 700,000 shares of its common stock.

Rights to subscribe to the additional common stock will be evidenced by transferable subscription warrants which will be issued to all record holders of AEP common stock as promptly as practicable after the record date. No fractional shares will be issued; however, any holder with more than 10 shares, but not in exact multiples thereof, may purchase, at the subscription price, one extra share of additional common stock. A stockholder with less than 10 shares of common stock will be entitled to purchase, at the subscription price, one full share of additional common stock. In addition, each holder of a warrant or warrants who exercises such warrant or warrants in full will be given the privilege of subscribing, subject to allotment, at the same subscription price, for shares of additional unsubscribed common stock. AEP expects that subscription rights will be traded on the New York Stock Exchange and that, in addition, rights may be bought or sold through banks or brokers. In addition, AEP intends to afford to holders of warrants the opportunity to buy or to sell rights through AEP's subscription agent, such agent to charge 2¢ per right for its services in effecting such transactions.

AEP does not propose to mail warrants to stockholders whose registered addresses are outside the United States, Canada and Mexico. To the extent that AEP does not receive instructions from such stockholders to either exercise or otherwise dispose of their warrants, AEP may sell the rights evidenced by such warrants and may also sell the rights evidenced by warrants which are returned after the initial mailing as nondeliverable for any reason. AEP will, if such rights are sold, within 30 days following the fifth anniversary of such sale, pay any of the net proceeds then remaining unclaimed (as such net proceeds may have been reduced by the deduction of fees for the administration of such funds) to the Comptroller of the State of New York or other appropriate authority pursuant to the applicable provisions of the Abandoned Property Law of New York.

It is stated that proceeds of the sale of the shares of additional common stock and any unsubscribed shares, together with other funds available to AEP are to be used by AEP to pay commercial paper as it matures and to make additional investments in the common stock of its subsidiaries. At December 31, 1973, AEP had an aggregate amount of $134,150,000 of outstanding commercial paper.

Estimates of the fees and expenses to be incurred in connection ith the proposed issue and sale of common stock are to be filed by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than March 19, 1974, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5014 Filed 3-4-74;8:45 am]

[812-3254]

CAPITAL EXCHANGE FUND, INC. ET AL.

Notice of Application for Exemption

Notice is hereby given that Capital Exchange Fund, Inc., Depositors Fund of Boston, Inc., Diversification Fund, Inc., The Exchange Fund of Boston, Inc., Fiduciary Exchange Fund, Inc., Leverage Fund of Boston, Inc., Second Fiduciary Exchange Fund, Inc., Vance, Sanders Common Stock Fund, Inc., Vance, Sanders Income Fund, Inc., Vance, Sanders Investors Fund, Inc., and Vance, Sanders Special Fund, Inc., (the "Funds"), One Beacon Street, Boston, Massachusetts 02108, all Massachusetts corporations registered as management investment companies under the Investment Company Act of 1940 (the "Act"), and Jack L. Treynor ("Treynor") (hereinafter collectively called "Applicants") 219 East 42nd Street, New York, New York 10017, have filed an application for an order of the Commission pursuant to section 6 (c) of the Act declaring that Treynor shall not be deemed an "interested person" of the Funds or any investment adviser of, or principal underwriter for, the Funds, within the meaning of section 2(a)(19) of the Act, solely by reason of his proposed status as a director and shareholder of, and consultant to, O'Brien Associates, Inc., ("OA"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Treynor represents that he is considering becoming a director of and consultant to OA and acquiring a stock interest in it of less than 5 percent of its outstanding stock. OA, a broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act"), a member of the Midwest Stock Exchange, and an investment adviser registered under the Investment Advisers Act of 1940, offers its customers consulting services and portfolio analyses as a part of its services as a broker-dealer. OA's customers presently consist principally of institutions such as pension and endowment trusts and their managers, and it is expected that this will be true for the future as well. OA generally does not do a retail business with individuals, does not make a market over-the-counter or in the third market and does not sell mutual fund shares or participate in underwritings.

As a consultant, Treynor expects to spend a maximum of 12 days a year providing advice to OA or its clients. It is expected that he might be called upon to give advice on computer programs being designed or modified by OA or comment on reports being prepared for specific clients of OA. It is expected that he also may be asked to assist clients of OA to make policy decisions on appropriate long-range risk policies for their investment portfolios or advise them on their decision-making processes and the manner in which they conduct their investment management functions. Treynor also may refer potential clients to OA and explain OA's services or reports to clients and potential clients. Treynor will not advise OA or its clients on short-term risk policies (such as whether to invest in debt securities or common stocks on a short-term basis) or on the investment merit of specific companies or industries.

The Funds state that the Funds have no financial interest in or relationship with OA. Vance, Sanders & Company, Inc., ("VS"), a Maryland corporation employed by Capital Exchange Fund, Inc., Depositors Funds of Boston, Inc., Diversification Fund, Inc., The Exchange Fund of Boston, Inc., Fiduciary Exchange Fund, Inc., Leverage Fund of Boston, Inc., Second Fiduciary Exchange Fund, Inc., Vance, Sanders Income Fund, Inc., and Vance, Sanders Special Fund, Inc., as their investment adviser and by Vance, Sanders Common Stock Fund, Inc., Vance, Sanders Income Fund, Inc., Vance, Sanders Investors Fund, Inc., and Vance, Sanders Special Fund, Inc., as their principal underwriter, has informed

the Funds that it has no financial interest in or relationship with OA. Boston Management & Research Company, Inc., ("BM&R"), a Massachusetts corporation which is a wholly-owned subsidiary of VS and which is employed by Vance, Sanders Common Stock Fund, Inc., and Vance, Sanders Investors Fund, Inc., as their investment adviser, has informed the Funds that it has no financial interest in or relationship with OA.

Applicants assert that Treynor would be subject to no conflicts of interest as a result of his relationships with OA since his activities as a director, shareholder and consultant would be isolated from and independent of any business activities of the Funds and of VS and BM&R. In this connection, each Fund has undertaken that so long as Treynor is a director of the Fund and is concurrently a director or shareholder of or consultant to OA, the Fund will not enter into, or cause any other person to enter into any transaction which might confer a benefit on OA. Each Fund states that VS and BM&R have advised the Fund that during such period VS and BM&R will not enter into, or cause any other person to enter into, any transaction which might confer a benefit on OA. Applicants further assert that Treynor, by virtue of such relationships with OA, would not be in a position, nor would he have any reason, to act in any way to the detriment of the Funds in connection with any portfolio securities transaction of the Funds.

Applicants state that it is believed that services such as those provided by OA presently are provided to institutions by a number of competing investment advisers and brokerage firms and that the Funds, VS and BM&R are not foreclosing themselves from utilizing an investment tool. If it should be determined in the future, however, that it is desirable to utilize the services of OA, then, it will be necessary at that time for the Funds' Board of Directors to determine whether it is any longer in the best interests of the Funds to continue in effect the undertaking contained in this application that neither the Funds, VS nor BM&R will transact any business with OA. Although Treynor might participate in any discussions of the Boards of Directors of the Funds as to whether the undertakings of the Funds, VS and BM&R should be continued in effect, Treynor will not be permitted to participate in any vote with respect to said undertakings.

Section 2(a)(19) of the Act, in pertinent part, defines "interested person" when used with respect to an investment company, investment adviser, or principal underwriter for an investment company to include any broker or dealer registered under the 1934 Act or any affiliated person of such a broker or dealer. Section 2(a)(3) defines an "affiliated person" of another person to include any director of such other person. Treynor, as a director of O'Brien, would be an affiliated person of a broker or dealer and, therefore, an "interested person" of the Funds and of their investment adviser and principal underwriter.

Section 6(c) of the Act provides that the Commission by order, upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision or provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants contend that Treynor should not be deemed an "interested person" of the Funds, VS, or BM&R because his affiliation with OA would not affect or impair his independence in acting on behalf of the Funds and their shareholders and that the requested exemption is therefore consistent with the provisions of section 6(c) of the Act.

Notice is further given that any interested person may, not later than March 22, 1974, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following March 22, 1974, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5011 Filed 3-4-74;8:45 am]

[File No. 500-1]

CONTINENTAL VENDING MACHINE CORP.

Notice of Suspension of Trading

FEBRUARY 22, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Continental Vending Machine Corporation being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from February 24, 1974 through March 5, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5028 Filed 3-4-74;8:45 am]

[File No. 500-1]

GAMMA PROCESS CO. INC.

Notice of Suspension of Trading

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Gamma Process Co. Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 2:00 p.m. (e.d.t.) on February 21, 1974 through midnight (e.d.t.) on March 2, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5029 Filed 3-4-74;8:45 am]

[File No. 500-1]

GRANBY MINING CO., LTD.

Notice of Suspension of Trading

FEBRUARY 20, 1974.

The common stock of Granby Mining Co., Ltd. being traded on the Pacific Coast Stock Exchange and on the Philadelphia Baltimore Washington Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Granby Mining Co., Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from 10:00 a.m. (e.d.t.) on February 20, 1974 through March 1, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5030 Filed 3-4-74;8:45 am]

[File No. 500-1]

HARVEST MARKETS INC.

Notice of Suspension of Trading

FEBRUARY 21, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Harvest Markets Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 2:00 p.m. (e.d.t.) on February 21, 1974 through midnight (e.d.t.) on March 2, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-5031 Filed 3-4-74;8:45 am]

[File No. 500-1]

HOME-STAKE PRODUCTION CO.

Notice of Suspension of Trading

FEBRUARY 22, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Home-Stake Production Company being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from February 24, 1974 through March 5, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-5032 Filed 3-4-74;8:45 am]

[File No. 500-1]

INDUSTRIES INTERNATIONAL, INC.

Notice of Suspension of Trading

FEBRUARY 20, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Industries International, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from February 21, 1974 through March 2, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-5033 Filed 3-4-74;8:45 am]

[812-3576]

INTERNATIONAL PLASMA CORP.

Notice of Application

In the matter of International Plasma Corporation, c/o James C. Gaither, Cooley, Godward, Castro, Huddleson & Tatum, The Alcoa Building, 1 Maritime Plaza, San Francisco, California 94111, Durrum Instrument Corporation, c/o John A. Wilson, Wilson, Mosher & Sonsini, 2 Palo Alto Square, Palo Alto, California 94304, Value Line Development Capital Corp., 5 East 44th Street, New York, New York, Genstar Pacific Corporation, P.O. Box 11787, Palo Alto, California, Sutter Hill Capital Corporation, Sutter Hill Ventures, 2 Palo Alto Square, Palo Alto, California 94304 (812-3576).

Notice is hereby given that International Plasma Corporation ("IPC"), Durrum Instrument Corporation ("Durrum"), Value Line Development Capital Corp. ("Value Line"), Genstar Pacific Corporation ("Genstar"), Sutter Hill Capital Corporation ("Capital"), and Sutter Hill Ventures ("Ventures") (hereinafter collectively called "Applicants") have filed an application pursuant to section 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder for an order authorizing Value Line and the other shareholders of Durrum to exchange their shares of Durrum common and preferred stock for shares of IPC common stock pursuant to an Agreement and Plan of Reorganization dated December 21, 1973 (the "Agreement"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

IPC is a California corporation which designs, manufactures and sells plasma machines in which an excited gas causes chemical reactions to take place. Durrum is a Nevada corporation which designs, manufactures and sells chemical instruments. Ventures, which holds 51 percent of the outstanding common stock of IPC, is a limited partnership whose sole limited partner is Genstar, a California corporation. Genstar holds all of the outstanding stock of Capital, a California corporation. Capital and Genstar hold in the aggregate 41 percent of the outstanding shares of Durrum. Paul M. Wythes, a general partner of Ventures and a vice-president of Capital, is a member of the Boards of Directors of IPC and Durrum.

Value Line, a non-diversified, closed-end investment company registered under the Act holds 8 percent of the outstanding common stock of Durrum and is, therefore, an affiliated person of Durrum under section 2(a)(3) of the Act.

IPC proposes to acquire at least 90 percent of the outstanding common and preferred stock of Durrum in exchange for shares of IPC common stock. The Agreement provides that IPC will issue from 3.009 to 3.139 shares of IPC common stock in exchange for each share of common and preferred stock of Durrum. The exact exchange ratio will be determined on the basis of the number of shares of Durrum common and preferred stock outstanding at the closing and purchaseable on exercise of options and warrants then outstanding.

Applicants state that Genstar and Capital each may be deemed to be an affiliated person of Durrum under the definition of affiliated person set forth in section 2(a)(3) of the Act and, therefore, an affiliated person of an affiliated person of Value Line. Applicants also state that if Ventures, IPC and Durrum were each deemed to be under the common control of Genstar, Ventures and IPC would each be an affiliated person of Durrum and therefore an affiliated person of an affiliated person of Value Line.

Under section 17(d) of the Act, and Rule 17d-1 thereunder, it is unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, to effect any transaction in which such investment company is a joint participant unless the Commission, upon application, has issued an order permitting such transaction. In passing upon applications for such orders, the Commission is required to consider whether the participation of the investment company in such joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants.

Applicants represent that the terms of the proposed transaction have been considered by the Boards of Directors of IPC and Durum and that each Board has determined that such terms are fair and reasonable. Applicants represent that the terms of the proposed transaction does not involve any unfair or less advantageous treatment of Value Line and are consistent with the general purposes of the Act.

In support of such assertions, Applicants cite, among others, the following factors:

1. The terms and conditions of the IPC offer will be the same to each Durrum shareholder (except that Value Line will incur none of the selling shareholder expenses).

2. The terms of the Agreement were achieved through arms-length negotiation, on the basis of the financial condition of both companies and all other pertinent business considerations.

3. An independent financial analysis of the transaction was obtained by the parties, and a favorable opinion rendered as to the fairness of the proposal.

4. Value Line, exercising its independent business judgment, has concluded that its participation in the proposed transaction is in its best interest.

Notice is further given that any interested person may, not later than March 22, 1974, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission,

Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the addresses set forth above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O–5 of the rules and regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–5012 Filed 3–4–74;8:45 am]

[File No. 500–1]

LAMP FASHION INC.

Notice of Suspension of Trading

FEBRUARY 21, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Lamp Fashion Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 2:00 p.m. (e.d.t.) on February 21, 1974 through midnight (e.d.t.) on March 2, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–5034 Filed 3–4–74;8:45 am]

MANATI INDUSTRIES INC.

[File No. 500–1]

Notice of Suspension of Trading

FEBRUARY 21, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Manati Industries Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 2:00 p.m. (e.d.t.) on February 21, 1974 through midnight (e.d.t.) on March 2, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–5035 Filed 3–4–74;8:45 am]

[File No. 500–1]

NATIONAL ALFALFA DEHYDRATING AND MILLING CO.

Notice of Suspension of Trading

FEBRUARY 22, 1974.

The common stock of National Alfalfa Dehydrating and Milling Company being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Comission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from February 25, 1974 through March 6, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–5036 Filed 3–4–74;8:45 am]

[File No. 500–1]

SEABOARD AMERICAN CORP.

Notice of Suspension of Trading

FEBRUARY 25, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Seaboard American Corporation being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from February 26, 1974 through March 7, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–5009 Filed 3–4–74;8:45 am]

[File No. 500–1]

SEABOARD CORP.

Notice of Suspension of Trading

FEBRUARY 22, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, units and warrants of Seaboard Corporation being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from February 25, 1974 through March 6, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–5037 Filed 3–4–74;8:45 am]

[File No. 500–1]

STRATTON GROUP, LTD.

Notice of Suspension of Trading

FEBRUARY 22, 1974.

The common stock of Stratton Group, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Stratton Group, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from February 24, 1974 through March 5, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 74–5038 Filed 3–4–74;8:45 am]

[File No. 500–1]

TECHNICAL RESOURCES, INC.

Notice of Suspension of Trading

FEBRUARY 25, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Technical Resources, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from February 26, 1974 through March 7, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–5010 Filed 3–4–74;8:45 am]

SMALL BUSINESS ADMINISTRATION

MAXIMUM INTEREST RATES

Notice of Establishment

Notice hereby is given that the Small Business Administration ("SBA") has established the maximum rate of interest which a lending institution may charge on an SBA participation loan approved by SBA on or after March 1, 1974, pursuant to section 7(a) of the Small Business Act, as amended, Section 402 of the Economic Opportunity Act of 1964, as amended, and Section 502 of the Small Business Investment Act, as amended.

Effective March 1, 1974, the maximum rate of interest acceptable to SBA on a guaranteed loan will be ten and one-half (10½) percent per year, and the maximum rate on an immediate participation loan will be nine and one-half (9½) percent per year.

These maximums shall remain in effect until changed by SBA.

Notice also is given hereby that the SBA has established a maximum rate of interest which a lending institution may charge on a revolving line of credit guaranteed by the SBA. Effective on the above date of March 1, 1974, the maximum interest rate acceptable to the SBA for this type of financing will be ten and one-half (10½) percent per year. This maximum rate shall remain in effect until changed by SBA.

These notices are being made under the provision of 13 CFR 120.3(b)(2)(vi).

(Catalog of Federal Domestic Assistance Programs:)
No. 59.012 Small Business Loans
No. 59.013 State and Local Development Company Loans
No. 59.014 Coal Mine Health and Safety Loans
No. 59.017 Meat and Poultry Inspection Loans
No. 59.001 Displaced Business Loans
No. 59.018 Occupational Safety and Health Loans
No. 59.003 Economic Opportunity Loans for Small Businesses)

Dated: February 28, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-5148 Filed 3-1-74;3:12 pm]

SELECTIVE SERVICE SYSTEM

National Headquarters

INDUCTION OF REGISTRANTS

Notice of Lottery Drawing

By virtue of the authority vested in me by § 1631.1 of Selective Service Regulations (32 CFR 1631.1), a drawing will be conducted in the Department of Commerce Auditorium, Washington, D.C., on March 20, 1974, beginning at 10 a.m., e.d.s.t., to establish a random selection sequence for induction of registrants who during the calendar year 1974 have attained their 19th but not their 20th year of age.

Dated: February 27, 1974.

BYRON V. PEPITONE,
Director.

[FR Doc.74-5018 Filed 3-4-74;8:45 am]

TARIFF COMMISSION

[AA1921-140]

REGENERATIVE BLOWER/PUMPS FROM WEST GERMANY

Notice of Investigation and Hearing

Having received advice from the Treasury Department on February 22, 1974, that regenerative blower/pumps from West Germany are being, or are likely to be, sold at less than fair value, the United States Tariff Commission on February 26, 1974, instituted investigation No. AA1921-140 under section 201 (a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), 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.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, NW., Washington, D.C. 20436, beginning at 10 a.m., e.d.t., on Tuesday, April 2, 1974. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon Thursday, March 28, 1974.

Issued: February 27, 1974.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.74-5042 Filed 3-4-74;8:45 am]

[TEA-W-227]

WORKERS' PETITION FOR A DETERMINATION

Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of Clippard Instrument, Inc., Paris, Tennessee, the United States Tariff Commission, on February 26, 1974, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with coils (of the types provided for in item 682.05 and 682.60 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, NW, Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

Issued: February 27, 1974.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.74-5043 Filed 3-4-74;8:45 am]

GENERAL SERVICES ADMINISTRATION

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, March 7 and 8, 1974, from 8:00 a.m. to 4:00 p.m., Building 41, Denver Federal Center, Denver, Colorado. This meeting will be for the purpose of considering Architect-Engineering firms to provide design services for selected projects in the State of Colorado on a year term fixed price contract.

The meeting will be closed to the public in accordance with the provisions set forth in section 10(d) of Pub. L. 92-463.

MICHAEL J. NORTON,
Regional Administrator.

[FR Doc.74-5192 Filed 3-4-74;9:17 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on February 28, 1974 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529).

NEW FORMS

DEPARTMENT OF COMMERCE

National Bureau of Standards, Form Letter and Resume for "A Directory of Authoritative Sources for Property Data on Ceramics", Form ———, Single time, Caywood, Information centers covering ceramics.

Bureau of the Census, 1974 Census of Agriculture Pretest: Recheck Listing Sheet; Respondent Interview, Forms 73X-A7, 73X-A8, Single time, Lowry, Farms.

Regular and Short Agriculture Questionnaires, Forms 73X-A1 PR, 73X-A2 PR, Single time, Lowry, Puerto Rican farmers in pretest area.

FEDERAL ENERGY ADMINISTRATION

Request for Data on Coal Conversion, Form ———, Single time, Lowry, Business firms.

FEDERAL RESERVE BOARD

Monthly Report on Foreign Assets, Form FR 936, Monthly, Hulett, Banks.

FEDERAL RESERVE BOARD

Quarterly Report on Foreign Assets, Form FR 937, Quarterly, Hulett, Nonbank financial institutions.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration, Evaluation of Hill-Burton Technical Standards and Guidelines for Medical Facilities, Form HRABHRD 0110, Single time, HRD/Sunderhauf, Hospitals built recently with Hill-Burton funds.

NATIONAL SCIENCE FOUNDATION

RANN Research Utilization Survey: Projected Utilization and Actual Utilization, Form—, Single time, Planchon, Principal investigators.

DEPARTMENT OF TRANSPORTATION

Departmental, University of Texas Transportation Survey Questionnaire, Form—, Single time, Foster, Adults in Austin, Texas.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, 1974 Survey of Independent Health Insurance Plans, Form SSA 1807, Annual, Caywood/Reese, Larger independent health insurance plans.

EXTENSIONS

DEPARTMENT OF COMMERCE

National Bureau of Standards, Package Size Survey, Form NBS 181, Occasional, Evinger (x), State & local govt. weights & measures officials.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control, Congenital Rubella Syndrome—Case Report, Form 4.271, Occasional, Evinger (x).

Rubella Case Investigation Report, Form 10.17, Occasional, Evinger (x).

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.74-5175 Filed 3-4-74;8:45 am]

FEDERAL ENERGY OFFICE

AGRICULTURE ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Agriculture Advisory Committee will meet at 2:00 p.m. on Monday, March 11, 1974, in room 4121, Main Treasury, 18th and C Streets NW.

The committee is composed of representatives of the agriculture industry from all areas of the United States.

The agenda for the meeting is as follows:

I. Problems in allocation program.

A. Allocation fraction to agricultural producers/end users (February 11 telegram from FEO to regional offices).

B. Plans for obtaining information to rule fuel distribution.

C. Ability for agricultural producers/end users to obtain fuel when needed (as cropping seasons demand increases).

D. Ability for agricultural producers/end users to obtain supplies at retail outlets.

E. Fuel for movement of migrant workers from distant areas to farm areas.

II. Proposed changes to definition of agricultural production.

III. Energy research and development as related to agriculture.

This meeting is open to the public; however, space and facilities are limited.

The chairman of the group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

Further information concerning this meeting may be obtained from Richard A. Ashworth, Assistant to the Undersecretary of Agriculture, Washington, D.C., telephone 202-447-6185. Minutes of the meeting will be made available for public inspection at the Federal Energy Office, Washington, D.C.

Issued in Washington, D.C., on March 4, 1974.

WILLIAM N. WALKER,
General Counsel.

[FR Doc.74-5269 Filed 3-4-74;12:10 pm]

EMERGENCY ADVISORY COMMITTEE FOR NATURAL GAS SUBCOMMITTEE ON LP-GAS SUPPLY AND DEMAND

Notice of Meeting

Notice is hereby given in accordance with PL 92-463 that there will be a meeting of the Government Policies Task Group of the Subcommittee on LP-Gas Supply and Demand of the Emergency Advisory Committee for Natural Gas at 10:00 a.m. on Wednesday, March 6, 1974, in Room 4426, Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, D.C. The Subcommittee is a group of qualified businessmen established to advise the Administrator, FEO, on LP-Gas Supply and Demand problems.

Agenda items are as follows:

1. Opening remarks by the Chairman of the Task Group.
2. Corrections and additions to minutes of previous meetings.
3. Receive comments and recommendations on issues raised on the Propane and Butane Mandatory Allocation Program.
4. Review and comment on draft of Proposed Revised Regulations on Mandatory Allocation Program for Propane and Butane.
5. Review and comment on propane and butane price regulations.
6. Review and recommendations of other Government policies that affect propane and butane supply/demand.
7. Other business—general discussion of rules and regulations.

This meeting will be open to the public to the extent of available space, on a first-come basis.

The Chairman of the group is empowered to conduct the meeting in a fashion that will in his judgment facilitate the orderly conduct of business.

Further information concerning the meeting may be obtained from Mr. Lucio D'Andrea, Office of Policy, Planning and Regulation, Federal Energy Office, Washington, D.C. 20461, Area Code 202/961-8471. Minutes of the meeting will be made available for public inspection at the Federal Energy Office, Washington, D.C.

Issued in Washington, D.C., on March 4, 1974.

WILLIAM N. WALKER,
General Counsel.

[FR Doc.74-5270 Filed 3-4-74;12:10 pm]

CONSUMERS ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Consumers Advisory Committee will be held Wednesday, March 13, 1974, at 1 p.m. in Room 3140A, New Post Office, 12th and Pennsylvania Avenue NW., Washington, D.C.

The committee was established to advise the Administrator, FEO, with respect to general consumer aspects of interests and problems related to the policy and implementation of programs crisis. The agenda for the meeting is as to meet the current national energy follows:

A. Organization.
B. Special Impact Office.
C. Energy Legislation.
D. Fuel Pricing.
E. Gas Rationing and its alternatives.
F. Project independence.
G. Petroleum Allocation and its impact.
H. New Business—discussion of rules and regulations.

The meeting is open to public; however, space and facilities are limited.

Further information concerning this meeting may be obtained from Joseph Dawson, Office of Consumer Affairs, Department of Health, Education and Welfare, Washington, D.C. 20201. Telephone 202/245-6975. Minutes of the meeting will

be made available for public inspection at the Federal Energy Office, Washington, D.C.

The chairman of the group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

Issued in Washington, D.C., on March 4, 1974.

WILLIAM N. WALKER,
General Counsel.

[FR Doc.74-5272 Filed 3-4-74;12:11 pm]

ENVIRONMENTAL ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Environmental Advisory Committee will be held Tuesday, March 12, 1974, at 9:00 a.m., in Room 3140A, New Post Office, 12th and Pennsylvania Avenue NW., Washington, D.C.

The committee was established to advise the Administrator, FEO, with respect to general environmental aspects of interests and problems related to the policy and implementation of programs to meet the current national energy crisis. The agenda for the meeting is as follows:

I. Discussion of Interstate Commerce Commission Regulations.
II. Subpanel discussions.
A. Strip mining.
B. Offshore oil lease program.
C. Oil shale.
D. Electric utility pricing.
III. New Business—Discussion of rules and regulations.

The meeting is open to the public; however, space and facilities are limited.

Further information concerning the meeting may be obtained from Jim Oberwetter, Office of the Administrator, Environmental Protection Agency (West Tower), 401 M Street, SW., Washington, D.C. 20460. Telephone 202/755-9416. Minutes of the meeting will be made available for public inspection at the Federal Energy Office, Washington, D.C.

The chairman of the group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

Issued in Washington, D.C., on March 4, 1974.

WILLIAM N. WALKER,
General Counsel.

[FR Doc.74-5271 Filed 3-4-74;12:10 pm]

INTERSTATE COMMERCE COMMISSION

[Notice No. 457]

ASSIGNMENT OF HEARINGS

FEBRUARY 28, 1974.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC-C-8065, Quality Drug Stores, Inc. —V— Eastern Freight Ways, Inc.; MC-C-8066, Quality Drug Stores, Inc. —V— Preston Trucking Company, Inc., and MC-C-8068, Quality Drug Stores, Inc. —V— Hermann Forwarding Company, now assigned March 6, 1974, at Harrisburg, Pa., is canceled and reassigned April 30, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 123685, Sub 17, Peoples Cartage, Inc., now assigned March 8, 1974, at Columbus, Ohio, is canceled and the application is dismissed.

MC 116254 (Sub-No. 137), Chem-Haulers, Inc., now assigned March 4, 1974, at Birmingham, Ala., is canceled and application dismissed.

MC-127834 Sub 94, Cherokee Hauling & Rigging, Inc., now assigned March 6, 1974, at Columbus, Ohio, is canceled and the application is dismissed.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-5047 Filed 3-4-74;8:45 am]

[Notice No. 37]

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 March 25, 1974. 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-74455. By order of February 26, 1974, the Motor Carrier Board approved the transfer to Bruce E. Emerson, Cumberland, R.I., of the Certificate in No. MC-100375 and the Certificate of Registration in No. MC-100375 (Sub-No. 2) issued July 10, 1941, and June 10, 1964, respectively, to Eunice M. Emerson and Everett F. Emerson, a partnership, doing business as Emerson's Express, Cumberland, R.I., the former authorizing the transportation of general commodities, Lincoln, Pawtucket, and Providence, R.I., and the latter evidencing a right of the holder to engage in transportation in interstate or foreign commerce as described in certificate No. MC-163, dated September 9, 1947, issued by the Public Utility Administrator of Rhode Island—Thomas with exceptions, between Cumberland, G. Hetherington, 255 Main Street, Pawtucket, R.I. 02860, attorney for applicants.

No. MC-FC-74981. By order of February 26, 1974, the Motor Carrier Board approved the transfer to Duggan's Trucking, Inc., Buffalo, N.Y., of Certificate of Registration No. MC-120951 (Sub-No. 1) issued to Lawrence L. Johnson, Buffalo, N.Y., evidencing a right to transport general commodities, in interstate or foreign commerce solely within the State of New York—Robert D. Gunderman, Attorney, Suite 710, Statler Hilton, Buffalo, N.Y. 141202.

No. MC-FC-74988. By order of February 26, 1974, the Motor Carrier Board approved the transfer to All Container Services, Inc., Port Newark, N.J., of the operating rights in Certificate No. MC-135229 issued January 21, 1974, to Coastal Container Trucking Corp., Bayonne, N.J., authorizing the transportation of general commodities, with exceptions, in containers, between points within the New York, N.Y., Commercial Zone, subject to certain limitations—John L. Murray, 235 Mamaroneck Ave., White Plains, N.Y. 10605, Attorney for applicants.

No. MC-FC-74989. By order of February 27, 1974, the Motor Carrier Board approved the transfer to Griffin Express, Inc., Chicopee, Mass., of the operating rights in Certificate of Registration No. MC-98420 (Sub-No. 1) issued to Stephen F. Bakos, Sr., dba E. J. Griffin Express, Chicopee, Mass., evidencing a right to engage in interstate or foreign commerce in the transportation of general commodities, between points solely within the State of Massachusetts—Richard D. Hayes, Attorney, 135 State St., Springfield, Mass. 01103.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-5053 Filed 3-4-74;8:45 am]

[Notice No. 32]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

FEBRUARY 27, 1974.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of

such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

No. MC 110988 (Sub-No. 308 TA), filed February 14, 1974. Applicant: SCHNEIDER TANK LINES, INC., 200 West Cecil Street, Neenah, Wis. 54956. Applicant's representative: Neil DuJardin (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Modified soybean oil*, from Blooming Prairie, Minn., to points in Virginia, for 180 days. SUPPORTING SHIPPER: Viking Chemical Company, 915 Midland Bank Building, Minneapolis, Minn. 55401 (Glen W. Pagel, Vice President). SEND PROTESTS TO: District Supervisor John E. Ryden, Bureau of Operations, Interstate Commerce Commission, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 113362 (Sub-No. 270 TA), filed February 19, 1974. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, Iowa 50533. Applicant's representative: Milton D. Adams, Box 562, Austin, Minn. 55912. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mayonnaise, table sauces, syrups* (not medicated), *prune juice, extracts, salad dressings and cooked clam products*, from the plantsite of Doxsee Food Corporation at Terre Haute, Ind., to points in Colorado, Iowa, Nebraska, North Dakota, and South Dakota, for 180 days. SUPPORTING SHIPPER: Doxsee Food Corporation, 8323 Pulaski Highway, Baltimore, Md. 21237. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 113908 (Sub-No. 303 TA), filed February 14, 1974. Applicant: ERICKSON TRANSPORT CORPORATION, 2105 East Dale Street, Glenstone Sta., P.O. Box 3180, Springfield, Mo. 65804. Applicant's representative: B. B. Whitehead (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Neutral and distilled spirits*—and—*alcoholic liquors*, in bulk, from Lake Alfred, Fla., to Rogers, Ark., Kansas City, Mo., Charlotte, N.C., Memphis, Tenn., and Houston, Tex., for 180 days. SUPPORTING SHIPPER: Speas Company, 2400 Nicholson Avenue, Kansas City, Mo. 64120. SEND PROTESTS TO: John V. Barry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 600 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 117940 (Sub-No. 105 TA), filed February 11, 1974. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Donald L. Stern, Suite 530 Univac Bldg., 7100 W. Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast iron boilers, heating supplies and equipment*, from Columbiana, Ohio to points in Iowa, Minnesota, North Dakota, South Dakota, Wyomng and Montana, for 180 days. SUPPORTING SHIPPER: J. L. Company, Division of Monty Robinson, Inc., 7419 Washington Avenue South, Minneapolis, Minn. 55435. SEND PROTESTS TO: A. N. Spath, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building & U.S. Courthouse, 110 S. 4th Building & U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 127539 (Sub-No. 32 TA) (CORRECTION), filed February 5, 1974, published in the FEDERAL REGISTER issue of February 21, 1974 as No. MC 127539 (Sub-No. 31 TA), and republished as corrected this issue. Applicant: PARKER REFRIGERATED SERVICE, INC., 3533 E. 11th St., Tacoma, Wash. 98421. Applicant's representative: George R. LaBissoniere, 130 Andover Park East, Seattle, Wash. 98188. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Long Beach, Calif. to points in Oregon and Washington, for 180 days.

NOTE.—The purpose of this republication is to indicate the correct Docket number assigned to this proceeding in No. MC 127539 (Sub-No. 32 TA).

SUPPORTING SHIPPERS: Peirone Produce Company, 524 East Trent, Spokane, Wash. 99202; Standard Fruit & Steamship Company, 666 East Ocean, Suite 1404, Long Beach, Calif. 90802; West Coast Fruit and Produce, 448 E. 18th, Tacoma, Wash. 98421; and Pacific Fruit & Produce, P.O. Box 3687, 4103 2nd Ave., So., Seattle, Wash. 98124. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Building, Seattle, Wash. 98104.

No. MC 133095 (Sub-No. 54 TA), filed February 14, 1974. Applicant: TEXAS CONTINENTAL EXPRESS, P.O. Box 434, 2603 W. Euless Blvd., Euless, Tex. 76039. Applicant's representative: Billy R. Reid, 6108 Sharon Rd., Fort Worth, Tex. 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides), from San Angelo, Tex., to points in the District of Columbia, Connecticut, Maryland, Massachusetts, Maine, New Jersey, New York, Pennsylvania and Rhode Island, for 180 days. SUPPORTING SHIPPERS: Wilson & Co., Inc. 4545 Lincoln Blvd., Oklahoma City, Okla. 73105, A. N. Brent, Transportation Manager.; Armour Food Company, Fresh Meats Division, Greyhound Tower, 111 W. Clarendon, Phoenix, Ariz. 85077, Donald A. Chute, Manager of Transportation and Distribution. SEND PROTESTS TO: H. C. Morrison, Sr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, 819 Taylor Street, Room 9A27 Federal Bldg., Fort Worth, Tex. 76102.

No. MC 136531 (Sub-No. 1 TA), filed February 15, 1974. Applicant: LUISI TRUCK LINES, INC., P.O. Box 606, New Walla Walla Highway No. 11, Milton-Freewater, Oreg. 97862. Applicant's representative: George R. LaBissoniere, Suite 101, 130 Andover Park East, Seattle, Wash. 98188. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Canned foods*, from Milton-Freewater, Oreg., and Walla Walla, Wash., to Bakersfield, Fresno, Modesto, Los Angeles, San Diego, San Jose, Stockton, Sacramento, San Francisco, Oakland and Alameda, Calif., Las Vegas and Reno, Nev., for 180 days. SUPPORTING SHIPPER: Rogers Walla Walla, Inc., P.O. Box 998, Walla Walla, Wash. 99362. SEND PROTESTS TO: District Supervisor W. J. Huetig, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Court House, 555 S. W. Yamhill, Portland, Oreg. 97204.

No. MC 138003 (Sub-No. 7 TA), filed February 19, 1974. Applicant: ROBERT F. KAZIMOUR, 1200 Norwood Drive, S.E., P.O. Box 2011, 52406, Cedar Rapids, Iowa 52403. Applicant's representative: Michael J. Myers, 309 Badgerow Building, Sioux City, Iowa 51101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Refrigerators, freezers, central air conditioning and heating units, appliances, and parts, materials and supplies used in the manufacture, repair, and distribution of such commodities* (1) from Amana, Iowa to points in Alabama, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, Oregon, Tennessee, Utah, and Washington; and (2) from Fayetteville, Tenn., to Amana, Iowa, and points in Arizona, California, Nevada, Oregon, Utah and Washington, for 180 days. SUPPORTING SHIPPER: Amana Refrigeration, Inc., Amana, Iowa 52203. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 138512 (Sub-No. 4 TA), filed February 15, 1974. Applicant: RONALD'S TRANSPORTATION SERVICES, INCORPORATED, doing business as WISCONSIN PROVISIONS EXPRESS, 3383 E. Layton Ave., Cudahy, Wis. 53110.

Applicant's representative: Allan J. Morrison (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cheese and cheese products, and equipment materials and supplies used in the manufacture and display of cheese and cheese products*, from Green Bay, Wis., to Detroit, Grand Rapids, Holland and Muskegon, Mich., for 180 days. RESTRICTION: Restricted against the transportation of commodities in bulk, and restricted to traffic originating at or destined to plants and facilities utilized by the L. D. Schreiber Cheese Co., Inc. SUPPORTING SHIPPER: L. D. Schreiber Cheese Co., Inc., P.O. Box 610, Green Bay, Wis. 54305. (Robert Buchberger, Traffic Manager). SEND PROTESTS TO: District Supervisor John E. Ryden, Bureau of Operations, Interstate Commerce Commission, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 139070 (Sub-No. 1 TA), filed February 13, 1974. Applicant: J & J ENTERPRISES, 230 West 1700 South, Salt Lake City, Utah 84115. Applicant's representative: Lon Rodney Kump, 720 Newhouse Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Kitchen cabinets*, from points in North Carolina, to points in Utah, Idaho, Montana and Wyoming, for 180 days. SUPPORTING SHIPPERS: Continental Kitchens, Inc., 230 West 1700 South, Salt Lake City, Utah 84115 (Nita K. Jackson, Secretary-Treasurer); Utah State Realty Corporation, 187 North 1st West, Logan, Utah (Robert D. Quayle, Secretary); Bridger Lumber Co., 3371 North Main, Logan, Utah (Robert Thatcher, Gen, Mgr. and Partner); Creative Kitchens, Inc., 3400 N. 36th St., #8, Boise, Idaho 83703 (Carl G. Smith, Pres.). SEND PROTESTS TO: District Supervisor Lyle D. Helfer, Bureau of Operations, Interstate Commerce Commission, 5239 Federal Building, 125 South State Street, Salt Lake City, Utah 84138.

No. MC 139463 TA (CORRECTION), filed January 30, 1974, published in the FEDERAL REGISTER issue of February 12, 1974, and republished in part as corrected this issue. Applicant: TABB TRUCKING CO., INC., Route 4, Box 79, Colquitt, Ga. 31737. Applicant's representative: W. Ferrell Tabb (Same address as above).

NOTE.—The purpose of this partial republication is to set forth the correct Docket No. 139463 TA, in lieu of MC 139643 TA shown in error in previous publication. The rest of the application remains the same.

No. MC 139483 (Sub-No. 1 TA), filed February 14, 1974. Applicant: ALLEN MITCHEK, P.O. Box 967, Rt. 1, Sterling, Colo. 80751. Applicant's representative: Charles J. Kimball, 2310 Colorado State Bank Building, Denver, Colo. 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Feed* from Sterling, Colo., to points in Wyoming, Colorado, Nebraska, and Kansas; and (2) *feed ingredients*, from points in Nebraska, North Dakota, South Dakota, Montana, Kansas, Iowa, and Colorado to Sterling, Colo., for 90 days. SUPPORTING SHIPPER: Farr Better Feeds, Division of W. R. Grace, P.O. Box 52, Lucerne, Colo. 80646. SEND PROTESTS TO: District Supervisor Roger L. Buchanan, Bureau of Operations, Interstate Commerce Commission, 1961 Stout Street, 2022 Federal Building, Denver, Colo. 80202.

No. MC 138512 (Sub-No. 3 TA), filed February 15, 1974. Applicant: ROLAND'S TRANSPORTATION SERVICES, INCORPORATED, doing business as WISCONSIN PROVISIONS EXPRESS, 3383 E. Layton Ave., Cudahy, Wis. 53110. Applicant's representative: Allan J. Morrison (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cheese and cheese products, and equipment, materials and supplies used in the manufacture and display of cheese and cheese products*, between Carthage, Mo., Logan, Utah; and Wisconsin, on the one hand, and, on the other, points in California, Idaho, Iowa, Illinois and Missouri for the account of L. D. Schreiber Cheese Co., Inc., for 180 days. RESTRICTION: Restricted against the transportation of commodities in bulk, and to traffic originating at or destined to plants and facilities utilized by the L. D. Schreiber Cheese Co., Inc., and further restricted against transportation of cheese and cheese products, from Green Bay, Wis., to points in California. SUPPORTING SHIPPER: L. D. Schreiber Cheese Co., Inc., 246 No. Main St., Green Bay, Wis. 54305 (Robert Buchberger, Traffic Manager). SEND PROTESTS TO: District Supervisor John E. Ryden, Bureau of Operations, Interstate Commerce Commission, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 139513 (Sub-No. 1 TA), filed February 13, 1974. Applicant: RITE-WAY TANK SALES, INC., 834 E. Tonto, Phoenix, Ariz. 85036. Applicant's representative: R. J. Duncan (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: *Scrap iron and boiler and pressure tanks and piping*, from Phoenix, Ariz., to the Greater Los Angeles, Calif., area and back to Phoenix, Ariz., for 180 days. SUPPORTING SHIPPER: Rite-Way Boiler Works, Inc., 834 E. Tonto, Phoenix, Ariz. 85036. SEND PROTESTS TO: Andrew V. Baylor, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 3427 Federal Bldg., 230 N. First Avenue, Phoenix, Ariz. 85025.

No. MC 139517 TA, filed February 14, 1974. Applicant: R. A. HARMON TRUCKING COMPANY, 279 Main Street, South Portland, Maine 04106. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail and chain grocery and food business houses, from South Portland, Maine to St. Albans, Burlington and Berlin, Vt., for 180 days. SUPPORTING SHIPPER: Hannaford Bros., Co., P.O. Box 1000, Portland, Maine 04104. SEND PROTESTS TO: Donald G. Weiler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 307, 76 Pearl Street, Portland, Maine 04112.

No. MC 139518 TA, filed February 13, 1974. Applicant: GEORGE E. PAGEL, Rt. 1, Box 29, Stratford, S. Dak. 57474. Applicant's representative: Raymond M. Schutz, 500 Capitol Bldg., Aberdeen, S. Dak. 57401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in bags and in bulk, from Hutchinson, Kans., to points in South Dakota, for 180 days. SUPPORTING SHIPPER: South Dakota Wheat Growers Association, 205 Van Slyke Building, Aberdeen, S. Dak. 57401, Larry Wheeting, Manager of Feed and Seed Division, SEND PROTESTS TO: J. L. Hammond, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 139519 TA, filed February 14, 1974. Applicant: R & B DISTRIBUTORS LTD., 8531 Addison Place, S.E., Calgary, Alberta, Canada. Applicant's representative: Joe Gerbase, 100 Transwestern Building, Billings, Mont. 59101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hardboard, prefinished paneling, fibreboard and particle board*, from points in Washington and Oregon, to ports of entry on the International Boundary line between the United States and Canada in Washington, Idaho, Montana and North Dakcta, for 180 days. SUPPORTING SHIPPER: J. Fyfe Smith Co., Ltd. 3640 7th St., S.E., Calgary, Alberta, Canada. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 222 U.S. Post Office Building, Billings, Mont. 59101.

By the Commission.

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

[FR Doc.74-5052 Filed 3-4-74;8:45 am]

[Notice No. 31]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

FEBRUARY 26, 1974.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provided that protests to the granting of an application must be filed

with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

No. MC 1855 (Sub-No. 19 TA), filed February 15, 1974. Applicant: SCHWENZER BROS., INC., P.O. Box 366, 767 St. George Avenue, Woodbridge, N.J. 07095. Applicant's representative: William J. Augello, 120 Main St., Huntington, N.Y. 11743. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Petroleum, petroleum products, and such commodities as are ordinarily used or distributed by wholesale or retail suppliers, marketers, or distributors of petroleum products*, in shipper-owned trailers, except in bulk, from Sewaren, N.J., to Richmond, Va., and (2) *empty shipper-owned trailers, empty drums and returned or damaged material on return*, to Newark and Sewaren, N.J., for 180 days. SUPPORTING SHIPPER: Shell Oil Company, P.O. Box 2099, Houston, Tex. 77001. SEND PROTESTS TO: District Supervisor Robert S. H. Vance, Bureau of Operations, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 51146 (Sub-No. 360 TA), filed February 15, 1974. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, 54306, 266 South Broadway, Green Bay, Wis. 54304. Applicant's representative: Neil DuJardin (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, restricted to traffic originating at American Furniture Co., Inc., Martinsville, Va., and Smyth County, Va., to points in Wisconsin, for 180 days. SUPPORTING SHIPPER: American Furniture Co., Inc., Hairston Street, Martinsville, Va. (Vance S. Pitzer, Traffic Manager). SEND PROTESTS TO: District Supervisor John E. Ryden, Bureau of Operations, Interstate Commerce Commission, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 56082 (Sub-No. 66 TA), filed February 15, 1974. Applicant: DAVIS & RANDALL, INC., 9812 Quincy Ave., Cleveland, Ohio 44106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Milwaukee, Wis., to points in Allegany, Cattaraugus, Chautauqua, Chemung, Genesee, Livingston, Monroe, Onondaga, Steuben, Wayne, and Wyoming Counties, N.Y., for 180 days. SUPPORTING SHIPPER: Miller Brewing Company, 4000 West State Street, Milwaukee, Wis. 53208. SEND PROTESTS TO: District Supervisor Ross Davis, Bureau of Operations, Interstate Commerce Commission, 1518 Walnut St., Philadelphia, Pa. 19102.

No. MC 80428 (Sub-No. 87 TA), filed February 15, 1974. Applicant: McBRIDE TRANSPORTATION, INC., P.O. Box 430, 289 West Main St., Goshen, N.Y. 10924. Applicant's representative: S. Michael Richards, 44 North Ave., Webster, N.Y. 14580. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid sugar, invert sugar and blends of liquid and/or invert sugar and corn syrups, and flavorings and flavoring syrups and corn syrups*, in bulk, in tank vehicles, from New York, N.Y., and Yonkers, N.Y., to points in Maine, New Hampshire, Rhode Island, Vermont, Massachusetts, and Connecticut, for 180 days. SUPPORTING SHIPPERS: CPC International, Inc., 1 Federal Street, Yonkers, N.Y. 10702; SuCrest Corporation, 120 Wall Street, New York, N.Y. 10005. SEND PROTESTS TO: Joseph M. Barnini, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 New Federal Building, Albany, N.Y. 12207.

No. MC 103993 (Sub-No. 796 TA), filed February 12, 1974. Applicant: MORGAN DRIVE-AWAY, INC., 2800 W. Lexington Ave., Elkhart, Ind. 46514. Applicant's representative: Paul D. Borghesani (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trucks*, in secondary movements, in truckaway service, from points in Elkhart County to points in the United States on and east of the western boundaries of North Dakota, Nebraska, Kansas, Oklahoma, and Texas, for 180 days. SUPPORTING SHIPPER: Utilimaster—Division of Holiday Rambler Corporation, Wakarusa, Ind. 46573. SEND PROTESTS TO: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 345 W. Wayne St., Room 204, Fort Wayne, Ind. 46802.

No. MC 103993 (Sub-No. 797 TA), filed February 12, 1974. Applicant: MORGAN DRIVE-AWAY, INC., 2800 W. Lexington Ave., Elkhart, Ind. 46514. Applicant's representative: Paul D. Borghesani (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings*, in sections on undercarriages, from points in Cabarrus County, N.C., to points in Georgia, South Carolina, Tennessee, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Skyline Corporation, Elkhart, Ind. 46514. SEND PROTESTS TO: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne St., Room 204, Fort Wayne, Ind. 46802.

No. MC 111401 (Sub-No. 408 TA), filed February 13, 1974. Applicant: GROENDYKE TRANSPORT, INC., Enid, Okla. 73701. Applicant's representative: V. R. Comstock, 2510 Rock Island Blvd., Enid, Okla. 73701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Activated carbon*, in bulk, in tank vehicles, from Marshall, Tex., to Boulder City, Nev., and Waterville Valley, N.H., for 180 days. SUPPORTING SHIPPER: ICI America, I. R. Hearn, Mgr., Traffic Research, Wilmington, Del. 19899. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 240, Old P.O. Bldg., 215 N.W. Third, Oklahoma City, Okla. 73102.

No. MC 120877 (Sub-No. 4 TA), filed February 11, 1974. Applicant: TIMM MOVING AND STORAGE COMPANY, Highway 2, 52 Bypass, Minot, N. Dak. 58701. Applicant's representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Adams, Benson, Billings, Bottineau, Bowman, McHenry, Burleigh, Divide, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Logan, Rollette, Sheridan, Sioux, Slope, Stark, Towner, Ward, Wells and Williams Counties, N. Dak., for 180 days. RESTRICTION: The operations authorized herein are subject to the following conditions: Said operations are restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized. Said operations are further restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating, and decontainerization of such traffic. SUPPORTING SHIPPERS: Karevan, Inc., P.O. Box 9240 Queen Anne Station, Seattle, Wash. 98109.; Towne International Forwarding, Inc., P.O. Box 16156, San Antonio, Tex. 78246.; DeWitt Freight Forwarding, 6060 North Figueroa Street, Los Angeles, Calif. 90042. SEND PROTESTS TO: J. H. Ambs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 123907 (Sub-No. 1 TA), filed February 13, 1974. Applicant: DAHLMAN TRUCK LINES, INC., P.O. Box N, Stevens Point, Wis. 54481. Applicant's representative: Michael J. Wyngaard, 329 W. Wilson St., Madison, Wis. 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Stevens Point, Biron and Wisconsin Rapids, Wis., to points in Illinois on and east of Illinois State Highway 26 and on and north of Interstate Highway 80, for 180 days. SUPPORTING SHIPPER: Consolidated Papers, Inc., 231 First Ave., North, Wisconsin Rapids, Wis. SEND PROTESTS TO: Barney L. Hardin, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 139 W. Wilson St., Room 202, Madison, Wis. 53703.

No. MC 124078 (Sub-No. 579 TA), filed February 14, 1974. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis. 53215. Applicant's representative: Richard H. Prevette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alumina hydrate*, in packages and in bulk, in tank vehicles, from points in Murray County, Ga., to points in Alabama, Florida, North Carolina, South Carolina and Tennessee, for 180 days. SUPPORTING SHIPPER: Solem Industries, Inc., 3550 Broad Street, Atlanta, Ga. (S. A. Grove, President). SEND PROTESTS TO: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 124711 (Sub-No. 25 TA), filed February 13, 1974. Applicant: BECKER AND SONS, INC., P.O. Box 1050, El Dorado, Kans. 67042. Applicant's representative: T. M. Brown, 600 Leininger Bldg., Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from the Mid-America Pipeline Co., terminal near Clay Center, Kans., to points in Nebraska, Iowa, and Missouri, for 180 days. SUPPORTING SHIPPER: Farmland Industries, Inc., P.O. Box 7305, Kansas City, Mo. 64116. SEND PROTESTS TO: M. E. Taylor, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 501 Petroleum Building Wichita, Kans. 67202.

No. MC 129068 (Sub-No. 22 TA), filed February 14, 1974. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 S. Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: Jack L. Griffin (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers*, designed to be drawn by passenger automobiles in initial movements; and (2) *buildings*, complete, knocked down on or in sections, when moving on wheeled undercarriages, in initial movements, from points in Delaware County, Okla., to points in Texas, Louisiana, Arkansas, Kansas, Missouri, Colorado, New Mexico, Arizona, Mississippi and Nebraska, for 180 days. SUPPORTING SHIPPER: Larry J. Lambeth, General Manager, New Style Homes, Inc., Box 587, Jay, Okla. 74346. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 240, Old P.O. Bldg., 215 N.W. Third, Oklahoma City, Okla. 73102.

No. MC 129222 (Sub-No. 2 TA) (CORRECTION), filed January 30, 1974, published in the FEDERAL REGISTER issue of February 12, 1974, and republished as corrected this issue. Applicant: MARVIN FORD, doing business as FORD TRUCK LINE, Tipton, Iowa 52772. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer and liquid fertilizer ingredients*, in bulk, from the storage facilities utilized by Twin-State Engineering & Chemical Company located in the Davenport, Iowa, Commercial Zone, to points in Illinois, for 180 days.

NOTE.—The purpose of this republication is to indicate that the origin facilities are located in the Davenport, Iowa, Commercial Zone.

SUPPORTING SHIPPER: Twin-State Engineering & Chemical Company, 3732 West River Drive, Davenport, Iowa 52802. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 129808 (Sub-No. 12 TA), filed February 13, 1974. Applicant: GRAND ISLAND CONTRACT CARRIER, INC., West U.S. Highway #30, P.O. Box F, Grand Island, Nebr. 68801. Applicant's representative: Patrick E. Quinn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies used in the manufacture and production of metal scaffolding towers, conveyors, pumps and parts and accessories thereof* (except commodities in bulk), from Chicago, Ill., Kansas City, Mo., Kansas City, Kans.; St. Louis, Mo., East St. Louis, Ill., Elyria, Ohio, Wausau, Wis., and Milwaukee, Wis., and points in their respective commercial zones to the plantsite of Morgen Manufacturing Co., at or near Yankton, S. Dak., for 180 days. RESTRICTION: The authority sought is restricted to a transportation service to be performed under a continuing contract or contracts with Morgen (Morgen) Manufacturing Company. SUPPORTING SHIPPER: Thomas J. Sparks, Morgen Manufacturing Co., 117½ West Third Street, Yankton, S. Dak. SEND PROTESTS TO: Max H. Johnston, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 320 Federal Building & Court House, Lincoln, Nebr. 68508.

No. MC 134182 (Sub-No. 20 TA), filed February 12, 1974. Applicant: MILK PRODUCERS MARKETING COMPANY, doing business as ALL-STAR TRANSPORTATION, Second and West Turnpike Road, P.O. Box 505, Lawrence, Kans. 66044. Applicant's representative: Lucy Kennard Bell, Suite 910 Fairfax Bldg., 101 West Eleventh Street, Kansas City, Mo. 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen batters*, from Tulsa, Okla., to Suffield and Hartford, Conn.; Harrington, Del.; Baltimore, Halethorpe and Landover, Md.; Boston, Milton, Southboro, South Boston and Watertown, Mass.; Elizabeth, Jersey City, Secaucus, Totowa and Woodbridge, N.J.; New York, N.Y.; and Belle Vernon, Erie, King of Prussia, Philadelphia, Pittsburgh, Reading and West Reading, Pa., for 180 days.

NOTE.—Applicant does not intend to tack the authority here applied for to another authority held by it, or to interline with other carriers.

SUPPORTING SHIPPER: Page Milk Company, P.O. Box 3047, Tulsa, Okla. 74101. SEND PROTESTS TO: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 234 Federal Building, Topeka, Kans. 66603.

No. MC 134300 (Sub-No. 12 TA), filed February 7, 1974. Applicant: PELHAM PRODUCE CARRIERS, INC., 933 E. Bloomington Freeway, Minneapolis, Minn. 55420. Applicant's representative: Paul J. Bozonie (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods and vegetables*, from Fairmont, Winnebago, Mankato, Worthington, and Albert Lea, Minn., to points in Alabama, Florida, Georgia, Illinois, Indiana, Kansas, Massachusetts, Michigan, Missouri, New Jersey, Ohio, Pennsylvania and Wisconsin, for 180 days. SUPPORTING SHIPPER: Stokely-Van Camp, Inc., P.O. Box 1113, Indianapolis, Ind. SEND PROTESTS TO: A. N. Spath, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building & U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 136647 (Sub 15 TA), January 28, 1974. Applicant: GREEN MOUNTAIN CARRIERS, INC., P.O. Box 1319, Albany, N.Y. 12201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pharmaceuticals and materials*, used in the manufacture thereof, except in bulk, for the account of Ayerst Laboratories, in vehicles with mechanical temperature controlled units, (a) from Mays Landing, N.J., Deepwater, N.J., Millville, N.J., Bridgeton, N.J., and Lakewood, N.J., Keokuk, Iowa, Rothschild, Wis., Franklin, Pa., Newtown, Pa., Wyandotte, Mich., and Cleveland, Ohio to Rouses Point, N.Y.; (b) from Rouses Point, N.Y., to Baltimore, Md., Clifton, N.J., and Little Falls, N.J.; (c) from Clifton, N.J., to Cleveland, Ohio, Niles, Ill., and Chamblee, Ga.; (d) from Baltimore, Md., to Little Falls, N.J., Chamblee, Ga., Cleveland, Ohio and Niles, Ill., and Rouses Point, N.Y.; (e) from Chicago, Ill., to Cleveland, Ohio, Chamblee, Ga., Little Falls, N.J., and Rouses Point, N.Y.; and (f) between Rouses Point, N.Y., and Detroit, Mich., for 180 days. SUPPORTING SHIPPER: Ayerst Laboratories, Div. of American Home Products Corp., Rouses Point, N.Y. 12979. SEND PROTESTS TO: Joseph Barnini, District Supervisor, Bureau of Operations, Interstate Commerce Commission 513 New Federal Building, Albany, N.Y. 12207.

No. MC 139455 TA (CORRECTION), filed January 25, 1974, published in the FEDERAL REGISTER issue of February 11, 1974, and republished as corrected this

issue. Applicant: RALPH OWNBEY, doing business as TWIN STATE COACH LINES, P.O. Box 826, Bristol, Va. 24201. Applicant's representative: Cecil D. Quillen, Gate City, Va. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage, express and newspaper in the same vehicle with passengers*, between Abingdon, Va., and Boone, N.C., serving all intermediate points; from Abingdon, Va., over U.S. Highway 58 to Damascus, Va., thence over Virginia Highway 91 to the Virginia-Tennessee State Line, thence over Tennessee Highway 91 to Mountain City, Tenn., thence over U.S. Highway 421 to the junction of North Carolina County Road 1233, thence via North Carolina County Road 1233 through Zionville and Sugar Grove, N.C., to the junction of U.S. Highway 321, thence over U.S. Highway 321 to the junction of U.S. Highway 421 at Vilas, N.C., thence over U.S. Highway 421 to Boone, N.C., and return over the same route, for 180 days.

NOTE.—The purpose of this republication is to redescribe the territory description.

SUPPORTED BY: There are 8 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named. SEND PROTESTS TO: Danny R. Beeler, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 215 Campbell Avenue, SW., Roanoke, Va. 24011.

MOTOR CARRIERS OF PASSENGERS

No. MC 139242 (Sub-No. 4 TA), filed February 12, 1974. Applicant: D & T LIMOUSINE SERVICE, INC., 11941 Abbey Road, North Royalton, Ohio 44133. Applicant's representative: James M. Burtch, 100 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers* who are employees of the Penn Central Transportation Company in Special operations, between points in Mahoning and Trumbull Counties, Ohio, on the one hand, and, on the other, points in Lawrence, Erie and Mercer Counties, Pa., for 180 days. SUPPORTING SHIPPER: The Penn Central Transportation Company, 807 Standbaugh Building, 44 Central Square, Youngstown, Ohio 44503. SEND PROTESTS TO: Franklin D. Bail, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 181 Federal Office Bldg., 1240 East Ninth Street, Cleveland, Ohio 44199.

By the Commission.

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

[FR Doc.74-5046 Filed 3-4-74;8:45 am]

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TUESDAY, MARCH 5, 1974
WASHINGTON, D.C.

Volume 39 ■ Number 44

PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN GEORGIA AND CERTAIN OTHER MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and Orders

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1007, 1071, 1073, 1090, 1094, 1096, 1097, 1098, 1102, 1108]

[Docket No. AO-366-A8, etc.]

MILK IN GEORGIA AND CERTAIN OTHER MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and Orders

7 CFR part	Marketing area	Docket No.
	GROUP I	
1007	Georgia	AO-366-A8.
1071	Neosho Valley	AO-227-A26.
1073	Wichita, Kans	AO-173-A26.
1090	Chattanooga, Tenn	AO-266-A15.
1094	New Orleans, La	AO-103-A33.
1096	Northern Louisiana	AO-257-A20.
1097	Memphis, Tenn	AO-219-A25.
1098	Nashville, Tenn	AO-184-A31.
1102	Fort Smith, Ark	AO-237-A20.
1108	Central Arkansas	AO-243-A22.

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in 33 marketing areas. In addition to those listed above, such marketing areas include the following:

GROUP II

Red River Valley	Central West Texas
Oklahoma Metropolitan	Austin-Waco, Texas
Lubbock-Plainview, Texas	Corpus Christi, Texas
North Texas	Central Arizona
San Antonio, Texas	Texas Panhandle
	Rio Grande Valley

GROUP III

Minnesota-North Dakota	Minneapolis-St. Paul, Minn.
Southeastern Minnesota-Northern Iowa	Duluth-Superior
Quad Cities-Dubuque	Cedar Rapids-Iowa City
Greater Kansas City	Eastern South Dakota
Nebraska-Western Iowa	North Central Iowa
	Des Moines, Iowa

The hearing notice also included the Mississippi order (Part 1103), which was later included in the recommended decision with the "Group I" orders. The Mississippi order was terminated at midnight, April 30, 1973 (38 FR 8748), at which time it ceased to be a part of this proceeding.

The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Atlanta, Ga., on October 18–20, 1971, at Dallas, Texas, on November 9 and 10, 1971, and at Bloomington, Minn., on November 16–18, 1971, pursuant to notice thereof which was issued October 4, 1971 (36 FR 19604). The hearing was a single proceeding with respect to all 33 marketing areas listed in the notice of hearing.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on August 28, 1972, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

Because of its length, and to facilitate its distribution to interested parties, the recommended decision was published in the FEDERAL REGISTER in the form of three separate documents. Each document contained the proposed amendments for the group of 11 orders listed at the beginning of such document and, for the convenience of interested parties, an identical set of findings and conclusions. These documents were published on the following dates: Group I orders—September 16, 1972 (37 FR 18984); Group II orders—September 19, 1972 (37 FR 19210); and Group III orders—September 20, 1972 (37 FR 19482).

On the basis of exceptions to the recommended decision, a number of changes in the findings and conclusions of that decision concerning the classification and pricing of milk in certain uses were determined to be appropriate. Because such changes were substantive, a revised recommended decison was issued with an opportunity to submit exceptions thereto. Such decision was filed with the Hearing Clerk by the Administrator on August 27, 1973.

The publication procedure used for the August 28, 1972, recommended decision was used also for the revised recommended decision. The three documents containing the revised recommended decision were published on the following dates: Group I orders—September 11, 1973 (38 FR 25024); Group II orders—September 12, 1973 (38 FR 25282); and Group III orders—September 13, 1973 (38 FR 25522).

The same publication procedure is again being used in the case of this decision. The three documents constitute, however, a single decision under this proceeding.

The material issues, findings and conclusions, rulings, and general findings of the August 27, 1973, revised recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading *"General setting of the hearing."*, paragraph 1 is changed.

2. Under the heading "1. *Application of a uniform milk classificaton plan in the 32 markets.*", paragraph 1 is changed.

3. Under the heading "2. *Revision of the present Class I classification.*", paragraph 27 is changed.

4. Under the heading "3. *Classification and pricing of milk not needed for Class I use.*":

a. Paragraphs 1, 3, 5 and 7 are changed;

b. Under the subheading *"Class III."*, paragraphs 9 and 21 are changed, paragraph 7 is deleted and two new paragraphs are substituted therefor, and paragraphs 13–17 are deleted and nine new paragraphs are substituted therefor; and

c. Under the subheading *"Class II."*, paragraphs 10 and 11 are changed and two new paragraphs are added after paragraph 23.

5. Under the subheading "4. (a) *Other source milk definition.*", a new paragraph is added after paragraph 8.

6. Under the subheading "4. (c) *Classification of milk transferred or diverted to other plants.*", a new paragraph is added after paragraph 8.

7. Under the subheading "4. (e) *Classification of shrinkage, milk dumped and milk disposed of for animal feed.*", paragraph 5 is deleted and two new paragraphs are substituted therefor, and paragraph 9 is changed.

8. Under the subheading "4.(f) *Allocation of receipts to utilization.*", a new paragraph is added at the end thereof.

9. Under the heading "5. *Changing the butterfat differentials.*", paragraph 6 is changed and paragraphs 16–18 are deleted and five new paragraphs are substituted therefor.

10. Under the heading "6. *Advance announcement of prices for surplus milk.*", paragraphs 3 and 4 are changed and a new paragraph is added after paragraph 3.

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

1. Application of a uniform milk classification plan in the 32 markets;

2. Revision of the present Class I classification;

3. Classification and pricing of milk not needed for Class I use;

4. Miscellaneous classification and accounting changes:

(a) Other source milk definition;

(b) Accounting for nonfat milk solids added to milk and milk products;

(c) Classification of milk transferred or diverted to other plants;

(d) Classification of end-of-month inventory;

(e) Classification of shrinkage, milk dumped, and milk disposed of for animal feed;

(f) Allocation of receipts to utilization;

(g) Obligations relative to other source milk; and

(h) Reports;

5. Changing the butterfat differentials;

6. Advance announcement of prices for surplus milk;

7. Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders; and

8. A uniform "equivalent price" provision.

General setting of the hearing. This hearing is the second of two regional hearings on the proposed use of a uniform plan for classifying milk for pricing purposes under Federal milk orders. The first hearing, which was held at Clayton, Mo., on July 14–22, 1970, was for seven midwestern markets. A recommended decision based on the seven-market hearing was issued on June 4, 1971, and a revised recommended decision for the seven markets was issued on August 27, 1973. A final decision for the seven markets is being issued concurrently with this decision.

Prior to the first hearing, the National Milk Producers Federation, an organiza-

tion of cooperative associations of dairy farmers and federations of such cooperative associations, undertook the development of a uniform milk classification plan for use under milk orders. Guidelines were formulated for use by member organizations in the drafting of specific classification proposals for consideration at public hearings.

Using these guidelines as a basis for their proposals, several cooperative associations petitioned the Department for a hearing on proposals relating to the classification and pricing of milk in seven midwestern markets. After the hearing and issuance of a recommended decision, these cooperatives, along with other producer groups, requested a similar hearing for an additional 33 markets. The order for one of these markets (Mississippi) has since been terminated, and further reference to this group of markets will be in terms of the remaining 32 markets. The two hearings together involve a group of 39 markets located throughout the central part of the United States.

As in the case of the seven markets, the main thrust of the cooperatives' proposals for the 32 markets was the proposed use of an identical classification plan under each of the orders. As proposed, the new plan would have three classes of utilization rather than the two classes now provided in most of these orders. The present Class II classification would be redesignated as Class III and a new Class II classification, which would include various milk products now in Class I and Class II, would be established.

Corollary pricing proposals by the cooperatives would provide that the new Class II price under all but the Central Arizona order be the Minnesota-Wisconsin price plus an amount ranging from 10 to 20 cents, depending on the order involved. Prices would increase generally from north to south. For the Central Arizona order, which now has three classes, local producers proposed retention of the Class II price now in effect (a butter-nonfat dry milk formula price plus 25 cents).

Producers took diverse positions concerning the appropriate Class III price for the 32 markets. A number of cooperatives operating largely in the Upper Midwest proposed that the Class III price for markets in that area be based on a formula reflecting market prices for butter, nonfat dry milk and cheddar cheese. A regional cooperative operating in the southeastern United States proposed that the Class III price in four of its local markets be based on the Minnesota-Wisconsin price, with reductions of 5 to 15 cents to be applicable in three of the markets. Another regional cooperative proposed for 15 southwestern markets that the Class III price under each order for the principal surplus products be the lower of the present surplus price now in effect or the Minnesota-Wisconsin price. In the case of still three other markets, local producer groups asked that their present surplus prices (all based solely or in part on butter-nonfat dry milk formulas) be retained.

Cooperatives also proposed that a single butterfat differential apply to all prices under each order. This differential, which would be identical among the 32 orders, would be based on the Chicago butter price times a factor of 0.115.

A uniform classification plan for the 32 orders was advocated also by the Milk Industry Foundation and the International Association of Ice Cream Manufacturers, national trade associations of fluid milk and ice cream processors whose members operate in each of the 32 subject markets. Without taking a position on whether there should be two or three use classes, these groups offered alternative proposals on the classification of various milk products under either type of classification plan. Individual handlers also made proposals concerning specific aspects of the classification and pricing scheme.

A more detailed description of the proposals by producers and handlers is set forth in the discussion of the material issues.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Application of a uniform milk classification plan in the 32 markets.* Each of the 32 orders under consideration should provide for the same basic classification plan. As adopted herein, each order would provide for three classes of utilization, with the milk uses included in each class being the same for each order. Likewise, the same basic procedure would be used under each order for classifying milk transferred or diverted from pool plants to other plants, and for allocating a handler's receipts to his utilization to determine the classification of his producer milk. Each order would use the same Class II and Class III price formulas. Also, a single butterfat differential would be used under all orders.

The statutory authority for Federal milk orders specifies that an order shall classify milk purchased by handlers from producers or associations of producers in accordance with the form in which or the purpose for which the milk is used. When each of the 32 subject orders was promulgated, the classification plan adopted reflected the marketing conditions and practices prevailing at the time in the local area concerned. Because local conditions and practices were seldom alike from market to market, the classification plans often varied from one order to another. As long as the markets remained relatively isolated from each other, marketing problems resulting from the differences in the various classification plans were minimal.

In recent years the "local" character of these markets has been disappearing. Intermarket movements of milk have become commonplace as handlers and producers alike seek to find additional outlets for milk. Such milk movements have been encouraged or facilitated by such developments as inspection reciprocity between health jurisdictions, improved highway networks and transportation equipment, conversion from can handling to farm bulk tanks, emergence of regional cooperatives, new processing and packaging techniques, and concentration of processing and packaging operations in large, specialized facilities.

Numerous cases were cited by handlers of products being distributed throughout multi-state regions from centralized processing facilities. Products frequently mentioned include frozen desserts, yogurt, various cream products and cottage cheese. Widespread distribution patterns prevail particularly for the processors of specialty products such as yogurt and sterilized cream items. Although the volume of these specialty products is relatively limited, it is probably the distribution of these products more than any others that has precipitated such general interest within the industry for uniform classification provisions among Federal orders.

Although the 32 orders have been revised from time to time to reflect the closer intermarket relationships, the classification plans of these orders continue to differ. The differences relate not only to the products included in each respective class, but also to the attendant class prices and butterfat differentials, the rules for classifying milk moved from one plant to another, the procedure for allocating a handler's receipts to his utilization, the method of classifying end-of-month inventories, and the manner of classifying shrinkage.

Such differences in the classification and pricing of milk are often disruptive to the competitive relationships of handlers and to the marketing of producer milk. Many of these differences, though, have little, if any, foundation under today's marketing conditions. It is thus concluded that a generally uniform classification and pricing plan should be incorporated in each of the 32 orders under consideration.

In conjunction with the development of uniform provisions pertaining to the classification and pricing of milk, it is desirable to also develop a single format of order provisions for use in each of these orders. All orders contain essentially the same categories of provisions, such as those relating to the definition of a pool plant or other source milk, those setting forth the class price formulas, or those describing how the uniform price shall be computed. At present, however, many of the orders are structured in such a way that provisions serving essentially the same purpose under all orders do not appear in each order in the same place or under the same section title.

Coordination of the orders in this respect will be helpful to those in the industry who must work with several orders, a situation that is becoming increasingly common as individual cooperatives and handlers continue to expand their marketing activities into more and more regulated markets. Moreover, the opportunity to effect changes in a relatively large number of orders at the same time makes the adoption of a uniform order format a particularly desirable

step at this juncture of the order program.

Each of the orders included in this document is set forth in its entirety at the end of the document. Each order reflects the revised order format as well as the classification and pricing amendments adopted herein. In adapting each order to the new format, no substantive changes have been made in those provisions not under consideration at the hearing. Since the classification and pricing amendments may be less discernable to the reader with the reprinting of the complete order, the sections in each order that encompass the basic changes in classification and pricing are listed below:

Sections 12–16, 30, 40–44, 50, 52–54, 60, 62, 74–76, and 85.

Some of the amendments adopted herein would change certain procedures under the orders that are carried out after the end of the month to which they apply. These include the submission of reports, the classification of milk, and the computation and announcement of certain class prices, butterfat differentials, and producer prices. It is intended, however, that the amendments apply only to that milk handled after the effective date of the changes. Such amendments are not intended to affect the completion of previously existing procedures with respect to milk handled prior to the effectuation of the amendments.

2. *Revision of the present Class I classification.* With certain exceptions noted below, Class I milk under each of the 32 subject orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, Class I milk should include all skim milk and butterfat disposed of in the form of any other fluid or frozen milk product (if not specifically designated as a Class II or Class III use) that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

As a convenience in drafting order provisions, each product designated herein as a Class I product would be defined in the 32 orders as a "fluid milk product."[1]

Class I milk should include also any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

Except for sterilized products, most of the products listed above for inclusion in Class I are now included in the Class I classification under each of the 32 orders. Only in the case of milk shake mixes might there be a higher classification under the adopted amendments than at present. Under some orders, such mixes are now included in the lowest class. This higher classification would be limited, however, to only those milk shake mixes containing less than 20 percent total solids.

The adopted Class I classification would not include eggnog, yogurt, cream or mixtures of cream and milk or skim milk containing 9 percent or more butterfat (such as half and half). A Class I classification now applies to eggnog in 9 of the 32 markets, and to yogurt in 18 of the markets. In all markets, sweet cream (except that in frozen, concentrated, aerated or sterilized form) and half and half are now Class I products. The classification of sour cream and sour cream mixtures, on the other hand, varies considerably among the orders.

Six of the 32 orders now include ending inventories of packaged fluid milk products in Class I. As discussed later, such inventories would not be classified as Class I milk under the revised orders.

The proposals concerning the Class I classification of milk related primarily to the use under all orders of a uniform fluid milk product definition based on product composition, and to the appropriate classification of milkshake and ice milk mixes, sterilized fluid milk products, cream, eggnog, yogurt, fluid milk products to which nonfat milk solids have been added and ending inventory. The classification of cream, eggnog, and yogurt is discussed under Issue 3 which deals with the classification and pricing of milk not needed for Class I use. The method of accounting for nonfat milk solids added to fluid milk products is discussed under Issue 4(b). The classification of ending inventory is dealt with under Issue 4(d). The remaining Class I issues are dealt with at this point.

Milkshake and ice milk mixes containing less than 20 percent total solids should be included in Class I. Such mixes containing a greater percentage of solids should be Class II products.

Cooperatives proposed that milkshake mixes that "are not further processed in a commercial establishment" be in Class I. They proposed that all other milkshake mixes be in Class II. The national organizations of fluid milk and ice cream processors, on the other hand, asked that all milkshake mixes be included in the lowest classification.

Milkshake and ice milk mixes are being marketed generally through two channels. Limited quantities of such mixes are processed for home consumption, with such mixes being distributed to consumers through food stores and on home delivery routes. The major outlet for milkshake and ice milk mixes, though, is the so-called "soft-serve" trade. Mixes processed by regulated handlers for this use are sold to commercial establishments where the product is run through a special freezer and dispensed to the public in a semisoft form.

Milkshake and ice milk mixes are basically similar in composition and purpose to what might be considered as traditional frozen desserts, such as ice cream. Although such shake mixes are intended to be consumed in a semisoft form, or even in a very thick fluid form, they are being marketed for essentially the same use as the traditional frozen desserts. This is the case whether such mixes are sold through the "soft-serve" trade or for home use. With minor exception, as noted below, milk used in milkshake and ice milk mixes thus should be classified in the same class as milk used in the traditional frozen desserts. As discussed later in this decision, the classification plan adopted herein includes frozen desserts in Class II.

It is possible that a product very similar in composition and form to chocolate milk could be marketed under the label of a milkshake mix for the purpose of having a lower classification apply to the product. Since such a product actually would have the same general form and purpose as other fluid milk products now classified as Class I under these orders, it should be included in the Class I classification. It is necessary, though, to provide some means of distinguishing between such a product and the general category of milkshake mixes that are being sold in competition with frozen desserts. For this purpose, the total solids content of the product should be used.

A standard of 20 percent or more total solids should encompass those milkshake and ice milk mixes intended for use as a type of frozen dessert. Mixes with less solids are similar in composition to chocolate milk and other flavored fluid milk products and should be a Class I product.

As proposed by cooperatives and the national organizations of fluid milk and ice cream processors, no exception to the Class I classification of milk should be made for fluid milk products in sterilized form. The sterilization of fluid milk products does not change the form or pur-

[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.

pose of such products. As in the case of the unsterilized fluid milk products which they resemble, such sterilized products are disposed of in fluid form for consumption as a beverage. They are generally intended for use in place of their unsterilized counterparts and are thus competing for the same customers.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form are being marketed for the same beverage use. Classifying all such products in Class I will assure that the returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for beverage use.

With the removal of any exception to the Class I classification of milk because of sterilization, specific reference must be made in the "fluid milk product" definition to the exclusion of certain products that otherwise could be construed to fall within such definition. Such products are evaporated or condensed milk or skim milk, formulas in hermetically sealed glass or all-metal containers that are especially prepared for infant feeding or dietary use, and products (such as flavored drinks in "pop" bottles) containing by weight less than 6.5 percent nonfat milk solids. These products, which are being sold in sterilized form, are now excluded from the Class I classification and, as proposed by cooperatives and handlers, such exclusion should be continued, notwithstanding the fact that they are sold to the public in fluid form. Evaporated milk and condensed milk sold for home use are intended primarily for cooking purposes. They are not consumed normally as a beverage. Infant and dietary formulas, which are being sold in hermetically sealed glass or all-metal containers, are specialized food products prepared for a limited use. Such formulas do not compete with other milk beverages consumed by the general public. Similarly, fluid products containing only a minimal amount of nonfat milk solids are not considered as being in the competitive sphere of the traditional milk beverages.

Fluid milk products should not be defined only on the basis of product composition, as was proposed by cooperatives. Contending that the present fluid milk product definition in each order does not clearly identify those products that are intended to be classified as Class I products, cooperatives proposed that a fluid milk product be defined solely in terms of moisture and milk solids content of the product. As proposed by producers, a "fluid milk product" would be any product containing at least 6.5 percent but less than 27 percent nonfat milk solids, less than 9 percent butterfat, and more than 20 percent moisture, all computed on the basis of weight.

In support of their proposal, proponents indicated that such a definition would result in a more uniform application among the 32 orders of the classification provisions. They contended that the listing of products under the current definitions does not accommodate the proper classification of new products or variations of the listed products when they are introduced on the market. Proponents pointed out that as market administrators have had to make order interpretations in response to this situation variations in interpretation and classification have resulted among the markets. Adoption of the proposed definition, it was contended, would eliminate such problems. Any product meeting the specified composition limits for a fluid milk product would be a fluid milk product regardless of the name under which the product might be marketed.

Proponents recognized, however, that their proposed fluid milk product definition would include some products not intended by them to be in Class I, and, at the same time, would exclude certain products that they wanted in this classification. To overcome this problem, proponents stated that certain products should be listed by name, either as inclusions or exclusions, to assure that the fluid milk product definition would include those products, and only those products, warranting a Class I classification.

Handlers took the position that the fluid milk product definition should continue to list by name those products intended to be included in Class I. They believe that this procedure would result in less confusion within the industry concerning the application of this definition. Also, handlers were concerned that defining a fluid milk product on the basis of product composition would deter the development and marketing of new products. They contended that the proposed composition standards could embrace a new product that was intended by the processor to be marketed in direct competition with products that would be included in Class II or Class III rather than in competition with Class I products.

The primary concern with any fluid milk product definition is that it clearly define the products or types of products that are intended to be included in the definition. The fluid milk product definition adopted herein, which incorporates both the listing of specified products and the use of composition percentages, should meet this requirement. Incorporation of this definition in each of the 32 orders will provide a uniform basis for identifying those products that are to be defined as "fluid milk products."

For simplicity, the fluid milk product definition should continue to list the generic names of those products commonly sold for consumption as beverages. The products listed in the adopted definition encompass most of the forms in which milk for fluid uses is sold. Anyone referring to this fluid milk product definition may easily ascertain in the case of most milk products whether or not a particular product is included in the definition.

A listing of products alone in the fluid milk product definition may not clearly indicate the classification of new milk products developed for fluid consumption. With certain limited exceptions noted, the fluid milk product definition is intended to include all milk products that are distributed for use as beverages. Although a new milk beverage introduced on the market might not be encompassed within the list of named products, it should be treated as a fluid milk product, nevertheless, if its composition is similar to that of the listed products. This will be the result of the standards of product composition for fluid milk products herein adopted.

As indicated, the adopted composition standards would embrace any fluid or frozen milk product not specified as a Class II or Class III product that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids, including both milk solids and non-milk 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. As set forth in the "filled milk" decision applicable to most of the 32 orders, sodium caseinate in any product is treated under the orders as a nonmilk ingredient.[3] There is no basis for changing this procedure.

The use of composition standards as a means of defining fluid milk products should not deter the development of new milk products, as handlers contended. Should the Class I classification of a new product appear to be incongruous with the intended use of the product, the hearing process remains as an avenue through which a different classification may be considered. The use of composition standards should result, however, in a more uniform classification among orders of new products developed for fluid consumption.

3. *Classification and pricing of milk not needed for Class I use.* Two use classes, Class II and Class III, should be provided in each of the 32 orders for skim milk and butterfat utilized for other than Class I purposes. The Class II price should be the basic formula price (Minnesota-Wisconsin manufacturing milk price) for the month plus 10 cents. The price under each of the orders for Class III milk should be the basic formula price for the month.

Class II milk should include skim milk and butterfat disposed of in the form of eggnog, yogurt or a "fluid cream product", i.e., cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients. Any product containing 6 percent or more nonmilk fat (or oil) that resembles any of these products likewise should be in this class. Also, eggnog, yogurt and fluid cream products that are in inventory at the end of the month in packaged form should be in Class II.

Included also in this classification should be skim milk and butterfat used to produce cottage cheese, low fat cottage cheese, dry curd cottage cheese milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, any concentrated milk product in bulk fluid form (unless used in a Class III product), 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, any concentrated milk product in bulk fluid form that is used to produce a Class III product, evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any product not otherwise specified as a Class I, Class II or Class III product.

Other Class III uses should include bulk and packaged fluid milk products and bulk fluid cream products in inventory at the end of the month, and that portion of modified (by the addition of nonfat milk solids) fluid milk products not included in Class I. Class III should include any fluid milk product or Class II product accounted for on a "disposed of" basis that is used for animal feed, or is dumped if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition. Also, shrinkage within certain limits should be classified as Class III milk.

As described later, the classification and pricing adopted herein for milk not needed for Class I use differs in some respects from that set forth in the August 28, 1972, recommended decision and the August 27, 1973, revised recommended decision.

The present classification of milk used in the adopted Class II and Class III classifications is quite varied among the 32 orders. Seven of the orders provide for three use classes while 25 have two classes of utilization. Under four of the three-class orders cottage cheese is classified separately from all other uses. One order classifies cottage cheese and sales of milk to commercial food establishments in an intermediate class. Two orders have a separate use class for milk used in cheddar cheese. Substantial variation exists among the 32 orders in the classification of skim milk and butterfat in eggnog, yogurt, sour cream, milkshake mixes, and milk disposed of to commercial food establishments. The treatment of milk dumped, and milk in inventory at the end of the month, also differs under the several orders.

There is now a variety of price formulas under the 32 orders for milk in other than Class I uses. Seventeen orders use the Minnesota-Wisconsin manufacturing milk price. Three orders use a combination of the Minnesota-Wisconsin price and a butter-nonfat dry milk formula price. Four orders use a combination of a butter-nonfat dry milk formula price and a cheddar cheese formula price. Six orders use a butter-nonfat dry milk formula price, with four of these employing a seasonal adjustment. Two orders use the U.S. manufacturing milk price with a seasonal adjustment for milk used to produce butter, nonfat dry milk and cheddar cheese. This variety of price formulas can result in as many as eleven different prices for milk put to similar uses. Also, four additional prices can result under the five orders that have an intermediate classification and price for milk used to produce cottage cheese.

Cooperatives proposed that each of the 32 orders provide for an intermediate classification (Class II) for skim milk and butterfat disposed of as cream, now a Class I use, and that used to produce several other products now in the lowest-priced class under most of the orders. The proposed Class II uses would include cottage cheese, frozen desserts, milkshake mixes for further processing in commercial establishments, eggnog, yogurt, evaporated or condensed milk or skim milk, dietary and infant formulas, custards, puddings, pancake mixes, any product with 6 percent or more nonmilk fat (or oil), and fluid milk products disposed of to commercial food processors. In addition, their new Class II also would include cream, mixtures of cream and milk or skim milk containing 9 percent or more butterfat, cream in plastic, frozen, aerated or sterilized form, sour cream, sour mixtures, and anhydrous milkfat.

Under the cooperatives' proposal, the Class II price in 31 markets would be the Minnesota-Wisconsin price plus 10 to 20 cents (increasing generally from north to south). Eleven markets in the States of Minnesota, Iowa, North Dakota, South Dakota, and Tennessee would have a price differential of plus 10 cents. The remainder of the 31 markets would have plus 15 cents, except for a plus 20 cents in the Corpus Christi and Rio Grande Valley markets. A cooperative in the Central Arizona market proposed that the present Class II price, which is 25 cents over the Class III price, be retained in that market.

The Class III uses proposed by the cooperatives would include dried products, cheese (except cottage cheese), butter, condensed whey and buttermilk for animal feed, dumpage, ending inventory,

[3] Official notice is taken of the Assistant Secretary's decision issued on Oct. 13, 1969 (34 FR 16881), with respect to the Memphis, Tenn., and certain other marketing areas.

shrinkage, and the non-Class I portion of modified fluid milk products.

The cooperatives' Class III pricing proposals varied by regions. A number of cooperatives operating primarily in the Upper Midwest proposed the adoption of a weighted butter-nonfat dry milk (55 percent) and cheese (45 percent) formula using "the product yield factors and make allowances used by the Department in its CCC Price Support Program." While suggesting that such a pricing formula would be appropriate for all 32 markets, they particularly urged its adoption for 11 upper midwestern markets. For four southern markets, the principal cooperative in such markets proposed the use of the Minnesota-Wisconsin price, but with minus adjustments of 5 cents for Chattanooga, 10 cents for New Orleans, and 15 cents for Georgia. For 15 markets in the Southwest, the principal cooperative there proposed that the Class III price be the higher of the Minnesota-Wisconsin price or the current price for the lowest utilization in the respective order. Under its proposal, milk used in butter, nonfat dry milk and cheddar cheese would be priced, however, at the lower of the Minnesota-Wisconsin price or the current price for the lowest utilization in the respective order. The principal cooperative in the Central Arizona market proposed retention of the Class III price now applicable in that market, which is based on a butter-nonfat dry milk formula.

In support of their proposed Class II and Class III use categories, the several cooperatives contended that there are significant differences in the competitive position of, and demand for, milk so used. They stated that handlers demand quality milk on a regular basis for the proposed Class II products, and that in the various markets alternative supplies of milk for such uses generally cannot be obtained for less than the Class II prices they propose for producer milk. Moreover, they claimed that products in such Class II uses should bear, along with fluid milk products, part of the cost necessary to attract an adequate market supply. With respect to the Class III classification, proponents stated that their proposed Class III products are the residual uses of milk associated with fluid markets. Consequently, the local production of such products is related to the amount of reserve or excess milk in the market. Such products, they claimed, can be stored for long periods and do not need to be made on a regular basis.

Proponent cooperatives pointed out that the present Class I classification of cream and cream mixtures has placed these products in a poor competitive position in the marketplace relative to nondairy substitutes. By shifting these products to a lower-priced class, proponents hope the industry will be better able to maintain its present small share of the cream and dessert topping market and perhaps recapture some of the market that it has lost.

In support of their various Class III pricing proposals, the cooperatives urged basically that such prices reflect the net value that can be obtained by cooperatives handling reserve supplies. They claimed that such value should take into consideration (1) product values of butter, nonfat dry milk, and cheese; (2) the cost of moving milk to available outlets; and (3) the burden of "balancing" the fluid milk supply in each market.

With respect to certain southern markets, it was contended that the net value that can be obtained for reserve milk supplies tends to differ from market to market depending upon surplus disposal conditions that prevail in each market. The principal variable factor mentioned was the cost incurred in transporting reserve supplies to available processing plants. For example, there are no plants processing hard cheese, butter, or nonfat dry milk in Georgia. Consequently, the principal cooperative in the area transports much of the reserve milk supply associated with the Georgia market to manufacturing plants located in Tennessee. The amounts so transported have ranged from one to 11 million pounds per month. The cooperative stated that for the 12 months ending with August 1971 it netted an average of 37.6 cents per hundredweight less than the Georgia order Class II price on such shipments because of the cost of hauling the milk.

Extra transportation costs are incurred also by the cooperative with respect to its disposition of reserve milk supplies in the New Orleans market. In the Nashville market, on the other hand, the same cooperative realized an average of 9.7 cents over the Nashville Class II price for the milk it moved to nonpool plants for manufacturing use during the 12 months ending with August 1971. For the Chattanooga market, the cooperative realized slightly less than the Class II price for milk moved to nonpool plants.

Another condition which the cooperative contended has influenced the returns it is able to realize on reserve milk supplies is that the quantity of such milk to be processed varies both seasonally and on certain days of the week. During the month of September, the reserve milk supply handled by the cooperative is at its lowest level. In September 1970, for example, the cooperative processed less than 500,000 pounds of milk at each of its major butter-nonfat dry milk processing plants (Lewisburg, Tenn., and Franklinton, La.). The following April, it processed 23.9 and 5.8 million pounds of milk, respectively, at such plants.

Reserve milk supplies increase on Sundays compared to other days because bottling plants in the markets served by the cooperative usually process milk only 5 or, at the most, 6 days a week. The needs of bottling plants are highest on Thursdays since sales of packaged milk tend to be higher on Thursday and Friday than on other days of the week.

Because of these circumstances, this cooperative proposed that the Class III prices adopted for the southeastern markets of Georgia, New Orleans, and Chattanooga be fixed from 5 to 15 cents under the Minnesota-Wisconsin price. This was proposed to enable the cooperative to absorb the costs of transporting reserve milk supplies to manufacturing plants and of maintaining unused capacity in its manufacturing plants during the seasonally short production months and on peak bottling days.

The principal cooperative in the southwestern markets proposed that the current provisions for pricing market surplus be maintained in the several orders throughout that region since such provisions tend to recognize individual market problems of surplus disposal. The problems mentioned by the witnesses for the cooperative are (1) uneven surplus milk volumes to be disposed of, and (2) costs of transporting milk to plants for manufacturing use. They stated that each market differs as to the volume of day-to-day, weekend, holiday, and seasonal surplus to be processed, which tends to result in variations in supply balancing costs among markets. Also, the surplus in each market is situated at varying distances from available processing plants. In Texas, for example, most of the manufacturing use outlets are situated in the northern part of the State at Muenster, Sulphur Springs, and Rusk. While the cooperative operates a small cheddar cheese plant at San Antonio, Tex., at times the San Antonio surplus cannot be processed there and is transported over 300 miles to Muenster or Sulphur Springs. During the Christmas holiday weekend in 1970, the cooperative moved 75 tank truck loads of surplus milk out of Texas to plants as far north as Iowa for manufacturing.

In support of their proposed butter-nonfat dry milk-cheese product price formula for markets in the Upper Midwest proponent cooperatives pointed out that about half of the manufacturing grade milk in Minnesota and Wisconsin is now handled by as few as three cooperative associations. They contended that, because of this, cooperatives are in a position to influence the level of prices paid for such milk and, in turn, influence the level of the order prices based on the Minnesota-Wisconsin price. Any upward swing in prices, they indicated, could be detrimental to the processors of butter and nonfat dry milk.

Proponents also stated that there have been periods of time when the open market cheese prices have increased relative to prices of butter and nonfat dry milk. When this has resulted in higher pay prices at cheese plants, butter-powder plants also have tended to pay higher prices to hold their milk supplies in competition with cheese plants. Proponents argued that such higher pay prices at butter-powder plants should not be reflected in Federal order surplus prices when the market values of butter and powder are not increased also. They contended that the order price should reflect changes in the market value of manufactured products to provide handlers a fixed processing margin on the butter and nonfat dry milk they process.

The national trade associations of fluid milk and ice cream processors did not take a position at the hearing on whether there should be two or three classes of utilization. It is their position

that under a three-class system the only products that should be included in Class II are yogurt, eggnog, cottage cheese, cream, and any mixtures of cream and milk or skim milk containing 9 percent or more butterfat. While the associations did not endorse a three-class system, they proposed that under such a plan the difference between the Class II and Class III prices be not more than 10 cents.

Certain individual handlers, particularly those operating plants in more than one market, testified that because of intermarket competition each order should provide for the same classification and pricing scheme. One such handler testified further that the Class III price should be the lower of the Minnesota-Wisconsin price or a butter-powder formula price (Chicago butter price times 4.2, plus nonfat dry milk price times 8.2, less 48 cents). Another urged adoption of the dairy price support level as the Class III price. A third handler proposed the use of the announced price support, adjusted to a 3.5 percent butterfat basis by a differential factor of the Chicago butter price multiplied by 0.12, and further adjusted by plus 15 cents during the period September through March.

Proponents of using the dairy price support level as the Class III price urged that such price be adopted to provide a more stable price by avoiding the month-to-month changes that tend to occur in the Minnesota-Wisconsin price. Proponents pointed out that basing the Class III price on the price support level, which is announced for each marketing year (April–March), would result in handlers knowing the minimum price before the milk is received. The Minnesota-Wisconsin price is announced about 5 days after the end of each month.

Class III. As stated at the outset, two classes of utilization should be provided under each order for milk not needed for Class I use. Before discussing the basis for establishing an intermediate price class, consideration should be given to the Class III price issue since the level of such price bears on what the Class II price should be.

Basically, there are two questions to be resolved concerning the Class III price issue: (1) Should the Class III price be uniform among the 32 markets, and (2) what is the appropriate pricing mechanism for determining the Class III price in each market?

The purpose of the classification proposals considered at this hearing strongly suggests the same Class III price under each order. The essence of the proposals by producers and handlers alike was that a particular product should be classified in each market in the same class. Although the various witnesses were not in agreement on the classification scheme that should be adopted, the common purpose of their proposals was the resolution of the many differences among the 32 orders in the classification of milk. It was the general consensus that with the burgeoning intermarket sales of various milk products over increasingly wider areas, these differences in classification are causing undue competitive inequities among handlers in various markets seeking the same outlets for milk.

Any attempt to resolve these competitive inequities through the adoption of a uniform classification plan cannot be divorced from consideration of the prices that would be applicable to each class. The classification of milk does nothing more than determine what uses of milk will be subject to different levels of price. The equity benefits to handlers of using the same classification plan in all markets can be fully realized only if the price for each class is uniform (except for appropriate location adjustments) in all markets. The use of several different Class III price formulas in these markets, as would result under the proposals of the various cooperatives, would nullify much of the intended effectiveness of classifying a particular product in the same class in each market.

Certain cooperatives urged that the Class III price of a market reflect the supply "balancing" costs of individual cooperatives. This could lead only to a proliferation of different Class III prices rather than a reduction of price differences in these markets. In balancing milk supplies for the fluid market, a cooperative incurs various costs. The extent of these costs is dependent on many factors, including the cooperative's share of the market, the location and availability of surplus disposal outlets, whether it operates a manufacturing plant, and policies and practices of the organization and its management. If such costs were to be a main consideration in establishing the Class III price for an individual market, such price would need to vary greatly among markets since the supply balancing situation differs from market to market.

The costs of supply balancing services performed by a cooperative should be reflected as a service charge to the handlers who receive the benefit of the service. A cooperative's cost of supply balancing service varies among handlers according to each handler's procurement practices. A handler that regularly accepts the full production of a given number of producer-members of the cooperative incurs the costs of balancing his own supply. On the other hand, a handler that limits his purchases of milk from a cooperative to 5 days a week, for example, to match his daily bottling schedule shifts the burden of balancing his milk supply to the cooperative. Most supply balancing costs are attributable to the variation between the quantity of milk produced and the demand for milk for Class I use. Since the balancing costs are incurred in serving the Class I market, the incidence of the costs should fall on such use of milk. This connection between these services and the Class I demand is recognized in many of these markets through the assessment by cooperatives of a service charge on their milk delivered to handlers for Class I use.

On the basis of the above findings, it was concluded in the initial recommended decision that the same Class III price should prevail under each order. Only in this way could the many classification and pricing differences among these orders be resolved to the fullest extent. While maintaining that this concept remained valid, the Department was persuaded by producer exceptions to its initial decision that complete uniformity in the pricing of Class III milk might not be attainable at the time if orderly marketing was to be preserved. Accordingly, an alternate Class III price formula was adopted in the revised recommended decision for 14 of the 32 orders under consideration.

For reasons set forth later, it is concluded that the pricing scheme set forth in the initial recommended decision, i.e., the establishment of the Class III price in each of the orders at the basic formula (Minnesota-Wisconsin) price, is the correct pricing procedure and this pricing is adopted under each of the orders here under consideration.

In considering the appropriate mechanism for determining the Class III price in each market, it is consistent with the purposes of the statute authorizing milk orders that reserve milk supplies be priced at the highest practicable level compatible with orderly disposal of the milk. Excess market supplies normally must be channeled into manufactured products that compete on a national basis with similar products made from ungraded milk. It is important, therefore, that the price for surplus milk in the regulated markets be in close alignment with prices being paid by processors of manufacturing grade milk.

The Minnesota-Wisconsin price, which is now the surplus price under 17 of the 32 orders and which is adopted herein as the Class III price under all orders, is a representative pay price for about half of the manufacturing grade milk in the United States. This price reflects a farm price level determined by competitive conditions that are affected by the demand for all major manufactured dairy products. It also reflects the supply and demand of such products within a highly coordinated marketing system, which is national in scope. Use of the Minnesota-Wisconsin price as the Class III price will result in order prices for surplus milk that are in close alignment with the dominant price structure for raw milk within the manufacturing milk segment of the dairy industry.

Use of the Minnesota-Wisconsin price also tends to result in price parity between regulated and unregulated plants engaged in a similar enterprise since it provides the regulated manufacturer essentially the same margin for processing as is experienced in the unregulated market. The Minnesota-Wisconsin price is an average of prices being paid by processors who are meeting the competitive test of the unregulated market place. Competing processors of ungraded milk purchase their supplies from farmers at prices commensurate with the ability of the more efficient processors to pay for

raw milk. As shifts in the relationship between finished product prices take place, one group of processors may be able to pay dairymen higher prices than another. Other processors generally must meet these prices or risk the loss of their milk supplies. If a dairy concern in the unregulated manufactured products market fails to make the necessary adjustments to meet procurement competition, it will, in time, be forced out of business. This is a normal business risk in the unregulated competitive market.

If the Class III price were based solely on market prices of certain manufactured products (e.g., butter and nonfat dry milk) minus a specified processing allowance, as proposed by certain cooperatives, handlers under each order would be assured at all times, regardless of current values of milk competitively procured for the several manufactured product uses in Class III, of a predetermined operating margin. Such pool handlers are protected in procurement competition by being able, through the pool equalization fund, to pay the blended price to producers. This is an advantage not available to manufacturers purchasing unregulated milk. The unregulated processors must pay whatever price to dairy farmers is required to maintain milk supplies, which is determined from competition with other processors. Unless regulated handlers are to have a competitive advantage, or disadvantage, in the manufactured milk product market relative to unregulated plant operators, it is necessary to maintain under the milk orders a close alignment of the Class III prices with the farm prices paid by unregulated plants in the manufacturing milk industry.

In the August 28, 1972, recommended decision, the Minnesota-Wisconsin price was adopted as the Class III price under each order. This would have provided a continuation of the surplus price now applicable in 17 markets and a change in pricing for the remaining 15 markets where a number of different price formulas are now in use.

After consideration of producer exceptions to the recommended decision, it was concluded in the revised recommended decision that in 14 of the 15 markets where the surplus price would have been changed the Class III price should be the Minnesota-Wisconsin price but not to exceed a butter-nonfat dry milk formula price. The markets for which this pricing mechanism was adopted in the revised decision were New Orleans, Northern Louisiana, Wichita, Central Arizona, Rio Grande Valley, Oklahoma Metropolitan, Red River Valley, North Texas, Central West Texas, Texas Panhandle, Lubbock-Plainview, Austin-Waco, San Antonio and Corpus Christi. It was concluded that the Class III price for the other market, Duluth-Superior, should be the Minnesota-Wisconsin price as initially recommended.

The surplus class price in all but two of these 14 markets is now based either entirely or in part on prices derived from some type of butter-nonfat dry milk formula. In the Oklahoma Metropolitan and Red River Valley markets, the surplus price is the U.S. manufacturing price, but with a 10-cent reduction during six months of the year for milk used in butter, nonfat dry milk or hard cheese. For most of these markets, cooperatives contended in their exceptions to the initial recommended decision that the present price formulas should remain in effect in the respective markets. The producer groups indicated that these formulas represent an historical recognition of particular surplus disposal conditions in these markets and that such recognition should not be abandoned at this time.

The revised recommended decision indicated that if a uniform classification and pricing scheme was to be implemented to any substantial degree the variety of pricing formulas now applicable in these several markets should not be continued as cooperatives urged. It was recognized, however, that surplus prices in most of the 14 markets historically have been tied directly to the market values of butter and nonfat dry milk. Accordingly, it was concluded that the Class III prices in these markets should be limited to a butter-nonfat dry milk formula price should the milk equivalent value of these products become unduly low relative to the average price being paid in Minnesota and Wisconsin for manufacturing grade milk. The formula recommended in the revised decision would have been computed by multiplying the average monthly price of 92-score bulk butter at Chicago by 4.2, then multiplying the average monthly price of spray process nonfat dry milk in the Chicago area by 8.2, and then substracting 48 cents from the sum of the above results. This formula price, when used in conjunction with the Minnesota-Wisconsin price, is commonly referred to in the trade as the "butter-powder snubber."

A number of exceptions were filed to the conclusion to provide a butter-powder formula price as an alternative Class III price determinant in specified markets. Most of these exceptions originated with parties who had steadfastly maintained throughout this proceeding that the single uniform pricing procedure was appropriate for all markets under consideration. One exceptor further pointed out that past experience has demonstrated that the butter-powder formula price can vary significantly from the Minnesota-Wisconsin price. When such price is below the Minnesota-Wisconsin price, exceptor noted, handlers in markets where the Minnesota-Wisconsin price is the sole Class III price determinant could be in the position of being required to pay a much higher Class III price than handlers in markets where the butter-powder formula price is used as an alternative price determinant. Exceptors contended that any price differences between markets should be minimal.

As concluded in the initial recommended decision, a uniform Class III price should apply in all markets under consideration. In circumstances where the Minnesota-Wisconsin price might be significantly above the butter-powder formula price, there could be widespread differences in surplus prices as between markets using only the Minnesota-Wisconsin price and markets also employing the alternative butter-powder formula price, to the end that there simply would not be any reasonable uniformity of Class III prices among these markets.

Moreover, in the circumstances where the butter-powder formula price might be substantially under the Minnesota-Wisconsin price, producers in the markets with the butter-powder price would not be receiving a realistic return for milk disposed of for manufacturing. The Minnesota-Wisconsin price is a free-market pay price resulting from competitive bidding among unregulated processors for milk for various manufacturing uses. If surplus milk were priced under orders at a much lower alternate price reflecting only the market values of butter and nonfat dry milk, producers would not be receiving a return for their milk commensurate with the returns presumably available from such milk in other uses, as would be indicated by the higher Minnesota-Wisconsin price being paid for milk used in various manufactured products. There is no justification for the establishment of Class III prices at levels which are not reflective of the full use value of milk at available manufacturing outlets.

The possible divergence of the Minnesota-Wisconsin price and the butter-powder price is an important consideration not only with respect to the Class III price but also with respect to the establishment of a new intermediate price class as proposed by producers. As adopted herein, the new Class II price under each order would be the Minnesota-Wisconsin price plus 10 cents. Should the Class III price drop significantly below the price for producer milk used in Class II, there would be an incentive for processors of such Class II products as ice cream and cottage cheese to displace producer milk with nonfat dry milk and butter made from milk priced at the lower Class III price. The net effect of this practice would be an uneconomical lowering of total returns to producers.

Upon further consideration of the surplus price issue for the 14 markets, it is concluded that the Class III pricing mechanism for these orders should be the Minnesota-Wisconsin pay price.

There is, of course, always the possibility that the market situation could change to a degree that some lower price might conceivably be appropriate for certain milk uses for brief periods of distress in the disposal of surplus milk. In such circumstances, the amendment hearing procedure offers an appropriate means for exploring such conditions and for considering the possible need for price relief.

As indicated, the Class III price under the Duluth-Superior order should be the Minnesota-Wisconsin price even though the surplus price in this market is now

based on a butter-nonfat dry milk formula. The present surplus price historically has averaged somewhat under the Minnesota-Wisconsin price. Conditions in this market do not support a continuation of this lower price level for surplus milk being processed into products such as butter, nonfat dry milk and hard cheese, residual products that would be included in Class III under the revised Duluth-Superior order.

The Duluth-Superior order regulates the handling of milk in certain areas of Minnesota and Wisconsin. Because of their location, regulated handlers in this market are operating within the competitive sphere of the largest concentration of processors of butter, nonfat dry milk and cheese in the United States. As noted earlier, about half of the manufacturing grade milk in the country is produced in this two-State area. It is the prices being paid in this area for such milk that are used in determining the "Minnesota-Wisconsin price." Use of this price for pricing Class III milk in the Duluth-Superior market will result in producer milk used in the residual products being priced at a level commensurate with unregulated milk that is being processed in the same general area into like products. A lower return to the graded producers on the Duluth-Superior market for surplus milk priced under the order is not warranted under the competitive conditions existing in this area.

It should be noted that in all other regulated markets in this two-State area producer milk processed into the residual products is priced at the Minnesota-Wisconsin price. Such markets include Minneapolis-St. Paul, Minnesota-North Dakota, and Chicago Regional, all of which are near the Duluth-Superior market. There is no indication that regulated handlers in the Duluth-Superior market are faced with conditions uniquely different from those faced by handlers in these other markets in disposing of surplus milk.

The surplus pricing adopted for the 32 markets will result in a significantly greater coordination of surplus prices under all Federal milk orders than is now the case. With the exception of one relatively small market (Appalachian), prices under all orders for milk used in the key residual products (butter, nonfat dry milk and cheese) would be based on the Minnesota-Wisconsin price, either alone or in conjunction with the butter-powder snubber. As noted earlier, such products are marketed within a highly coordinated marketing system that is national in scope.

Class II. Certain uses of producer milk not needed for Class I purposes should be priced at a somewhat higher level than that applicable to milk in the adopted Class III uses. These higher-valued uses, to be included in the Class II classification, were set forth at the beginning of this discussion on pricing surplus milk. The Class II price, which should be the same under each order, should be the Minnesota-Wisconsin price plus 10 cents.

Of the products adopted herein for inclusion in Class II, one of principal importance is cottage cheese. In 1970, about 840 million pounds of the skim milk and butterfat utilized by pool handlers under the 32 orders was used to produce cottage cheese. For this discussion the term "cottage cheese" encompasses cottage cheese (i.e., creamed cottage cheese), lowfat cottage cheese, and dry curd cottage cheese.

Five of the 32 orders under consideration now provide a higher price for milk used in cottage cheese than the price provided for milk used in butter, nonfat dry milk or cheddar cheese. There are several distinguishing characteristics of cottage cheese production that support a higher price for milk in this use than for milk channeled into the residual surplus uses. There is little, if any, relationship between the quantity of cottage cheese made and the amount of reserve milk in a market, as is the case with respect to butter and nonfat dry milk, for instance. Unlike such other manufactured products, cottage cheese has a more limited storage life and must be processed on a regular basis. Thus, as in the case of fluid milk products, handlers normally want adequate supplies of fresh, high-quality producer milk to be made available at their plants at all times for cottage cheese use.

Although some cottage cheese is made in specialized country plants, as the economics of location would suggest, cottage cheese production is commonly an integral part of the processing operations of fluid milk distributing plants. Such plants are usually located in or near the populated centers of the market. This entails a greater hauling expense for producers than when the reserve milk is processed in the production area, as is generally the case with respect to butter, nonfat dry milk and hard cheese manufacture.

The adopted Class II price (the Minnesota-Wisconsin price plus 10 cents) is a reflection of some of the additional value which producer milk used in cottage cheese has to regulated handlers. Although local producers represent the regular source of milk for cottage cheese production, a handler may choose to use milk from some other source for this purpose. Such milk could not be obtained on a regular basis, however, at less than the cost of producer milk under the adopted pricing scheme.

Rather than produce his own cottage cheese, a handler might choose to purchase the finished product from some other Federal order market where a lower price applies to milk for cottage cheese. There is no indication, however, that under the adopted pricing such a handler could materially enhance his competitive position relative to handlers using producer milk. The cost of transporting cottage cheese, a somewhat bulky and perishable item, from distant areas to outlets in the 32 markets would generally negate any seeming price advantage attributable to differences in applicable order prices.

In the New Orleans market, certain handlers process a type of cheese described locally as "Creole cheese". This product, which apparently is limited to this market, was described at the hearing as being similar to cottage cheese. Accordingly, Creole cheese should be included in the same class as cottage cheese under the New Orleans order.

Milk used in yogurt should be priced at the Class II price level. Yogurt is a soft, nonfluid, "spoonable" product. It is not a beverage as are other products defined herein as fluid milk products.

Yogurt has some of the marketing characteristics of cottage cheese, although, unlike cottage cheese, very limited quantities of yogurt are made from milk priced under the 32 orders. In 1970, about 13 million pounds of skim milk and butterfat were utilized in yogurt production in the 32 markets. To the extent of this limited production, however, processors generally use regular supplies of inspected milk. Although yogurt can be made from cream and nonfat dry milk, processors prefer milk. Since yogurt has a relatively limited shelf life, it is made on a continuing basis, thus requiring a regular supply of milk at all times. As in the case of cottage cheese, these conditions warrant that producer milk in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk.

Class II also should include frozen desserts (including commercial milkshake and ice milk mixes), custards, puddings, pancake mixes, dietary and infant formulas, and sales of bulk milk and cream to commercial food processors for use in food products. In the initial 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 was concluded in a revised recommended decision, and it is so concluded in this decision, 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 initial recommended decision for including cottage cheese in an intermediate class is in several respects applicable to these other products just listed. The demand for producer milk used in these products is related closely to the current consumer demand for such products. Thus, handlers normally want adequate supplies of producer milk made available at their plants in the quantities and at the times needed for these uses. This is in contrast to the more storable residual "hard" products. Also, the processing of such products often takes place at the market center, which entails a greater hauling expense for producers than when reserve milk is processed in the production area. Moreover, it is doubtful that handlers in general would be able to obtain alternative supplies of milk or product ingredients at less than the cost of producer milk under the adopted pricing provisions.

Cooperatives proposed that the Class II price in most of these markets range from 10 to 20 cents over the Minnesota-Wisconsin price. The lower 10-cent differential (to apply to both cottage cheese and frozen desserts) was proposed for those markets where local ungraded milk supplies represent a significant competitive factor for regulated processors of ice cream and other frozen desserts. The national associations of fluid milk and ice cream processors contended that any price differential over the Class III price for milk in an intermediate class should not be more than 10 cents per hundredweight. In supporting this position, individual handlers stressed that any greater price differential would seriously jeopardize the competitive position of regulated handlers using producer milk relative to unregulated processors relying largely on ungraded milk.

With respect to the several milk uses at issue in the cooperatives' exceptions, the preponderance of evidence at the hearing focused largely on the marketing of frozen desserts. The marketing conditions for frozen desserts are somewhat varied throughout the 32-market area. Some regulated handlers rely regularly on producer milk for use in frozen desserts. In some of the southern markets where milk supplies tend to be shorter than elsewhere, handlers use producer milk when it is available but often must supplement such milk with purchases of condensed skim milk and nonfat dry milk. Some handlers, wherever located, rely on these concentrated forms of milk entirely in processing frozen desserts. Also, the concentrated products used may be made from either graded or ungraded milk. In addition, much of the processing of frozen desserts is done at unregulated plants. Some unregulated processors rely on ungraded milk, while others use milk surplus to the needs of regulated fluid markets. Other unregulated processors use concentrated forms of milk from either graded or ungraded sources.

The marketing situation in the 32-market area for the several other milk uses in question (custards, puddings, pancake mixes, dietary and infant formulas, and sales to commercial food processors) is essentially the same as for frozen desserts.

Under these varying conditions, the Class II price should be set at 10 cents over the Minnesota-Wisconsin price. Pricing Class II milk at this level should permit regulated handlers using producer milk to remain competitive in the marketplace with the unregulated sector in the sale of Class II products. At the same time, such price will reflect the minimum additional value of such high quality producer milk supplied to regulated handlers over the widespread area covered by the 32 markets at the times and places, and in the quantities, needed for the several Class II uses.

It is recognized that under the varied conditions just described an individual handler may find that producer milk does not represent the cheapest source of milk for his Class II uses. Presumably the alternative source would be concentrated forms of milk since health regulations would not permit the receipt of ungraded supplies of whole milk at a pool distributing plant, and graded supplies would not be available on a regular basis at less than the Class II price. Under the revised allocation provisions adopted herein, receipts of nonfluid other source milk such as condensed skim milk or nonfat dry milk that are used in a Class II product would be allocated directly to the handler's Class II uses, with no obligation applying under the order to such milk. Under this arrangement, the handler could choose to use the other source milk without the cost impact of down-allocation should the cost of such milk become less than the cost of producer milk. The handler thus could rely upon whichever source of milk best fits his competitive and operational circumstances.

Classifying the several types of cream items, some of which are now in Class I while others are in Class II or Class III, in Class II will accommodate proponents' desire for a lower price for milk used in cream products and at the same time price at the same level a variety of products that compete with each other. Half and half, whether sterilized or unsterilized, and light cream are used principally by consumers in coffee. Aerated cream and sterilized and unsterilized whipping cream are used as dessert toppings. Both graded and ungraded sour cream and sour mixtures are used by consumers for similar purposes. Like classification for these cream products will result in uniform pricing to handlers for milk used in products competing in the same trade channels for essentially similar uses.

Although the present Class I cream products sold in these markets must be made from inspected milk, which is delivered regularly by producers to distributing plants, there was general agreement by producers and handlers that milk sold in the form of such products should no longer be subject to the Class I price. Relative to the total Class I sales of producer milk in these markets, cream products represent only 1.5 percent of the present Class I market. Thus, this classification change will have relatively little effect in total on the returns to producers.

In connection with the reclassification of cream products, it is desirable to define a new term—"fluid cream product." "Fluid cream product" would mean cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

With the reclassification of cream, movements of cream to or from a plant no longer should be considered in determining whether a plant meets the pooling requirements of the order.

Class II milk should include eggnog. Although eggnog is prepared for use as a beverage and is now a Class I use in 9 of the 32 markets, proponent cooperatives contended it should not be a Class I product because of competition from imitation products. Eggnog has a relatively high butterfat content and the limited sales of the product are highly seasonal. In 1970, only about 12 million pounds of eggnog, with an average butterfat content of 7 percent, were disposed of by pool handlers under the 32 orders. An estimated 40 percent of the marketings of this type of product is in the form of imitation eggnog. Classification of eggnog in Class II rather than Class I will materially enhance the competitive position of the product in the marketplace.

Most of the orders now provide that any "filled" product containing 6 percent or more nonmilk fat (or oil) shall be in the surplus price class. With the establishment of an intermediate price class under each of the 32 orders, it is appropriate that any such filled products that resemble the proposed Class II products made with milk fat likewise be included in this class. The substitution of nonmilk fat for milk fat in a product merely changes the composition of the product and not its use. For competitive reasons, a comparable classification of products made with milk fat and their filled counterparts is necessary.

Condensed milk or skim milk in bulk, plastic cream, frozen cream and anhydrous milk fat are "intermediate" products that also should be included in Class II. These products are not end uses in themselves but instead are used in making other products, including frozen desserts and food products such as candy and soup. Under the classification adopted herein, frozen desserts and food products are Class II uses for milk. Accordingly, producer milk used in the several intermediate products likewise should be priced at the Class II level.

In the revised recommended decision, no recognition was given to the possible use of condensed milk or skim milk in making a Class III product. Cooperatives pointed out in their exceptions, however, that such condensed products are processed at times into dried products, which would be a Class III use under the revised classification plan. The cooperatives urged in this case that the milk used to produce the condensed product be classified as Class III milk.

Such classification requires, of course, that the condensed product be followed to its ultimate use. Presumably, the final disposition of the condensed product can be easily ascertained when it is moved to a plant containing only drying facilities. Should the condensed product be moved to a plant having mixed processing operations and receipt of condensed milk from different sources, ascertainment of the ultimate use of the condensed product in question may be difficult, if not impossible. It is concluded, however, that to the extent that it can be satisfactorily determined that the ultimate use of the "intermediate" condensed product was in a Class III product the lowest classification should apply to the producer milk used in the condensed product.

A Class II classification should not apply to evaporated or condensed milk

or skim milk in consumer-type containers as the cooperatives proposed. Such storable products should remain in the lowest price class. A Class III classification for producer milk in these products will permit such uses to remain as a competitive outlet for milk surplus to the needs of the Class I market. Such products made from milk regulated under these orders must compete over wide areas with the same products processed from ungraded milk or other graded milk that is often priced at no more than the Minnesota-Wisconsin price. Comparable pricing should prevail under these 32 orders.

Although cooperatives proposed Class II price differentials of 10, 15, 20, and 25 cents, the Class II differential for each market should be the same. The distribution of the adopted Class II products from a single plant often extends over a broad region encompassing several Federal order marketing areas. Numerous examples were cited on the record concerning the widespread sales of yogurt, cream items, frozen desserts and cottage cheese in particular. Because of this intermarket competition, a uniform Class II price differential should be provided in these orders to complement the uniform classification provisions. A price differential of 10 cents reasonably reflects the added value which handlers are able to pay for producer milk in such uses as compared to procuring milk supplies or finished products from other sources.

In proposing a generally uniform classification plan for the 32 markets, cooperatives emphasized that any new plan adopted should not result in lower total returns to producers. Handlers, on the other hand, stressed that their total cost of milk should not be increased.

Providing for classification and pricing provisions that are generally uniform among the various markets cannot necessarily encompass at the same time the maintenance of precisely the same value of producer milk in each market. With the many classification and pricing differences that now exist among the 32 orders, resolution of these differences through a uniform classification and pricing plan would be expected to have some effect on the value of producer milk in individual markets. While the provisions adopted in this decision are not designed to change the value of producer milk in the aggregate, their effect on producer returns or handlers' costs in an individual market cannot be controlling in deciding on the matter of classification and pricing here under consideration.

4. *Miscellaneous classification and accounting changes.* The following findings and conclusions relate to certain miscellaneous classification proposals by handlers and producers and to some of the order changes that are necessary to implement the revised classification plan adopted herein for each of the 32 subject orders.

(a) *Other source milk definition.* A common other source milk definition should be adopted for each order.

Because of the revised classification plan, certain changes in the present other source milk definition of each order are necessary. This definition would continue to serve, however, the present function of implementing the identification of various categories of receipts at a regulated plant.

At present, fluid milk products from any source other than producers, cooperatives acting as a handler for farm bulk tank milk, pool plants, and plant inventory at the beginning of the month are considered as other source milk.[3] Under the revised classification plan, however, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of each order, it is desirable, nevertheless, that fluid cream products, when in bulk form, continue to be treated in the same manner as fluid milk products for purposes of applying the other source milk definition.

Other source milk should include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the revised classification plan.

Producers and handlers proposed that Class II products received at a pool plant in packaged form and then disposed of from the plant without further processing be treated as "pass-through" products. Under this treatment such "pass-through" products would not be considered as other source milk and would not be subject to the allocation and pricing provisions of the order.

Although no handler obligation would apply under the provisions adopted herein to these receipts of packaged Class II products, it is desirable for accounting purposes that such receipts be defined as other source milk. This accounting procedure will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest utilization as is provided in some cases for other types of other source milk.

The orders now provide that manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant shall be considered as other source milk. For accounting purposes under the order, such manufactured products should include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or 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.

Exceptions to this accounting procedure raised the question as to whether there might be some difficulty in determining the source of the condensed skim milk that is reprocessed in the plant should a handler use during the month condensed skim milk not only from his current condensing operation but perhaps from inventory held over from the previous month or purchases from another plant. If this situation arises, the condensed skim milk produced in the plant during the current month should be considered as having been reprocessed first before any condensed skim milk from other sources.

Other source milk should include any disappearance of manufactured milk products for which the handler fails to establish a disposition. Fourteen of the 32 orders now have a provision concerning the unaccounted for disappearance of such products. The other 18 orders do not specify such disappearance as other source milk.

It is reasonable that each handler be required to account fully for all milk and milk products received or processed at his plant. Otherwise, a handler with inadequate records may have an opportunity to gain a competitive advantage over his competitors who properly account for all milk. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

(b) *Accounting for nonfat milk solids added to milk and milk products.* Except for two orders, no change should be made in the present method of classifying the skim milk equivalent of nonfat milk solids added to a fluid milk product.

Currently, all but two of the orders under consideration provide that a modified fluid milk product shall be classified as Class I in the amount of the weight of an equal volume of an unmodified product of the same nature and but-

[3] The terms "pool plant" and "nonpool plant" will be used occasionally throughout this decision. Most of the 32 orders define such terms for the purpose of distinguishing between those plants that are fully regulated under the order and those plants that are not so regulated. In some orders, the terms "fluid milk plant" and "nonfluid milk plant", or "approved plant" and "unapproved plant", are used for the same purpose. When reference is made in this decision to a "pool plant" or a "nonpool plant," it is intended (unless noted otherwise) that the reference apply correspondingly to the other types of plants.

terfat content. The remaining skim milk equivalent of the nonfat milk solids in such product is classified in the lowest class.

The Neosho Valley and Fort Smith orders presently do not set forth a specific procedure for accounting for nonfat milk solids added to milk and milk products. As proposed by producers, such orders should be made uniform in this respect with the other orders under consideration.

Cooperatives proposed that the amount of a modified fluid milk product that is classified as Class I milk be the actual weight of the modified product rather than the weight of a like unmodified product. Proponents stated that the use of the weight of the modified product would accommodate some of the technical problems of laboratory analysis when this procedure is used in verifying the amount of nonfat milk solids added to natural milk or skim milk. They indicated that since the results of laboratory tests are expressed as a percentage of the weight of the product being tested, using the actual product weight factor would simplify the accurate accountability of modified products.

There was no showing of the extent to which laboratory analysis of modified products is used in verification by market administrators in these markets. Also, there is no indication that modified products are not being accounted for in an accurate manner. Thus, it is not clear from this record that the proposed procedure is necessary for more accurate product accounting or that it would result in any net saving in administrative cost.

Proponents did not attempt to demonstrate any economic basis for making the slightly greater charge for nonfat milk solids used to modify fluid milk products that would result from their proposal. Their proposed procedure would increase slightly the quantity of a modified product priced in Class I. A gallon of modified skim milk containing 11 percent nonfat milk solids, for example, would be classified in Class I on an 8.7 pounds weight factor as compared to the present basis of an 8.63 pounds weight factor.

The present method of classifying modified fluid milk products increases total Class I sales only to the extent of the volume of the unmodified product that the added nonfat milk solids replaces. In the absence of evidence that the present procedure is inappropriate, it should be continued. The present procedure is used under Federal orders generally and, therefore, carries out the objective of uniformity in this respect.

Handlers may add nonfat milk solids to several of the proposed Class II products, such as half and half and light cream. Each order should provide in this case that the entire weight of the skim milk equivalent of the solids added be classified in Class II. This procedure would differ from that applicable to modified fluid milk products in that no part of the skim milk equivalent of the added solids would be classified in the lowest class. As described in detail later, nonfat dry milk or condensed milk that is added to a Class II product would be allocated directly to the handler's Class II use. Thus, classification of the entire skim milk equivalent in Class II would not affect adversely the handler's pool obligation under this allocation procedure.

(c) *Classification of milk transferred or diverted to other plants.* Certain changes should be made in the provisions of each order that prescribe the classification of fluid milk products that are transferred or diverted from a pool plant to another plant. Several of the changes become necessary with the adoption of three classes of utilization in place of the present two classes. Other changes are appropriate for purposes of uniformity among orders and clarity in the classification of milk.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk form from a pool plant to another plant be classified in a manner similar to that now used in classifying transfers of bulk fluid milk products.

Each order now prescribes a procedure for classifying transfers of bulk fluid milk products from a pool plant to a nonpool plant that is not an other order determine such classification, the nonpool plant's utilization must be assigned to it receipts of milk from each source. Some amplification of this procedure is appropriate to set forth clearly the priority for assigning the different types of plant use to the different sources of fluid milk products and bulk fluid cream products received at the nonpool plant.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the marketing area of a Federal order, and any transfers of packaged fluid milk products from the nonpool plant to plants fully regulated under such order, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under such order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned, first, to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under that order and, second, to any such remaining receipts from plants fully regulated under other orders.

Additional unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In their exceptions, producers contended that in assigning transfers or diversions of fluid milk products or fluid cream products to a nonpool plant's available Class II and Class III utilization preference should be given to the higher utilization. Such preferential assignment is not consistent, however, with the basis on which a new intermediate price class is being established. Provision for the new class merely recognizes that some additional value attaches to producer milk delivered to pool plants for use in certain products. It is not intended that such utilization of producer milk at other plants necessarily be reserved for local producers.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

Certain changes should be made in each order concerning the classification of products transferred from a pool plant to a producer-handler. Under the revised classification plan, bulk fluid cream products transferred from a pool plant to a producer-handler should be assigned to

the extent possible to the latter's Class III use, and then Class II use. If the producer-handler does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

As in the case of all other fluid milk products, such transfers of cream are now classified as Class I milk. Such classification tends to assure that producers do not carry for producer-handlers the burden of maintaining reserve supplies for the Class I sales of producer-handlers. With the removal of cream from the Class I classification, as adopted herein, a mandatory Class I classification of cream transfers to producer-handlers would not be necessary for this purpose.

Each order should provide that fluid milk products transferred from a pool plant to a producer-handler under another order be classified as Class I milk. With one exception, this classification now applies under these orders with respect to such transfers made on an intramarket basis. The San Antonio order has no provisions for classifying such transfers since it does not contain a producer-handler definition.

The producer-handlers, in their capacity as handlers, have been exempt from the pricing and pooling provisions of the various orders. In consideration of this exemption, each order, except as noted, requires a Class I classification of all fluid milk products that are transferred from a pool plant to a producer-handler as defined under that particular order. Inasmuch as the producer-handler exemption under each order is predicated on essentially the same basis, a Class I classification of milk transferred from a pool plant regulated under one order to a producer-handler as defined under another order would be in keeping with the general basis for producer-handler exemption.

In addition to the Class I classification of all fluid milk products transferred from a pool plant to a producer-handler, several orders provide for a similar classification of all fluid milk products transferred to a government-operated plant. Such plants are exempt from the pooling and pricing provisions of the order in much the same manner as producer-handlers. It is appropriate, therefore, that the adopted method for classifying bulk fluid cream products transferred to a producer-handler likewise apply to transfers of bulk fluid cream products to government-operated plants.

The orders should be uniform with respect to the conditions under which the classification provisions apply to bulk milk movements from one regulated market to another. Although each order now has the same rules for classifying such movements of milk, their application is limited under some orders to only those movements in the form of interplant transfers. This is because such orders do not permit milk to be moved between markets by diversion.

Since the advent of farm bulk tanks, the diversion of producer milk from pool plants to manufacturing plants has been a common method of handling milk not needed for the fluid market. Under some orders, such diversions are permitted to be made only to unregulated nonpool plants. For a number of markets where available manufacturing facilities are associated with another regulated market, the orders permit producer milk to be diverted to other order plants. Corollary provisions in the order regulating the manufacturing plant specify that such milk, although having been delivered directly from the farm, shall not be considered as producer milk in the market to which diverted if the milk comes into the market for manufacturing use.

In connection with developing uniform classification provisions for the 32 orders, provision should be made under each order for the diversion of milk to other order plants for Class II or Class III use. This will contribute to a more uniform application of the classification provisions to all regulated handlers. At the same time, such provisions will foster the efficient handling of surplus milk in these markets by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk will continue to be pooled in the market from which diverted.

The classification of fluid milk products transferred or diverted from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant should not be contingent upon any distance limitation. Presently, 20 of the 32 orders under consideration provide for the Class I classification of milk moved beyond a specified distance, regardless of its ultimate use at the nonpool plant. In the case of milk transferred to less distant plants, recognition is given under the classification provisions of the 20 orders to the nonpool plant's actual utilization.

Cooperatives proposed the removal of all mileage limitations affecting the classification of transfers and diversions. They claimed that these provisions are not appropriate under today's marketing conditions and that their removal would facilitate the orderly disposition of reserve milk supplies.

The conditions prompting the initial adoption of these mileage limitations no longer prevail, thereby making their continued use inappropriate. The use of mileage limitations evolved in large part from the relatively high transportation cost of milk relative to its value for manufacturing and from the administrative cost of verifying the utilization of milk transferred to plants distant from the local market. Under today's conditions of distribution, milk regularly moves greater distances as a routine matter. Moreover, Federal orders now operate throughout much of the United States. Arrangements for verifying the utilization at distant plants can be made easily through the facilities of the various market administrators' offices.

Also, the mileage limitations often are no longer consistent with the existing supply patterns. Milk is often moved considerable distances from producers' farms to distributing plants. When such milk is not needed for fluid use, it is usually diverted to manufacturing plants located close to the production area. Classifying such milk in Class I because of applicable mileage limitations is not consistent with the obvious manufacturing use of the milk. Removal of such provisions will promote uniformity in classification among the 32 markets.

(d) *Classification of end-of-month inventory.* Each of the orders should be made uniform with respect to the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Such inventory should be subject in the following month to reclassification in a higher class. Ending inventory of fluid cream products, eggnog and yogurt, when held in bulk form, likewise should be classified in Class III and subject to reclassification. Such products held in packaged form at the end of the month should be classified as Class II milk.

Presently, 22 of the 32 orders classify all ending inventories of fluid milk products (which now include most cream products) in the lowest class. Under the remaining orders, such inventories in bulk form are classified in the lowest class, while a Class I classification applies to such inventories in packaged form. In the latter case, a handler's obligation for the Class I inventory is adjusted in the following month by whatever amount the Class I price in such month changes from the Class I price level initially applicable to the inventory. This assures that such inventory is priced on a current basis when disposed of on routes.

Cooperatives proposed that each order classify all ending inventories of fluid milk products in Class III. They claimed that this procedure would be less complicated for handlers and would facilitate the administration of the order since handlers only occasionally would have any adjustment in their pool obligation as a result of having Class III inventory reclassified in a higher class. Proponents stated that with packaged inventory in Class I, as under 10 of these orders now, each handler usually has some adjustment each month in his obligation for Class I inventory. The cooperatives' proposed classification of ending inventory was supported by handlers.

In the interest of establishing uniform classification provisions among the orders, the same procedure for classifying end-of-month inventory should be adopted for each of the orders. Either type of inventory classification procedure now being used in these markets results over the long run in essentially the same pool obligation for handlers and the same returns to producers. In this circumstance, the substantial support among the industry for classifying all ending in-

ventories of fluid milk products in the lowest class suggests that this procedure be used under all orders. Under this procedure, such inventories would be subject in the following month to reclassification in a higher class, as determined through the allocation of a handler's receipts to his utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory. This is the same reclassification procedure that now applies under the orders to inventories of fluid milk products in bulk form.

Fluid cream products in bulk form that are on hand at the end of the month likewise should be classified in Class III. As in the case of bulk milk, the final use of cream being held in bulk form is not necessarily apparent from that form. The cream must be followed to its ultimate use, which may be in any class. Accordingly, it is reasonable to classify any closing inventory of bulk cream in Class III and then apply a reclassification charge should the cream, as beginning inventory the following month, be allocated to a higher class.

Fluid cream products, yogurt, and eggnog that are on hand in packaged form at the end of the month should be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the following month, would be allocated in the following month directly to the handler's Class II utilization.

Cooperatives proposed that for classification purposes ending inventory include only those products that are actually on the premises of a pool plant. Under their proposal, the premises of a plant would be limited to a location having equipment for receiving, cooling, processing, and storing milk. However, products being held in trucks parked at that location would not be a part of the handler's closing inventory. Also, a storage facility at a distributing point for packaged products in transit to wholesale and retail outlets would not be considered under their proposal as an extension of the premises of a plant. Cooperatives proposed also that ending inventory include any bulk milk that is in transit from a pool plant to another plant at the end of the month. Proponents claimed that defining ending inventory in this manner would facilitate the administration of the order.

The present orders do not specify at what point in a handler's distribution system fluid milk products shall be or shall not be considered for classification purposes as being in a handler's closing inventory. This is a matter that has been left to the accounting guidelines established by market administrators in their administration of the orders. It is recognized that at the close of the monthly accounting period fluid milk products that have been packaged but not yet delivered to the place of sale may be at any one of several places in a handler's distribution system. Depending on the handler's method of operation, such places could include the cold storage room within his processing plant, trucks parked on or near the plant's premises, distributing points, or trucks in transit to distributing points or places of sale. No significant problems concerning the determination of what constitutes closing inventory were brought to light at the hearing. Therefore, the cooperatives' proposal in this regard need not be adopted at this time.

For the first month that the revised classification plan is effective, certain transitional provisions relating to inventory should apply. Such provisions are necessary to assure that all handlers under an order will be subject to the same pricing for milk used in packaged fluid milk products and fluid cream products whether such products enter into the month's accounting as beginning inventory or are made from current receipts of producer milk.

As indicated, 22 of the orders under consideration presently classify ending inventories of fluid milk products, including cream items, in the lowest class. Thus, in the last month that the present classification plan is effective, handlers under these orders will have paid the corresponding class price for these products. In the first month under the new plan, such inventories that had been held over in the form of a fluid milk product or a bulk fluid cream product would be allocated to the extent possible to the handler's Class III utilization. Should such inventories be allocated to a higher class, the appropriate reclassification charge would apply.

Under the new plan, beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new amendments, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply if a higher classification results.

Under the remaining 32 orders, which now classify ending inventories of packaged fluid milk products in Class I, a pool credit should apply to such inventories in the first month that the revised classification plan is effective. Under the new plan, beginning inventories of fluid milk products and, for the first month, all fluid cream products would be allocated to the extent possible to Class III. Again, this allocation assumes that such inventories were priced at the lowest class price in the preceding month. Since such inventories in packaged form will have been priced at the preceding month's Class I price, handlers under these 11 orders should receive a credit on such packaged inventories equal to the difference between the preceding month's Class I price and lowest class price. If a higher classification results through the allocation procedure, the appropriate reclassification charge would apply.

(e) *Classification of shrinkage, milk dumped and milk disposed of for animal feed.* Each of the orders should provide for generally uniform provisions for classifying skim milk and butterfat dumped, disposed of for animal feed, or in shrinkage.

In the case of shrinkage, the cooperative associations requested that no change be made in the present order provisions, except to classify shrinkage in Class III insofar as it is now classified in the lowest class of each order.

The shrinkage provisions adopted herein are basically similar to the shrinkage provisions now effective under 27 of the 32 orders. The classification of shrinkage in the lowest use class (subject to certain limitations), as now provided in all the orders, would be continued under the adopted three-class system. Modifications of shrinkage provisions in the individual orders are in the nature of certain refinements now applicable under several of the orders.

The amount of shrinkage that may be classified in the lowest class under the 32 orders is presently limited with respect to receipts of producer milk and certain interplant transfers. In 31 of the orders, 2 percent is the maximum shrinkage allowed in the lowest class in the case of such receipts. One and one-half percent is the rate usually applicable to bulk receipts of interplant transfers, but generally no limit applies in the case of receipts of other source milk requested for lowest class use. These allowances are adopted for each order in the new uniform provisions.

Also adopted is the commonly used method of prorating total plant shrinkage to (1) those receipts of bulk fluid milk products that are generally intended for Class I use, and on which Class III shrinkage limitations apply, and (2) other bulk receipts of fluid milk products and fluid cream products generally intended for manufacturing use, such as milk from other order plants or unregulated supply plants for which a Class II or Class III classification is requested. To the extent that the quantity of shrinkage prorated to the first category exceeds the amount permitted a Class III classification, the excess would be classified as Class I milk.

Although the revised recommended decision did not provide for the inclusion of receipts of fluid cream products in the second category of receipts just referred to, it is concluded that such receipts should be so included. As pointed out in exceptions, failure to include cream in this second category of receipts would result in a greater portion of the

total plant shrinkage, which would include that associated with the cream, being prorated to those receipts intended primarily for Class I use, even though the cream presumably would be received for a Class II or Class III use. Because of the Class III shrinkage limitation, such proration could result in an unwarranted amount of plant shrinkage being classified as Class I milk.

The adopted provisions recognize that shrinkage normally experienced varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to delivery of milk by a cooperative association handler from farms to plants in tank trucks, a Class III shrinkage allowance of 0.5 percent of such milk is provided. Any excess shrinkage over 0.5 percent is classified as Class I milk.

The Class III shrinkage allowance to the processing plant receiving the milk from the cooperative would be 1.5 percent. This maintains a total of 2 percent Class III shinkage allowance for such milk from producers in the receiving and processing operations.

The provisions adopted herein are designed to carry out the appropriate division of shrinkage whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if he buys the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for the cooperative association delivering the milk.

As provided herein, a pool plant operator who transfers fluid milk products in bulk to another plant would have his shrinkage allowance reduced at the rate of 1.5 percent of the quantity transferred. Under the revised recommended decision, such reduction would have applied only in the case of bulk milk that might be transferred. As pointed out in exceptions, this would result in an unwarranted pyramiding of allowable Class III shrinkage on any transfers between pool plants in the form of skim milk. The orders now provide that in the case of such transfers the tranferor-handler be allowed 0.5 percent Class III shrinkage while the transferee-handler is permitted up to 1.5 percent Class III shrinkage on the skim milk received. It is reasonable that this limit on the total allowable Class II shrinkage on the skim milk involved be continued.

In the case of milk diverted from a pool plant to another plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This is the same procedure applicable to cooperative bulk tank deliveries to pool plants. Similar handling is involved.

This kind of division of the 2 percent shrinkage allowance, both in the case of transfers from cooperatives to plants and for transfers between plants, has been found practical and has been well accepted in the markets where it now applies. Such division of the shrinkage allowance, therefore, should be included also in the Cedar Rapids-Iowa City, North Central Iowa, Des Moines, Fort Smith, and Austin-Waco orders that now treat shrinkage in a somewhat different manner.

As has been indicated, the uniform shrinkage provisions adopted would allow for certain typical variations of individual handler operations. Thus, the provisions should be adaptable to methods of milk handling now in use in all 32 markets. Testimony on the record did not provide any basis for retaining the many minor differences in shrinkage provisions that exist among these orders. In view of these conditions, it is appropriate that the orders have basically uniform shrinkage provisions.

The single exception to the maximum 2 percent shrinkage allowance will be in the Neosho Valley order that now allows up to 5 percent shrinkage in the surplus class for skim milk during April, May, and June. Although the record does not indicate why a need exists for such a substantially different allowance in one market, no change should be made in the allowance until the matter can be explored further.

A proposal in the hearing notice by two trade associations of processors would amend the orders to allow shrinkage on milk solids used in fortifying fluid milk products. While such an allowance now applicable under the North Texas order would be continued in that market, a basis for adoption in the other orders was not developed on the record. It would be important to have, for the other markets, evidence of current plant practices with respect to use of nonfat solids used for fortification and the effect of accounting and recordkeeping procedures on quantities reported as loss. Such data were not presented and thus there is no substantial basis on which to broaden the use of such provision.

Milk or milk products dumped or disposed of for animal feed are minor categories of disposition. Both cases involve quantities of milk products that for one reason or another are not salable for human consumption. Such dispositions are likely to occur in normal plant operations. Route returns that may be nonsalable because of dating regulations often may not be reprocessed economically into other products. Additives such as flavoring or nondairy solids may make reprocessing impractical. Also, in the processing of certain products culturing processes may break down, thereby making the milk unusable for further processing.

The cooperatives proposed that there be no change in the present classification of dumpage and animal feed other than to include such uses in the lowest class in those orders specifically recognizing such dispositions. Several milk dealers and two trade associations of processors also proposed that dumpage and animal feed dispositions be classified in the lowest use class. They requested, however, that these provisions be included in the several orders not now containing such provisions.

In the three-class system adopted in this decision, dumpage and animal feed dispositions are classified in the lowest use class. This conforms to the classification plans in those orders that provide specifically for such dispositions. Existing provisions recognize that such dispositions provide little or no return to the handler.

There are differences among the orders as to the type of products for which the lowest classification is permitted when disposed of for animal feed or dumped. While some of the orders apply such classification to all skim milk and butterfat so disposed of, others limit the application to skim milk in fluid milk products, and several orders provide such classification for cottage cheese and cottage cheese curd dumped or disposed of for animal feed.

The products covered by the dumpage and animal feed provisions should be limited to fluid milk products, fluid cream products, eggnog, yogurt and similar filled products. Because of their relatively limited shelf life, it is these products that are commonly found in route returns and for which handlers realize little, if any, monetary value. Such provisions also would apply to skim milk being used in the manufacture of cottage cheese but which must be dumped because of a failure in the culturing process.

Dumping, unlike other dispositions, involves no sales records that could aid in verification of a handler's records. Thus, advance notice to the market administrator and opportunity for verification should be required. Also, in the case of animal feed disposition, a plant operator should maintain sufficient records to establish in every instance the quantities of skim milk and butterfat involved, and show a written receipt for every disposition.

The several changes herein adopted with respect to the classification of shrinkage, dumpage and animal feed disposition will have relatively minor effect on producer returns or on handlers' costs. The quantities of milk classified in these categories are normally a very small percentage of an individual handler's total utilization. The uniform provisions adopted are similar to existing provisions found practical from experience in the majority of markets here involved. The standardization of terminology in the provisions described should result in provisions more easily understood.

Whether there may be some merit in a more general revision of the provisions for classifying shrinkage, dumpage, and animal feed disposition than is set forth

herein cannot be decided on this record. If more extensive changes are in any way desirable, such matters should be considered on the basis of a thorough exploration of the issue at another hearing.

A handler proposal for a single "loss" classification including shrinkage, animal feed, and dumped products is not adopted. The proposal was not explored by interested parties on the record as to how it would affect handler and producer equities. There is no substantial basis on which to judge its merit and the proposal therefore is denied.

(f) *Allocation of receipts to utilization.* In adopting a revised classification plan under each of the 32 orders, conforming changes must be made in the provisions that prescribe how a handler's receipts from different sources shall be allocated to his utilization for the purpose of classifying producer milk. Of the 32 orders, all but 7 provide for only two classes of utilization. Thus, changes in most of the orders are necessary to provide for the allocation of receipts to three classes of utilization rather than two classes. Also, all orders must be changed with respect to the allocation of beginning inventories, as previously described.

The adoption of three use classes requires a new consideration of how other source milk shall be allocated to a handler's utilization of milk. Under the present orders, other source milk is allocated in most cases to a handler's surplus uses to the extent possible, regardless of how it actually may have been used. The producers who are relied upon for a regular supply of milk for the local fluid market thus receive the highest possible classification of their milk. Depending on the supply conditions, milk from unregulated supply plants and other Federal order plants is permitted to share in varying degrees with local producer milk in the higher value of the handler's Class I sales.

In conjunction with the revised classification plan, however, handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products should be permitted to have such other source milk allocated directly to their Class II uses. Under the plan adopted herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

The national associations of fluid milk and ice cream processors proposed that if a three-class system is adopted handlers should have the option of having other source milk allocated to their Class II utilization rather than allocated to the extent possible to the lowest class. It was their position that the Class II price for producer milk should not be set at a level that is any higher than the cost to handlers of obtaining alternative supplies of milk or milk products for Class II use. These groups contended that with such pricing there is no justification for "down-allocating" to Class III any receipts of other source milk which actually may have been used in Class II.

Handlers indicated further that with optional allocation a handler could choose to use other source milk without the cost impact of down-allocation should the cost of such milk become less than the cost of producer milk for Class II use. Also, these groups stated that down-allocation of other source milk would imply an intent to provide undue protection of the Class II market for producers. They maintained that such protection is not justified, or apparently intended by producers in view of no producer proposal for a compensatory payment on other source milk used in Class II.

Cooperative associations, on the other hand, urged in connection with their proposal for three classes that producers have first claim on a handler's Class II use as well as on his Class I use.

In establishing a new intermediate price class, it is not intended that this outlet for producer milk necessarily be reserved for local producers. This new use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed under the revised classification plan on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk to any greater extent than presently for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use.

No provision should be made for the direct allocation to a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle in his plant any receipts of fluid other source milk with his receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating that he actually used fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk in essentially the same manner as now provided by the orders.

In this connection, it should be noted that under the revised classification plan each order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

An additional proposal concerning the "down-allocation" of other source milk was offered at the hearing by a handler operating distributing plants in several of the markets under consideration. The company's spokesman indicated that in one market the milk supply being furnished to it by the local producer cooperative was withheld by the cooperative in a particular month when the company refused to enter into a "full-supply" contract. The spokesman claimed that because the cooperative controlled about 85 percent of the producer milk on the market, the company was forced to acquire a supply of milk for the remainder of the month from another market. The spokesman indicated that although having purchased the outside milk for Class I use some of the milk was down-allocated to the plant's lowest utilization. This was because of the order provisions that now result in local producers receiving in large part first priority on a handler's Class I utilization. The handler proposed that if local producers refuse to supply a pool plant with sufficient milk for its Class I needs during the month, any supplies acquired from outside the market for Class I use not be down-allocated relative to receipts of producer milk.

The proposal should not be adopted. Any order provision intended to accommodate a handler in this one particular circumstance would be difficult to administer in an equitable manner. Handlers are not required by an order to purchase milk from any particular source. Similarly, producers are not required to supply any particular handler. In negotiating for the purchase or sale of milk, either party may find the proposed terms unsatisfactory and thus may decide not to consummate the transaction. It would be difficult, if not impossible, for a market administrator to determine, however, which party actually decided not to enter into a purchase-sales agreement. Should a handler be able to acquire outside milk at a lesser cost than would be applicable to local producer milk, such handler would have an incentive to claim that local producers refused to supply him with milk when, in fact, this was not the case.

Such administrative difficulties could be overcome, of course, through the adoption of provisions that do not down-

allocate receipts of outside milk from selected sources, or from any source, for Class I use. This would be a major departure, however, from the allocation procedure now used under the present orders. This procedure, which was based on comprehensive hearings for all Federal order markets, resulted from the "compensatory payment" decisions concerning the integration of other source milk into the regulatory plan of an order.[4] Such a change would be much broader in scope than was contemplated under the handler's proposal described above and should not be adopted.

In keeping with the goal of classifying milk uniformly under the 32 orders, certain changes should be made in the orders to effect a uniform application of the allocation provisions to multiple-plant handlers. Presently, the 32 orders differ as to how the allocation procedure shall be carried out for handlers who operate two or more pool plants regulated under the same order.

Each order should provide that for purposes of allocating a multiple-plant handler's receipts to his utilization, the operations at each of his pool plants shall be considered separately. As is the case now, however, those receipts of other source milk from unregulated supply plants and other Federal order plants eligible to share with producer milk in a handler's Class I utilization should be allocated on the basis of the handler's total plant system.

This application of the allocation provisions to a multiple-plant handler is now used under six of the 32 orders. Two other orders require that allocation be on an individual-plant basis unless there are receipts of other source milk at any one of the handler's pool plants to be allocated pro rata with producer milk to the plant's Class I utilization. In this case, all allocations of the handler's receipts to utilization are done on the basis of the handler's total system. The remaining orders provide that allocation be on a system basis in all cases.

Conditions in the individual markets do not require continuance of the several allocation methods now provided in the orders under consideration. Handlers are often subject at different times to the regulatory provisions of different orders. Applying the allocation provisions uniformly among all orders will reduce unnecessary regulatory differences being experienced by these handlers. There would be little, if any, change in a handler's total obligation under the order, or in producer returns, from applying the adopted allocation procedure in those orders not now providing for allocation on an individual-plant basis.

All the orders now provide that certain receipts of milk from unregulated supply plants and other Federal order plants shall share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of his pool plants combined. This procedure, which resulted from the 1964 "compensatory payment" decisions referred to earlier, should be continued. To implement this procedure in those orders being changed from system allocation to individual-plant allocation, several additional allocation steps must be provided in such orders. These involve essentially the same computations now required under the orders for the North Texas, Central West Texas, Lubbock-Plainview, Rio Grande Valley, Northern Louisiana, and Des Moines markets where individual-plant allocation is used. Such provisions are revised, however, to incorporate three classes of utilization rather than two classes.

The additional allocation steps establish a procedure whereby the milk from unregulated supply plants and other order plants will continue to be classified on the basis of the handler's total system, but will be assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of his entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of his other pool plants in his system. This technique does not result, however, in changing the amount of milk to be accounted for at each plant, or the classification of milk within the handler's entire system.

The provisions in the attached orders concerning this allocation procedure reflect certain minor changes from the provisions set forth in the revised recommended decision. Such changes are intended to make the accounting technique for "adjusting" utilization at plants within a handler's system comparable to the adjustment technique now used under the six orders listed above that provide for individual-plant allocation and at the same time compatible with the establishment of a new intermediate price class for producer milk.

(g) *Obligations relative to other source milk.* Each of the orders under consideration that provide for market-wide pooling should be revised to the extent necessary to remove the possibility of a handler being charged under the order at the Class I price for milk that already has been classified and priced as Class I milk under some Federal order. Certain of these orders already have been revised to remove any "double charge" on Class I milk. The order language previously adopted for this purpose should be made uniform, however, and should be included in the remaining orders not now containing such provisions.

No changes in this respect are necessary under the Memphis, Fort Smith, Austin-Waco, and North Central Iowa orders. These orders employ individual-handler pooling and do not provide for any handler obligation on other source milk.

A "double charge" on Class I milk received at a pool plant from an unregulated nonpool plant could result in the following manner. Producer milk could be transferred in bulk from a pool plant under the Wichita order, for example, to an unregulated nonpool plant and be assigned to the nonpool plant's Class I utilization. In determining his pool obligation, the pool plant operator would be charged for this Class I utilization of milk at the Class I price. During the same month, bulk milk could be transferred from the nonpool plant to a pool plant under the Kansas City order and be allocated to such pool plant's Class I utilization. In this case, the operator of the pool plant would be charged under the Kansas City order the difference between the order's Class I price and weighted average price for this receipt of "other source" Class I milk. Thus, to the extent of the Class I milk that was moved to the nonpool plant from the Wichita market as Class I milk, the Class I other source milk received at the Kansas City pool plant from the nonpool plant is, in effect, priced twice as Class I milk under the Federal order system.

More and more, plants are tending to specialize in the processing of certain products, or in the packaging of products in particular types of containers. It is not uncommon for milk to be transferred from a pool plant to an unregulated nonpool plant for special processing and the finished products to be moved back into the regulated market. When the milk is initially priced at the Class I price, the market price structure is in no way undermined if this milk, or its equivalent, is disposed of by the nonpool plant in the regulated market.

The orders therefore should provide that the operator of the Kansas City plant, in this example, will have no obligation to the pool on such other source Class I milk. This is achieved through a revision of the allocation provisions and the procedure for computing the pool obligation of a pool plant operator. Receipts of packaged fluid milk products at a pool plant from an unregulated supply plant would be allocated to the pool plant's Class I utilization to the extent that an equivalent amount of skim milk or butterfat disposed of to the unregulated plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order. This allocation would be made prior to any other 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 un-

[4] Official notice is taken of the Assistant Secretary's decisions issued on June 19, 1964 (29 FR 9002, 9110, and 9213) with respect to all milk orders then in effect.

regulated plant had been priced as Class I milk under some order.

In this same connection, the provisions prescribing the obligation of a partially regulated distributing plant should be changed in each marketwide pool order. When such plant's obligation is computed as though it were a pool plant, proper recognition must be given to any transfers from the plant to a regulated plant that are considered to already have been priced as Class I milk under some Federal order. Also, in computing such plant's pool obligation on route sales in a Federal order marketing area, recognition should be given to any receipt of milk at such plant from another unregulated plant if an equivalent amount of milk received at the latter plant already has been priced as Class I milk under an order.

Each order now imposes a handler assessment for administering the order on all other source Class I milk except that received in fluid form from an other order plant. This may include milk that already has been priced as Class I milk under some Federal order as described above. With the removal of a "double" Class I charge on such milk, each order should be changed to likewise remove any assessment on such milk for administrative expenses. It is presumed that such milk was subject to a similar charge under the order that initially priced the milk.

The marketwide pool orders should be changed also with respect to the application of location adjustments to other source Class I milk. As just described, each of the orders provides that a pool plant operator's obligation to the producer-settlement fund shall include a payment for fluid milk products received from an unregulated supply plant if they are allocated to Class I. The handler's payment is determined by charging him at the Class I price for the Class I other source milk and giving him a credit on the milk at the weighted average price (or uniform price in the case of those orders that do not provide for any type of seasonal production incentive plan). Both the Class I and weighted average prices are adjusted for the location of the unregulated supply plant. The adjustment of the weighted average price, though, is so limited as to be not less than the lowest class price. No such limitation is applied currently under most of the 32 orders to the Class I price adjustment.

Providing that any adjusted Class I price applicable to other source milk be not less than the Class III price is appropriate under each order. Otherwise, under certain conditions a handler could receive payment from the producer-settlement fund on Class I milk obtained from an unregulated supply plant. Such payment could result when the location differential for the distant plant is greater than the difference between the Class I and Class III prices. In this circumstance, producers under the order, in effect, would be providing the handler with a credit that reduces his cost for the distant milk below its value for manufacturing use at the point of purchase. From the standpoint of marketing efficiency, the handler should not be provided an incentive, which would be at the expense of local producers, to import such distant milk into the local market.

A similar situation now exists with respect to the obligation of the operator of a partially regulated distributing plant or an other order plant. In certain cases, the handler's obligation includes a payment to the producer-settlement fund at the difference between the Class I price applicable at his plant and either the weighted average price or the Class III price. For the same reasons, each order should provide, in computing the obligation of such a handler also, that the Class I price, as adjusted for location, shall not be less than the Class III price.

(h) *Reports.* The proposed changes in the classification of milk are not expected to require any major change in the amount of information to be submitted by handlers in their monthly reports of receipts and utilization. The reporting provisions of each order must be changed, however, to reflect the new categories of information that each market administrator will need in administering an order. These changes stem largely from the proposed reclassification of cream and the revised accounting methods necessary for implementing a three-class classification scheme.

In revising the reporting provisions of each order, such provisions should be made uniform to the extent possible. Essentially the same information is now required to be reported under each order, basically for the purposes of determining the classification of the milk and its classified value. There is considerable variation among these orders, however, in the manner in which the provisions on reports are expressed.

As proposed herein, the reporting provisions would be stated in some orders in slightly less detail than is now the case. The market administrator would have, nevertheless, no less authority than at present to obtain through handler reports, in the detail and on forms prescribed by the market administrator, any information the latter believes is necessary for administration of the order.

5. *Changing the butterfat differentials.* A single butterfat differential should apply under each order for adjusting prices to the actual butterfat content of the milk being priced. This differential should be the Chicago butter price multiplied by 0.115, rounded to the nearest one-tenth cent.

All 32 orders provide butterfat differentials for adjusting class prices and uniform prices for butterfat content. With two exceptions, each order bases the class butterfat differentials on the Chicago butter price, which would be continued under the revised orders. The Chicago butter price is the simple average of the wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk butter at Chicago as reported for the month by the U.S. Department of Agriculture. Under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, the Class II butterfat differential is based on the price of Grade AA (93-score) butter at New York City.

The handler butterfat differentials for each class are now computed by multiplying the butter price by a specified factor. In the case of the Class I butterfat differential, the factor is 0.120 under 19 orders and 0.125 under 11 orders. One order uses a factor of 0.130 and another a factor of 0.135.

The factor most commonly used in computing the butterfat differentials applicable to the surplus prices is 0.115, as prescribed by 18 orders. Eight orders use 0.110, while the factors 0.120 and 0.108 are used under two other orders. Four orders use a factor of 0.110 during the heavy production months and 0.115 during the remainder of the year.

The butterfat differential used in adjusting the uniform price to producers under 22 of the orders is the average of the butterfat differentials for each class, weighted by the proportion of producer milk in each class. Under six other orders, the butterfat differential to producers is determined by multiplying the Chicago butter price by 0.120. Two other orders use a factor of 0.110 under a similar computation, while another provides that this differential be computed by adding 4 cents to the Chicago butter price and multiplying the sum by 0.1. Under the Memphis order, the producer butterfat differential is determined from a fixed schedule of rates in the order which are related to the Chicago butter price, i.e., for each 5-cent change in the butter price, the butterfat differential changes one-half cent per point of butterfat.

Cooperative associations proposed that all class prices and uniform prices be subject to adjustment by a butterfat differential based on the Chicago butter price times a factor of 0.115. One handler proposed that the Class II and Class III butterfat differentials be based on the Chicago butter price times 0.110. Handlers in general opposed any change in the present factor used in computing Class I butterfat differentials.

Lowering the Class I butterfat differential factor to 0.115 will accommodate producers' request for a readjustment of the values of skim milk and butterfat in Class I milk at a time of declining use of butterfat in fluid milk products. In 1960, the average butterfat test of fluid milk products (including cream items) in 63 Federal order markets was 3.76 percent. In 1970, the average butterfat test for such products in 58 markets was 3.26 percent.

Comparable data for the 32 subject markets as they are presently constituted are not available. On the basis of information available for much of the area now regulated by these orders, however, there is every indication that the use of butterfat in Class I in these markets is following the national trend.[5]

[5] Official notice is taken of the annual summaries for 1960 through 1971 of Federal Milk Order Market Statistics which were issued by the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C.

The impact of this change on a handler's average cost of producer butterfat for Class I use is dependent, of course, upon the average butterfat test of his Class I products and the butterfat differential now applicable to him. Thus, handlers in the 32 markets will be affected differently from lowering the Class I butterfat differential. An analysis of 1970 data for 30 of the 32 markets will serve to illustrate the general change in handlers' costs under the revised classification plan. Data for the Ft. Smith and Austin-Waco markets are not available.

It is estimated that in 18 of the 19 markets now using a Class I butterfat differential factor of 0.120 the average butterfat test of Class I products distributed by handers (excluding cream and lowfat items) would have ranged in 1970 from 3.55 percent to 2.53 percent. Using the average test for these markets of 2.98 percent, the Class I price at test would have been increased 1.8 cents per hundredweight. For 10 of the 11 markets now using a Class I butterfat differential factor of 0.125, the average test of Class I milk would have ranged from 3.25 percent to 2.81 percent. Based on an average test of 3.01 percent, using a factor of 0.115 in these markets would have increased the Class I price at test by 3.4 cents. The price increases would have been slightly greater in the Duluth-Superior and Central Arizona markets, where factors of 0.130 and 0.135, respectively, are used. Based on estimated Class I butterfat tests of 2.73 percent and 3.10 percent, the Class I price at test would have been increased 8.0 cents per hundredweight in the Duluth-Superior market and 5.6 cents in the Central Arizona market.

Handlers opposed any change in the Class I butterfat differentials on the basis that the relationship of skim milk and butterfat values had already been altered by a change on April 1, 1971, in the purchase prices for dairy products under the Department's price support program. They pointed out that this change, as reflected in order prices, increased handlers' cost of skim milk about 10 cents per hundredweight. Handlers argued that in view of this any further increase in the value of skim milk should be delayed until there has been an opportunity to observe the market response to the effects of the price support change.

There is no evidence to suggest that Class I sales of skim milk and lowfat products were affected adversely by the price support action. Data for 58 Federal order markets indicate that average daily sales of these products in 1971 increased 2.1 million pounds over such sales in 1970. Monthly data show no drop in sales following the support price change in the early part of 1971. Adopting a lower Class I butterfat differential at this time gives recognition to the lower market value now associated with butterfat in Class I products.

Using a single factor of 0.115 for computing Class II and Class III butterfat differentials will result in a uniform adjustment of class prices for butterfat content among the markets under consideration. Continuation of the several butterfat differential factors now in use would offset to some extent the benefits to be gained through the adoption of a uniform classification plan.

A handler proposed that the butterfat differential factor for adjusting surplus prices be 0.110 rather than 0.115 as proposed by cooperatives. Proponent indicated that in disposing of surplus cream handlers usually are not able to recover their cost of such cream under the order. A Class II-Class III butterfat differential factor of 0.110, it was argued, would provide handlers with some price relief in this circumstance.

The record does not indicate that the adoption of 0.115 as the butterfat differential factor for pricing surplus milk will hinder the removal of surplus butterfat from the fluid market. Of the 32 orders, 22 now use a factor of 0.115, and one uses a factor of 0.120, for pricing surplus milk. The handler proposing the 0.110 factor was the only opponent of the 0.115 factor proposed by cooperatives. The great majority of residual butterfat is disposed of by the cooperatives rather than handlers. It must be concluded that the adoption of the handler's proposal under present marketing conditions would return to producers in most cases less than the obtainable market value for butterfat not needed for Class I purposes.

With the use of the same factor in computing the butterfat differential for each class, there appears to be no need for announcing more than one butterfat differential under each order, or for doing so before the end of the month in which it applies. Accordingly, under the new pricing arrangement, the single butterfat differential for the current month should be based on butter prices for such month and should be announced by the fifth day of the following month.

In the case of the butterfat differentials for each class, this announcement procedure represents a change only in the pricing of Class I milk. The Class I butterfat differentials under these orders are now based on butter prices prevailing during the preceding month and are announced by the fifth day of the current month. Such advance announcement of the Class I butterfat differential does not appear necessary, however. The average monthly butter price normally changes very little from month to month, and changes that do occur usually result in relatively limited changes in the butterfat differentials. Each change in the price of butter may be readily noted by handlers by following the daily butter quotations. 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.

As indicated, cooperatives proposed that the butterfat differential used in adjusting pay prices to producers be computed in the same manner as adopted herein for computing handler butterfat differentials. Producer butterfat differentials under 22 of the 32 orders now reflect the weighted value of butterfat in the class uses. Inasmuch as producers favor this method of reflecting skim milk and butterfat values in their pay prices, this pricing arrangement should be extended to the other 10 orders. Since the same butterfat differential would be used in adjusting each of the class prices, there is no actual need, of course, for any provision in these orders for weighting the values of butterfat in the three classes in determining the producer butterfat differential.

Under the concept that all class prices should be adjusted by the same butterfat differential, it is necessary that each order provide only for a producer butterfat differential. No handler butterfat differentials for adjusting class prices need be set forth as such in the orders, nor is there any need for pooling the value of butterfat in each class. All producer "differential" butterfat received by handlers would be priced the same to all handlers regardless of the class in which the butterfat is used.

There is no reason for handlers to be less aware under this procedure of what their cost of milk is in each class than under the present order provisions, as was suggested in exceptions to the revised recommended decision. Any adjustment of class prices that a handler may wish to make to reflect a certain butterfat content can be done merely by using the butterfat differential used to adjust pay prices to producers. The procedure adopted herein for not pooling butterfat values is not unique to the Federal order program. The procedure has been in use for some time in a number of other Federal orders, apparently with general acceptance by affected parties in those markets.

It is recognized that the basic formula price of these orders is determined by adjusting the average Minnesota-Wisconsin price at test to a 3.5 percent butterfat basis by using a factor of 0.120 times the average Chicago butter price. The appropriateness of such factor for this purpose was not considered at the hearing and no consideration is given in this decision to changing this factor for such purpose. Moreover, since this method of determining the basic formula price is now used under all Federal milk orders throughout the country, it would appear that any change in this butterfat differential factor should be considered simultaneously for all orders.

6. *Advance announcement of prices for surplus milk.* The proposal by handlers to announce order prices for surplus milk at the beginning of the month rather than at the end of the month during which the prices apply should not be adopted.

Under the present orders, the prices for surplus milk are announced by the fifth day of each month. Such prices apply to producer milk delivered to handlers during the preceding month.

The national associations of fluid milk and ice cream processors proposed at the hearing that the class prices to be applicable in a particular month to surplus milk be announced by the fifth day of such month. Handlers stated that under the present announcement procedure they are often disadvantaged by not knowing the costs of producer milk for manufacturing use until after the end of the month in which the milk is processed. They claimed that when there is a significant increase in the order price, the delayed notice of the increase prevents them from making corresponding adjustments in their resale prices on a timely basis. Proponents' interest in advance pricing related essentially to the prices that would be applicable to cottage cheese, cream products, yogurt, and frozen desserts, the principal Class II products processed by such handlers.

In exceptions filed to the revised recommended decision, there was a general concensus among both handler and producer groups that the present method of announcing surplus prices should continue with respect to the Class III price. These groups generally urged, however, that the Class II price for the month be announced by the fifth day of the month and be based on the Minnesota-Wisconsin price for the preceding 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. As indicated earlier, the surplus prices under the revised classification plan would be based on prices paid for manufacturing grade milk in Minnesota and Wisconsin. These prices are closely related to the market values of cheddar cheese, nonfat dry milk and butter, the principal uses for such milk in the month of delivery of the raw milk. These product prices are established on a regular basis in a market that is national in scope. The manufacturers of ungraded milk are fully aware of the movements of these product prices, which are published weekly, and can adjust their pay prices for milk in response to changes in the prices for the finished products. Regulated handlers who are processing these particular products must compete in the same national market in which the processors of manufacturing grade milk are competing and the same product price information is available to them.

In most of the markets under consideration, substantial quantities of milk are disposed of by regulated handlers in the form of butter, nonfat dry milk or cheese. In 1970 over 1 billion pounds of milk, or 88 percent of the market's total Class II use, were so disposed of by handlers in the Minneapolis-St. Paul market. In the Minnesota-North Dakota, Southeastern Minnesota-Northern Iowa, Duluth-Superior, Cedar Rapids-Iowa City, Eastern South Dakota, Oklahoma Metropolitan, and North Central Iowa markets, over 80 percent of each market's total Class II milk was used that year in manufacturing these products. Although lesser quantities of milk were used in such products in the other markets, only in four markets (Memphis, Fort Smith, Central West Texas, and Rio Grande Valley) did such uses represent less than 20 percent of the total Class II use for each market. Thus, handlers in most of the 32 markets have a very definite interest in the relationship of the applicable class price with prices being paid currently for manufacturing grade milk. Accordingly, the prices paid by regulated handlers for Class III milk should correspond very closely with the pay prices during the month of delivery for manufacturing grade milk if these handlers are to be competitive in the sale of the principal surplus products.

The same considerations are involved in the case of an advance announcement of prices for milk used in the proposed Class II products. The influence of the manufacturing milk price level on the competitive relationship of producer milk for Class II uses is similar to that for producer milk used in the proposed Class III products. Therefore, the prices for Class II milk should be announced on the same basis as the price for Class III milk.

In connection with the announcement of surplus prices, a comment should be made concerning the transition from the present pricing provisions to the new ones adopted herein. It is intended that the present surplus prices apply to producer milk delivered to handlers during the last month under the present classification and pricing scheme. Clarification of this point is pertinent since such prices would be announced following the effective date of the new pricing provisions.

7. *Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders.* The Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders should be changed to provide that the skim milk ingredient of "filled milk" shall be classified and priced as Class I milk.

The provisions provided herein are substantially those which were proposed for consideration at the hearing by a cooperative association operating in these markets.

In 1968, proposals to classify and price the skim milk component of filled milk were considered for most orders at a hearing held in Memphis, Tennessee. The decision resulting from the hearing classified the skim milk component of filled milk in the same way as the skim milk component of natural milk. It provided a means of equating the cost of skim milk in filled milk if it originates from sources other than producer milk with the cost if derived from producer milk.

At the time of the 1968 hearing, the Southeastern Minnesota-Northern Iowa order had not been issued, and the Minneapolis-St. Paul order could not be amended in this respect because of a marketing area expansion to which the filled milk hearing did not apply. As a result, these orders do not contain the uniform provisions dealing with filled milk provided in all other Federal milk orders.

Filled milk is a combination of skim milk and vegetable fat or oil in about the same proportions as the skim milk and milk fat in whole milk. Well over 90 percent of the product is skim milk. In most filled milk, the skim milk portion is fresh fluid skim milk separated from whole milk. Some filled milk contains reconstituted fluid skim milk prepared from a concentrated product such as nonfat dry milk. Whether made from vegetable fat and fresh or reconstituted skim milk or any combination of the two, filled milk resembles whole milk in appearance.

Regulated handlers disposing of filled milk make a substantial savings in cost by substituting vegetable fat or oil for butterfat. This is the main incentive for the marketing of filled milk. While the difference in cost between vegetable fat and butterfat is not an issue at this hearing, it is relevant to the extent that it explains the profit motivation for marketing the product relative to the marketing of natural milk.

At the present time, no filled milk is distributed in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas. In those regulated markets where filled milk is distributed, it moves in the same channels as whole milk. It is distributed by the same handlers in the course of their regular business through the same outlets for natural milk and in the same types of containers.

Filled milk, if disposed of in either the Minneapolis-St. Paul or the Southeastern Minnesota-Northern Iowa marketing area, would directly burden, obstruct, or affect interstate commerce in milk and milk products. It previously has been determined (at the time of the promulgation of each of these orders) that all milk marketed in each marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and milk products.

Filled milk is in content substantially a product of milk and competes for the same sales outlets as milk. It follows, therefore, that the marketing of the milk ingredients in filled milk in either of the two markets would burden, obstruct, or affect interstate commerce in milk and milk products. This would be equally true whether the marketing of filled milk were by a fully regulated plant or by a plant not fully regulated because both would compete for similar outlets in the market.

Also, manufactured milk products are sometimes used in the production of filled milk. Manufactured milk products move in interstate commerce and compete in the national market, regardless of where the milk is produced. Therefore, manufactured milk products, if used in the production of filled milk for disposition in either the Minneapolis-St. Paul or Southeastern Minnesota-Northern Iowa market, likewise would burden, obstruct,

or affect interstate commerce in milk and its products.

The classification of the dairy ingredients of filled milk is a proper consideration derived from the Agricultural Marketing Agreement Act. As stated in the decision resulting from the filled milk hearing in Memphis, Tenn., the

> Specific language of the Act with respect to classification is that each order shall contain terms "* * * classifying milk in accordance with the form in which or the purpose for which it is used * * *". In applying the language of the Act we here consider the form and purpose of use for both filled milk and the milk ingredient content of the filled milk.
>
> The form of filled milk and the purpose for which it is used are the same as the form and purpose of use of whole milk. Filled milk, just as whole milk, is disposed of in fluid form. It is marketed by handlers in the same types of packages and in the same trade channels as the whole milk they market, and is mainly intended as a beverage substitute for milk.
>
> Similarly, the fluid skim milk content of the filled milk is in the same form as skim milk in whole milk and serves the same purpose, providing in each case the main body of the product thereby making it a milk beverage. The addition of the nonmilk ingredients, principally vegetable fat or oil and stabilizers, does not alter the basis for Class I classification. The addition of nonmilk ingredients in fluid milk products is not a new development. The addition of vegetable fat does not involve an essentially different consideration from that for other Class I fluid milk products to which a flavoring ingredient, such as chocolate (which also contains nonmilk fat) has been added.
>
> For purpose of illustration, a product within the "fluid milk product" category containing a nonmilk additive is chocolate milk. The additive is not considered as changing the form of this product so that it is no longer a fluid milk product. For the purposes of classification, the flavoring material has never been regarded as significant in determining the form of the product or as a basis for altering its classification.
>
> The same reasoning applies in the case of filled milk—that the additives do not change significantly the form or the purpose of use and therefore do not constitute a basis for classification other than in Class I.
>
> The product "filled milk" therefore should be classified, for the purpose of pricing under the orders, in the same manner as whole milk. As in the case of other fluid milk products containing some nonmilk ingredients, the classification would apply only to the milk ingredients in the product.

No opposition to the filled milk proposal was expressed at the hearing or in briefs submitted by interested parties.

Based on the testimony of proponent, which related specifically to the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, it is found that the above findings from the Memphis decision are equally applicable to this proceeding. Accordingly, they serve as the basis for concluding that the milk ingredients of filled milk should be classified and priced under the two orders as Class I milk.

Proponent testified also that filled milk may be made by combining reconstituted skim milk with vegetable fat and other minor ingredients. Reconstituted skim milk commonly is made from nonfat dry milk to which water is added to return it essentially to a form and consistency similar to fresh skim milk. Its potential as a disruptive influence on the market for producer milk is substantial, however, since the disposition of any Class I product that has been priced at the surplus price level undermines the classified pricing system.

As was found in the filled milk decision referred to earlier, filled milk made from reconstituted skim milk is, from a marketing standpoint, essentially similar to filled milk made from fresh skim milk. It is a competitor of whole milk at the consumer level. Therefore, reconstituted skim milk in filled milk, as in other fluid milk products, should be classified and priced on the same basis as all other fluid milk products to achieve uniformity in the pricing of milk for similar uses.

Federal milk orders, including the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, have contained for some time specific provisions dealing with the disposition by a regulated handler of other fluid milk products reconstituted from nonfluid milk products. The issue of proper classification and charge for such use of nonfluid milk products to produce products for Class I disposition was dealt with for most orders in the compensatory payment decisions referred to earlier in this decision. The findings and conclusions that relate to the reconstitution of milk appeared at 29 FR 9010. The regulatory treatment of reconstituted products that is described in the compensatory payment decisions and reiterated in the later filled milk decision is appropriately applicable to any reconstituted skim milk used in filled milk that may be disposed of in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas.

It should be noted that these two orders now provide that a producer-handler would lose his status as such and become a fully regulated handler if he disposes of fluid milk products made from reconstituted skim milk. Since the fluid milk products definition would include filled milk under the amendments adopted herein, loss of producer-handler status would result also from the sale of reconstituted filled milk.

A definition of filled milk should be provided in the two orders to meet the specific needs of order regulation, and for such purpose only. This definition, which would be identical to the filled milk definition in all other orders, should be as follows:

> "Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

The term "filled milk" is not intended to include skim milk marketed in a form or for a purpose specifically excluded from the fluid milk product definition of either order. For example, evaporated milk is a use of skim milk and butterfat not treated as a fluid milk product in either order. If a product containing skim milk and any amount of vegetable fat were marketed in the same form and manner as evaporated milk, it would be excluded from the term "filled milk".

The regulatory treatment of filled milk adopted herein requires numerous conforming changes throughout the order. Accordingly, all the conforming changes found necessary on the basis of the Memphis hearing to implement the filled milk amendments are incorporated herein wherever applicable.

8. *A uniform "equivalent price" provision.* Each of the 32 orders included in this proceeding should be amended to the extent necessary to provide identical language for determining an equivalent price, or price constituent, when a price or price constituent is not available as prescribed by the order.

At present, all of the 32 orders except the Minnesota-North Dakota order provide for computing an equivalent price as needed. Such provisions are not identical, however, among the orders. A Dairy Division proposal for a uniform equivalent price provision under each order was supported by a witness for the National Milk Producers Federation.

An equivalent price provision is necessary in each of the orders to provide a price, or price constituent, in cases where published prices, indexes, quotations or other pricing constituents as prescribed by the order are not available. It insures that basic formula prices, class prices and butterfat differentials can be computed, as prescribed, in emergency situations without interruption.

All the orders now rely on butter price quotations for computing butterfat differentials. All rely on the Minnesota-Wisconsin price series for computing the basic formula price and Class I prices. As proposed herein, this price series would be used also in establishing Class II and Class III prices under each order.

Under unusual circumstances, these published prices and price constituents might not be available for use in computing order prices. If there were insufficient trading during the month in butter, for example, or if the specific butter price quotations were discontinued, the prescribed butterfat differentials could not be computed without an equivalent price provision. By providing for the determination of an equivalent price as needed, the Department is in a position to draw on comprehensive resource data to assure that the computation of the basic formula price, the class prices, or the butterfat differentials is not interrupted by the contingencies cited.

For these reasons, it is concluded that the Minnesota-North Dakota order should provide for the determination of an equivalent price in the same manner as the other orders included in this proceeding.

In providing for a determination of equivalent price, the same objective is sought for each order. It is appropriate, therefore, to provide for identical provi-

sions in each order. Then, if a determination had to be made for more than one order simultaneously, there would be no question as to the applicability of the determination to each order.

Accordingly, the equivalent price provision in each order should be stated as follows:

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

A corollary change should be made in the Class I price provisions of the Neosho Valley order. This order provides that the Class I price shall be based in part on the Class I price "under Part 1067 of this chapter regulating the handling of milk in the Ozarks marketing area." At the time the Ozarks order was merged with the St. Louis order, a determination of equivalent price was issued for the Neosho Valley order (33 F.R. 15107) which stated in part that:

For the purpose of computing the Neosho Valley Class I price, the Class I price announced for Zone 1 under the St. Louis-Ozarks milk order (Part 1062) will be equivalent to the price specified in § 1071.51(a)(2) of the Neosho Valley order and should be used in lieu thereof in computation of the Class I price of the Neosho Valley order until such time as the Neosho Valley order may be amended.

This determination of equivalent price, which was issued in October 1968, is still in effect. This proceeding affords an opportunity to amend the Neosho Valley order as prescribed in the determination. Thus, the order language quoted earlier should be revised to read "under Part 1062 of this chapter regulating the handling of milk in the St. Louis-Ozarks marketing area."

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

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

A cooperative association in the Duluth-Superior market requested in its exceptions to the revised recommended decision that the Duluth-Superior order be withdrawn from this proceeding. The cooperative urged that any order changes concerning the classification and pricing of milk in this market be dealt with in conjunction with its anticipated proposal to expand the Duluth-Superior marketing area.

The basic purpose of this proceeding is to resolve the marketing problems arising from differences among orders in the classification and pricing of milk. The hearing record indicates that handlers in the Duluth-Superior market have overlapping sales areas with handlers regulated under the Minneapolis-St. Paul order, which also is included in this proceeding. To assure the coordination of the classification and pricing provisions of the two orders, the Duluth-Superior order should continue to be a part of this proceeding.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement [1] regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the aforesaid marketing areas which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

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

Determination of Producer Approval and Representative Period

December 1973 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas is approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the respective marketing areas.

Signed at Washington, D.C. on February 19, 1974.

Clayton Yeutter,
Assistant Secretary.

Order [2] Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of 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 orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

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

(1) The said order as hereby amended, and all of the terms and conditions

[1] Filed as part of the original document.

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

thereof, will tend to effectuate the declared policy of the Act;

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

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

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

The provisions of the proposed marketing agreement and order amending each of the specific orders contained in the revised recommended decision issued by the Administrator on August 27, 1973, and published in the FEDERAL REGISTER on September 11, 1973 (38 FR 25024) shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein, subject to the following modifications:

1. The following sections of each order have been changed: § 1007.12(b); § 1007.14(a); § 1007.15(a)(2); § 1007.40 (b)(4) and (c)(1); § 1007.41(a)(2) and (b)(7); and § 1007.44(a)(8), (11), and (12).

2. Section 1007.50(c) has been changed in the Wichita, New Orleans, and Northern Louisiana orders.

3. Changes are made in the Wichita and Northern Louisiana orders to incorporate amendments, based on separate hearing records, that have been issued since the issuance of the revised recommended decision in this proceeding.

PART 1007—MILK IN GEORGIA MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1007 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1007.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1007.2 Georgia marketing area.

The "Georgia marketing area", hereinafter called the "marketing area", means all the territory, including all waterfront facilities connected therewith, geographically within the boundaries of the State of Georgia except the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Rabun, Walker, and Whitfield. The marketing area shall include all territory that is occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area.

§ 1007.3 Route disposition.

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1007.4 [Reserved]

§ 1007.5 Distributing plant.

"Distributing plant" means a plant in which milk approved by a duly constituted health authority for fluid consumption or filled milk is processed or packaged and which has route disposition in the marketing area during the month.

§ 1007.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority for fluid consumption or filled milk is shipped during the month to a pool plant.

§ 1007.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route disposition, except filled milk, during the month of not less than 50 percent of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of it total Class I disposition, except filled milk, during the month.

(b) A supply plant from which not less than 50 percent of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of August through February shall be a pool plant for the months of March through July unless the milk received at the plant

does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

(c) For the purpose of qualifying a supply plant under paragraph (b) of this section, a cooperative association supplying pool distributing plants during the month at least two-thirds of the producer milk of its members (including both milk delivered directly from their farms and that transferred from the supply plant(s) of the cooperative) may count (irrespective of other requirements of § 1007.9(c)) as shipments from the plant to pool distributing plants the milk delivered to pool distributing plants under § 1007.9(c); in the event the cooperative operates more than one supply plant, all such deliveries shall be assigned, for this purpose, to the supply plant nearest Atlanta, Ga.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant; and

(3) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

§ 1007.8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

§ 1007.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1007.13 for the account of such cooperative association;

(c) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1007.10 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no Class I milk from sources other than his own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk;

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his personal enterprise and risk; and

(e) If such person had been a producer to whom a Class I base had been assigned pursuant to § 1007.94, has forfeited such Class I base in accordance with the requirement of § 1007.96(c).

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is physically received at a pool plant or diverted pursuant to § 1007.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act or the operator of an exempt distributing plant;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1007.44(a)(8)(iii) and the corresponding step of § 1007.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1007.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer or from a handler described in § 1007.9(c): *Provided*, That if the milk received at a pool plant from a handler described in § 1007.9(c) is purchased on a basis other than weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the volume by which the farm weights and butterfat as determined from the farm bulk tank samples of such milk exceed the weights and butterfat on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1007.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account only the milk of member producers: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk;

(5) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk; and

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1007.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1007.40(b)(1) from any source other than producers, handlers described in § 1007.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1007.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1007.40(b)(1), and products produced at the plant during the 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 § 1007.40(b)(1)) for which the handler fails to establish a disposition.

§ 1007.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1007.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1007.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1007.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1007.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing milk or milk products for, its members.

§ 1007.19 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload point shall not be considered a plant except that a reload operation on the premises of a plant shall be considered a part of the plant operation.

Handler Reports

§ 1007.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1007.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1007.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) Each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator on or before the seventh day after the end of the month:

(1) The total pounds of base milk and the total pounds of excess milk; and

(2) The days for which milk was received from each producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1007.30 and 1007.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1007.40 Classes of utilization.

Except as provided in § 1007.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1007.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk in bulk, fluid form that is used to Class III product;

(v) 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

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1007.15; and

(6) In shrinkage assigned pursuant to § 1007.41(a) to the receipts specified in § 1007.41(a)(2) and in shrinkage specified in § 1007.41 (b) and (c).

§ 1007.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1007.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1007.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1007.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to §1007.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1007.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a)(7) or the corresponding step of § 1007.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1007.44(a) (11) or (12) or the corresponding steps of § 1007.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b) (3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective

market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1007.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt distributing plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1007.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, 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.

§ 1007.43 General classification rules.

In determining the classification of producer milk pursuant to § 1007.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1007.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1007.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1007.40, 1007.41, and 1007.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1007.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1007.9(a) for each of his pool plants separately and of each handler described in § 1007.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1007.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any

Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1007.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1007.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i), of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1007.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, substract 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 (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being substracted 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 Class II and Class II combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1007.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between 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 substracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) 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 Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1007.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations puructs from an other—plant that are in suant to paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

§ 1007.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1007.44(a) (12) and the corresponding step of § 1007.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1007.44 on the basis of such report, and, thereafter any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

Class Prices

§ 1007.50 Class prices.

Subject to the provisions of § 1007.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1007.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1007.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Northern Zone" means all the territory in the following Georgia counties:

Banks.
Bartow.
Catoosa.
Chattooga.
Cherokee.
Dade.
Dawson.
Elbert.
Fannin.
Floyd.
Forsyth.
Franklin.
Gilmer.
Gordon.
Habersham.
Hall.
Hart.
Jackson.
Lumpkin.
Madison.
Murray.
Pickens.
Rabun.
Stephens.
Towns.
Union.
Walker.
White.
Whitfield.

(2) "Southern Zone" means all the territory in the State of Georgia that is not within the Northern Zone.

(b) The Class I price for producer milk at a plant in the Northern Zone shall be reduced 15 cents and at a plant that is outside Georgia, north of an east-west line extending from the city hall in Atlanta and more than 100 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the nearer of the city halls in Atlanta and Augusta, Ga., shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Atlanta and Augusta: *Provided*, That the location adjustment pursuant to this paragraph applicable at a plant in Alabama or South Carolina shall not be more than 15 cents.

(c) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee-plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1007.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1007.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1007.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1007.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1007.44(a)(14) and the corresponding step of § 1007.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1007.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1007.44(a)(9) and the corresponding step of § 1007.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7)(i) through (iv) and the corresponding step of § 1007.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7)(v) and (vi) and the corresponding step of § 1007.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(11) and the corresponding step of § 1007.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1007.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1007.61 Computation of uniform prices for base milk and excess milk.

(a) For each month, the market administrator shall compute a uniform price as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports pursuant to § 1007.30 for the month, except those in default of payments required pursuant to § 1007.71 for the preceding month;

(2) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1007.75;

(3) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1007.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the uniform price.

(b) The market administrator shall compute uniform prices per hundredweight for base milk and excess milk each month, each of 3.5 percent butterfat content, as follows:

(1) Determine the aggregate amount of producer milk in each class included in the computation pursuant to paragraph (a) of this section and the hundredweight of such milk that is base milk and that is excess milk;

(2) Determine the value of the total hundredweight of milk of producers specified in § 1007.94 (c) and (d) to whom no base milk has been assigned by multiplying such volume by the Class III price;

(3) Determine the total value of excess milk by assigning such milk in series beginning with Class III to the hundredweight of milk in each class as determined pursuant to paragraph (b)(1) of this section, multiplying the quantities so assigned by the respective class prices and adding together the resulting amounts;

(4) Divide the total value of excess milk in paragraph (b)(3) of this section by the total hundredweight of such milk. The quotient, rounded to the nearest cent, shall be the uniform price for excess milk;

(5) Multiply the total hundredweight of excess milk by the uniform price for excess milk computed pursuant to paragraph (b)(4) of this section;

(6) Multiply the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the uniform price for the month;

(7) Subtract the total values arrived at in paragraph (b)(2), (5), and (6) of this section from the amount resulting from the computations pursuant to paragraph (a)(1) through (4) of this section; and

(8) Divide the amount obtained in paragraph (b)(7) of this section by the total hundredweight of base milk determined in paragraph (b)(1) of this section and subtract not less than 4 nor more than 5 cents per hundredweight. The resulting figure rounded to the nearest cent, shall be the uniform price for base milk.

§ 1007.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform prices for such month.

PAYMENTS FOR MILK

§ 1007.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1007.71 and 1007.76 and out of which he shall make all payments from such fund pursuant to § 1007.72: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1007.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1007.60.

(2) The sum of:

(i) The value at the uniform prices pursuant to § 1007.61(b), as adjusted pursuant to § 1007.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price pursuant to § 1007.61(a) applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1007.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(a)(2) exceeds the amount computed pursuant to § 1007.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month less proper deductions authorized in writing by such producer;

(2) On or before the 15th day of each month at not less than the applicable uniform prices for the quantities of base milk and excess milk received adjusted by the butterfat differential computed pursuant to § 1007.74, and in the case of base milk by the location adjustment computed pursuant to § 1007.75, subject to the following:

(i) Less payments made pursuant to paragraph (a)(1) of this section;

(ii) Less proper deductions authorized by such producer;

(iii) Less deductions for marketing services made pursuant to § 1007.86; and

(iv) If by such date such handler has not received full payment from the market administrator pursuant to § 1007.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator; and

(3) On or before the 15th day of the month at not less than the Class III price adjusted by the butterfat differential computed pursuant to § 1007.74 for the quantity of milk received from producers described in § 1007.94 (c) and (d) for whom no base milk has been computed.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the day prior to the date on which payments are due individual producers shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members, shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1007.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices for base and excess milk shall be increased, or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1007.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be reduced according to the location of the pool plant at the rates set forth in § 1007.52(b); and

(b) The uniform price applicable to other source milk shall be adjusted at the rates set forth in § 1007.52(b) applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1007.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1007.30(b) and 1007.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price pursuant to § 1007.61(a), both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1007.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1007.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1007.60 for such handler shall include, in lieu of the value of other source milk specified in § 1007.60(f) less the value of such other source milk specified in § 1007.71(a)(2)(ii), a value of milk determined pursuant to § 1007.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1007.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1007.30(b) and 1007.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1007.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1007.77 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in moneys due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1007.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1007.71, 1007.77, 1007.85, and 1007.86 shall be increased one-half of 1 percent for each month or portion thereof that such obligation is overdue.

Administrative Assessment and Marketing Service Deduction

§ 1007.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1007.44(a)(7) and (11) and the corresponding steps of § 1007.44(b), except such other source milk that is excluded from the computations pursuant to § 1007.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1007.76(a)(2).

§ 1007.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) If the Secretary determines that a cooperative association is performing for its members the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such members and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

CLASS I BASE PLAN

§ 1007.90 Definition of terms relating to the Class I base plan.

For purposes of determination and assignment of the Class I base of each producer the following terms are defined:

(a) "Production history" means the average daily marketings of a producer during the production history period used for the determination of bases or the future updating of bases.

(b) "Production history base" means a quantity of milk in pounds per day as computed pursuant to § 1007.91.

(c) "Production history period" means the days or months to be used for the computation of the production history base of a producer.

(d) "Average daily producer milk deliveries" of any producer in any specified period used for computing a production history base means the total pounds of producer milk delivered by the producer divided by the number of days' production represented by such deliveries: *Provided,* That for any September–January period, the divisor shall be the actual days of production, or 145 whichever is greater.

(e) "Class I base" means a quantity of milk in pounds per day computed pursuant to § 1007.94 for which a producer may receive the base milk price.

(f) "Base milk" means:

(1) Milk received from a producer which is not in excess of his Class I base multiplied by the number of days of production of producer milk delivered during the month; and

(2) Milk received from a producer to whom no Class I base has been issued in the amount determined for such producer pursuant to § 1007.94 (c) and (d).

(g) "Excess milk" means milk received in excess of base milk from a producer who is delivering base milk during such month.

§ 1007.91 Computation of production history base.

A "production history base" shall be determined by the market administrator for each producer eligible for such base on the effective date of this provision and on March 1 of each year thereafter. The computation of production history base shall be subject to adjustments due to acquisition or disposition by transfer of Class I base or other modifications of Class I base due to hardship or loss of Class I base because of underdelivery of base. For purposes of computation of his production history base, a producer shall be considered as having been on the market during any specified period if: As a producer he delivered milk of his own production during the designated period without interruption sufficient to cause forfeiture of base pursuant to § 1007.96(a); and during such period (after the effective date of this provision) did not dispose of all his Class I base by transfer. The production history base for each producer on the effective date of this provision shall be determined by the market administrator as follows:

(a) The market administrator shall determine a production history base for each producer who delivered at least 100 days' production during the immediately preceding period of September–January by computing his average daily producer milk deliveries as defined in § 1007.90 (d) during such period.

(b) For producers who delivered milk on less than 100 days during the immediately preceding period of September–January, but at least 90 days prior to March 1, the market administrator shall determine a production history base by multiplying such producer's average daily producer milk deliveries during the months in which milk was delivered prior to March 1, by .80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September–January period by the average daily producer milk deliveries during the same months used for such producer.

(c) Producers who have delivered milk for less than 90 days prior to March 1 shall have no initial production history base but shall be assigned a history of production in accordance with the provisions applicable for new producers.

(d) For each producer not subject to § 1007.94(d) who became a producer for this market subsequent to September 1, 1971, because the plant to which he regularly delivered milk became a fully regulated plant pursuant to this order, a production history base shall be determined, if possible pursuant to paragraph (a) or (b) of this section based on his deliveries of milk as if the nonpool plant to which he delivered had been a pool plant during the representative period.

(e) A producer not described pursuant to paragraph (d) of this section who delivered milk to a nonpool plant(s) prior to becoming a producer and who is not subject to the provisions of § 1007.94(c) shall have a production history base effective on the first day of the second month following the month in which he began deliveries of producer milk to a pool plant if a production history base can be computed pursuant to paragraph (a) or (b) of this section based on deliveries of milk from the same farm on which he is now a producer as if the plant(s) to which he delivered had been a pool plant(s) during the preceding 12 months.

(f) For a producer who held producer-handler status at any time subsequent to September 1, 1971, a production history base shall be calculated as prescribed in paragraph (a) of this section as if the milk of his own production received at his producer-handler plant had been received at a pool plant.

(g) With respect to the computation of production history base pursuant to this section, the following rules shall apply:

(1) If a producer operated more than one farm at the same time, a separate computation shall be made with respect to the average daily producer milk deliveries from each farm except that only one computation shall be made with respect to milk production resources and facilities of a producer-handler.

(2) Only one production history base shall be allowed with respect to milk produced by one or more persons where the land, buildings, and equipment are jointly used, owned or operated.

§ 1007.92 Updating of production history bases.

The production history base for each producer who has neither disposed of his entire base by transfer nor forfeited his base pursuant to § 1007.96(a) or after having disposed of his entire base by transfer or forfeiture, has met the delivery requirements prescribed in § 1007.93 shall be determined by the market administrator on March 1 of each year as follows:

(a) Effective March 1, 1973, the market administrator shall update the production history base for each producer as follows:

(1) Subject to the provisions of paragraph (a)(1) (i) and (ii) of this section for a producer who is assigned an initial history of production pursuant to § 1007.91 (a) or (b) on the effective date of this order, add the average daily milk deliveries of such producer during the period September 1972 through January 1973 to the production history bases computed for such producer on the effective date of this order and divide the result by 2. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his avarage daily deliveries during the immediately preceding September through January period but in no event, shall such producer's production history base be reduced by more than 25 percent.

(2) For producers who had not previously been assigned a production history base, a history of production shall be determined by calculating such producer's average daily producer milk deliveries during the period September 1972 through January 1973 and multiplying the result by 0.80.

(b) Effective March 1, 1974, the market administrator shall update the production history base for each producer as follows:

(1) Subject to the provisions of paragraph (b)(1) (i) and (ii) of this section for a producer who had a production history base for the 2 most recent years, determine the average daily producer milk deliveries during the immediately preceding period September through January. Add the resulting amount to the production history base

determined for each of the 2 most recent years and divide the result by 3: (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(2) Subject to the provisions of paragraph (b)(2) (i) and (ii) of this section for a producer who had a production history base for 1 year, the market administrator shall determine his average daily producer milk deliveries during the immediately preceding period of September through January and add such amount to the producer's previous production history base and divide the result by 2: (i) If during the immediately preceding period of September through January a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base, then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(3) For producers who have not previously been assigned a production history base, the market administrator shall assign a production history equal to such producer's average daily producer milk deliveries during the immediately preceding period of September through January and multiply the result by 0.80.

(c) Effective March 1, 1975, and on March 1 of each year thereafter the market administrator shall update the history of production for each producer as follows:

(1) Subject to the provisions of paragraph (c)(1) (i) and (ii) of this section for producers who have a production history base covering 3 or more years, the market administrator shall compute the average daily producer milk deliveries for such producer during the immediately preceding period of September through January and shall add such figure to the average daily producer milk deliveries of the preceding two years and divide the result by 3. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding September through January period the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(2) Subject to the provisions of paragraph (c)(2) (i) and (ii) of this section for a producer who had a production history base for the two most recent periods, determine the average producer milk deliveries during the immediately preceding period September through January. Add the resulting amount to the production history base determined for each of the two most recent periods and divide the result by 3. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(3) Subject to the provisions of paragraph (c)(3) (i) and (ii) of this section for a producer who had a production history base for 1 year, the market administrator shall determine his average daily producer milk deliveries during the immediately preceding period of September through January and add such amount to the producer's previous production history base and divide the result by 2. (i) If during the immediately preceding period of September through January a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(4) For producers who have not previously been assigned a production history base, the market administrator shall assign a production history equal to such producer's average daily producer milk deliveries during the immediately preceding period of September through January and multiply the result by 0.80.

(5) On March 1 of each year of which this plan is in effect, the market administrator shall determine a production history base for producers who delivered milk for less than 100 days in the immediately preceding period of September through January but who delivered milk for at least 90 days prior to March 1 by determining such producers average daily producer milk deliveries during the first 3 months in which the producer delivered milk to the market, multiplying the result by 0.80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September–January period by the average daily deliveries per producer during the same months used for such producer.

§ 1007.93 New producers.

The market administrator shall determine a history of production for each producer for whom a production history base was not determined pursuant to § 1007.91 as follows:

(a) Any producer who during the immediately preceding September through January period delivered his milk to a nonpool plant which became a pool plant shall be assigned a history of production on the same basis as other producers under the order as though the deliveries to the nonpool plant had been deliveries to a pool plant.

(b) Effective on the first day of the second month following the month in which he began deliveries of producer milk to a pool plant a producer who delivered milk to a nonpool plant prior to becoming a producer as defined in this order shall be assigned a production history base on the same basis as if he had been a producer under the order and his deliveries to the nonpool plant had been deliveries to a pool plant provided that in no event shall the production history base exceed the amount of milk actually delivered by such producer under this order.

(c) A producer who delivered no milk to a nonpool plant or who delivered milk to a pool plant for less than 90 days prior to March 1 of any year and who has not acquired a history of production by transfer shall be assigned Class I base milk pursuant to the provisions of § 1007.94(c).

§ 1007.94 Computation of Class I base or base milk for each producer.

On the effective date of this provision and on March 1 of each subsequent year the market administrator shall assign a Class I base to each producer who has a production history base. Class I bases shall be assigned to producers described in § 1007.93 when they are issued production history bases. Class I bases shall be computed as follows:

(a) Compute a "Class I base percentage" as follows:

(1) Determine the sum of Class I dispositions during the preceding period of September through January:

(i) Class I producer milk pursuant to § 1007.44(c);

(ii) The Class I disposition of plants during the period when they were nonpool plants, if such plants were pool plants in the preceding January; and

(iii) The Class I disposition of his own production of a person who was a producer-handler during a portion of the year and who held producer status in the preceding January.

Multiply the sum by 1.15 and divide the result by 153:

(2) Divide the quantity computed pursuant to paragraph (a)(1) of this section by a quantity which is the total of production history bases computed pursuant to § 1007.91 or § 1007.92, whichever is applicable. The result shall be converted to a percentage by multiplying by 100 and rounding to the third decimal place. Such percentage shall be known as the "Class I base percentage."

(b) The Class I base of each producer with a production history base shall be determined by multiplying his production history base by the "Class I base percentage." For each of the months of June, July, and August the Class I base so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the preceding months of September through May.

(c) A producer, other than a producer pursuant to paragraph (d) of this section, who has no production history base shall be assigned base milk each month until the first March 1 on which he is eligible for a Class I base in an amount equal to 50 percent of his average daily deliveries of producer milk in such month multiplied by the number of days' production delivered by such producer during the month (1) effective with his first delivery of producer milk if he begins deliveries in the months of September through January, and (2) effective on the first day of the second month following the month in which he began delivery if he begins deliveries in the months of February through August. For each of the months of June, July, and August the base milk so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the immediately preceding months of September through May.

(d)(1) A producer who, after having forfeited or disposed of all of his Class I base, either continues as a producer on the market or discontinues deliveries to the market and returns to the market as a producer, shall be assigned base milk equal to 50 percent of his average daily deliveries of producer milk in such month multiplied by the number of days' production delivered by such producer during the month, such assignment to be effective on the later of the following dates: the first day of the third month following the month in which he recommences deliveries of producer milk on the market, or the first day of the twelfth month following the month in which a producer who forfeits his base ceases deliveries or a producer disposes of his Class I base. For each of the months of June, July, and August the base milk so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the immediately preceding months of September through May. The production history period of such producer shall begin on the later of the following dates: The date on which he first received payment for base milk or the first day of the first month eligible for use in a production history period pursuant to § 1007.93.

(2) In the application of this provision, use of the same production facilities by another person (or the same person under a different name) to produce milk after the above described forfeiture or transfer of base shall be considered as a continuation of the operation by the previous operator if the new operator is a member of the immediate family of the previous operator. It shall be applied also to any production facility to which a Class I base has not been assigned, wherever located, operated by a person in which the producer who forfeited or transferred his base has a financial interest if such facility commences production on or after the effective date of the transfer or forfeiture, or such producer acquired his financial interest in such person later than 3 months prior to the effective date of the base transfer or forfeiture.

§ 1007.95 Transfer of bases.

Production history and Class I base may be transferred pursuant to the following rules and conditions:

(a) A transfer of base means the transfer of both the production history base and the Class I base associated with it at the time of transfer. The percentage of Class I base transferred shall be applied to the total production history base held at the time of transfer to determine the corresponding amount of production history transferred.

(b) The market administrator must be notified in writing by the holder of Class I base of the name of the person to whom the Class I base is to be transferred, the effective date of the transfer, and the amount of base to be transferred. Application for transfer must be made to the market administrator on forms approved by the market administrator and signed by the base holder(s), his heirs, executor, or trustees and by the person to whom such base is to be transferred.

(c) A transfer of an entire base may be made effective on any day of the month if application for such transfer is filed with the market administrator within 5 days thereafter. Otherwise, such transfer shall be effective on the first day of the month following that in which application is made.

(d) A transfer of a portion of a base shall be effective the first day of the month following that in which application for which such transfer is made to the market administrator, except that a portion of a base may be transferred to be effective on March 1 of any year if application for such transfer is filed with the market administrator no later than March 15.

(e) A producer who has received base by transfer on or after March 1 of any year may not transfer any portion of the base for 3 full months following the effective date of such transfer.

(f) A producer who has transferred base on or after March 1 of any year may not receive additional base by transfer for 3 full months from the effective date of such transfer.

(g) A base which is jointly held or in a partnership may be transferred in part or in its entirety only upon application signed by each joint holder or partner, his heirs, executors, or trustee and by the person to whom such base is to be transferred.

(h) A base which has been established by two or more persons operating a dairy farm jointly or as a partnership may be divided among the joint holders or partners if written notification of the agreed division of base signed by each joint holder or partner, his heirs, executor, or trustee, is received by the market administrator prior to the first day of the month on which such division is to be effective.

(i) It must be established to the satisfaction of the market administrator that the conveyance of such base is bona fide and not for the purpose of evading any provision of this order, and comes within the remaining provisions of this section.

(j) A transfer may be made only to a producer (a person who is currently a producer on the market or who will become a producer under the terms of the order by the last day of the month of transfer).

(k) In the case of an intrafamily transfer (including transfers to an estate and from an estate to a member of the immediate family) all restrictions on transferring base applicable to the transferor producer shall also apply to the transferee.

(l) A producer who receives a base pursuant to § 1007.91 (c) or (d) may not transfer such base, other than pursuant to paragraph (k) of this section, for 1 year from the date of receipt.

(m) A producer-handler who becomes a producer and receives a base may not transfer that base for a period of 1 year from the date of receipt, except to a member of the immediate family pursuant to paragraph (k) of this section.

(n) A base which has been computed from less than a full production history period may not be transferred, except as an intrafamily transfer pursuant to paragraph (k) of this section.

(o) If a base is held by a corporation, a change in ownership of the stock which

transfers control to a new person or persons other than a member of the immediate family of the person transferring such stock will require a transfer of bases and compliance with all base rules therein.

§ 1007.96 Miscellaneous base rules.

The following base rules shall be observed in the determination of bases:

(a) A person who discontinues delivery of producer milk for a period of 90 consecutive days after a Class I base is issued to him shall forfeit his production history, together with any Class I base and production history base held pursuant to the provisions of this order, except that a person entering the military service may retain them until 1 year after being released from active military service.

(b) As soon as production history bases and Class I bases are computed by the market administrator, notice of the amount of each producer's production history base and Class I base shall be given by the market administrator to the producer, to the handler receiving such producer's milk, and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place in his plant a list or lists showing the Class I base of each producer whose milk is received at such plant.

(c) As a condition for designation as a producer-handler pursuant to § 1007.10, any person (including any member of the immediate family of such a person, any affiliate of such a person, or any business of which such a person is a part) who has held Class I base any time during the 12-month period prior to such designation shall forfeit the maximum amount of Class I and production history base held at any time during such 12-month period.

§ 1007.97 Hardship provisions.

Requests of producers for relief from hardship or inequity arising under the provisions of §§ 1007.91 through 1007.96 will be subject to the following:

(a) After bases are first issued under this plan and after bases are issued on each succeeding March 1, a producer may request review of the following circumstances because of alleged hardship or inequity:

(1) He was not issued a Class I base;

(2) His production history base is not appropriate because of unusual conditions during the base-earning period such as loss of buildings, herds, or other facilities by fire, flood, or storms, official quarantine, disease, pesticide residue, condemnation of milk, or military service of the producer or his son;

(3) Loss or potential loss of Class I base pursuant to § 1007.96(a);

(4) Loss or potential loss of Class I base because of underdeliveries pursuant to § 1007.92; and

(5) Inability to transfer base due to the provisions of § 1007.95 (l), (m), and (n).

(b) The producer shall file with the market administrator a request in writing for review of hardship or inequity not later than 45 days after notice pursuant to § 1007.96 with respect to requests pursuant to paragraph (a) (1) or (2) of this section, or not later than 45 days after the occurrence with respect to requests pursuant to paragraph (a) (3), (4), or (5) of this section, setting forth:

(1) Conditions that caused the alleged hardship or inequity;

(2) The extent of the relief or adjustment requested;

(3) The basis upon which the amount of adjustment requested was determined; and

(4) Reasons why the relief or adjustment should be granted.

(c) One or more Producer Base Committees shall be established and function as follows:

(1) Each Producer Base Committee shall consist of five producers appointed by the market administrator.

(2) Each committee shall review the requests for relief from hardship or inequity referred to it by the market administrator at a meeting in which the market administrator or his representative serves as recording secretary and at which the applicant may appear in person if he so requests.

(3) Recommendations with respect to each such request shall be endorsed at the meeting by at least three committee members and shall:

(i) With respect to requests pursuant to paragraph (a) (1), (3), (4), or (5) of this section, grant or adjust production history bases and average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of Class I base, restore forfeited base or reduced average daily producer milk deliveries where appropriate, and permit transfer of base not otherwise possible under the order provisions.

(ii) With respect to requests pursuant to paragraph (a) (2) of this section, either reject the request or provide adjustment in the form of additional production history base and average daily producer milk deliveries for prior years where it appears appropriate and the effective date thereof of such adjustment. In considering such requests the loss of milk production due to the following shall not be considered a basis for hardship adjustment:

(*a*) Loss of milk due to mechanical failure of farm tank or other farm equipment; and

(*b*) Inability to obtain adequate labor to maintain milk production, except that hardship adjustment may be granted in the case of a producer or the son of a producer who entered into military service directly from employment in milk production.

(4) Recommendation of the Producer Base Committee shall:

(i) If to deny the request, be final upon notification to the producer, subject only to appeal by the producer to the Director, Dairy Division, within 45 days after such notification; or

(ii) If to grant the request in whole or in part, be transmitted to the Director, Dairy Division, and shall become final unless vetoed by such Director within 15 days after transmitted.

(5) Committee members shall be reimbursed by the market administrator from the funds collected under § 1007.85 for their services at $30 per day or portion thereof, plus necessary travel and subsistence expenses incurred in the performance of their duties as committee members.

(d) The market administrator shall maintain files of all requests for alleviation of hardship and the disposition of such requests. These files shall be open to the inspection of any interested person during the regular office hours of the market administrator.

PART 1071—MILK IN NEOSHO VALLEY MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1071 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1071.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1071.2 Neosho Valley marketing area.

"Neosho Valley marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Allen, Bourbon, Chautauqua, Cherokee, Crawford, Labette, Montgomery, Neosho, and Wilson, all in the State of Kansas, and the counties of Barton, Jasper, Newton, and Vernon, all in the State of Missouri.

§ 1071.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or sale from a plant or plant store) to a retail or wholesale outlet, other than a plant, of any fluid milk product classified as Class I milk.

§ 1071.4 [Reserved]

§ 1071.5 [Reserved]

§ 1071.6 [Reserved]

§ 1071.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means any milk plant described in paragraph (a) or (b) of this section, which is approved by the appropriate health authority having jurisdiction in the marketing area.

(a) Any plant, hereinafter referred to as a "distributing pool plant," from which:

(1) During the current delivery period there is route disposition, except filled milk, in the marketing area equal to 10 percent or more of such plant's Grade A receipts from dairy farmers as specified in paragraph (a)(2) of this section; and

(i) During the current delivery period there is disposed of as Class I milk, except filled milk, an amount not less than an applicable percentage of such plant's Grade A receipts as specified in paragraph (a)(2) of this section as follows: (*a*) April through August, 30 percent; and (*b*) September through March, 45 percent; or

(ii) During five of the six immediately preceding delivery periods, such plant was a pool plant by virtue of meeting the specifications pursuant to paragraph (a)(1)(i) of this section; and

(2) The Grade A receipts from dairy farmers to be used in calculating the percentages specified in paragraph (a)(1) of this section, for each plant shall include all receipts of Grade A milk from dairy farmers and handlers described in § 1071.9(c) subject to the following provisions:

(i) Milk diverted to another plant for the account of the operator of the plant from which the milk was diverted shall be included in the receipts of the plant from which diverted for the purposes of this section, if the milk is claimed as diverted on the report of the diverting handler filed for the month pursuant to § 1071.30 (if such claim is made by the diverting handler, milk so diverted shall be excluded from the receipts of the plant to which diverted); and

(ii) Milk received at a plant operated by a cooperative association from a handler described in § 1071.9(c)(2) shall be excluded from the cooperative association's plant receipts for the purposes of this section.

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the delivery period no less than 50 percent of the Grade A milk received from dairy farmers is shipped to a plant(s) described in paragraph (a) of this section: *Provided*, That if such plant is a pool plant during each of the months of September through March it shall be designated as a pool plant in the next succeeding months of April through August, unless the market administrator is requested by means of written application on or before the 7th day after the end of the month that the plant should not be a pool plant. All plants described in this paragraph which are operated by one handler may be considered as a unit, upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice, and the notice of any change in designation, shall be furnished on or before the 7th day following the month to which the notice applies. In any of the months of April through August a unit shall not contain plants which were not qualified as pool plants either individually or as members of another unit, during each of the previous months of September through March.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant that either the Secretary determines disposed of a greater portion of its milk as Class I milk, except filled milk, in another marketing area regulated by another milk marketing agreement or order issued pursuant to the Act or is otherwise determined pursuant to the provisions of another milk marketing agreement or order to be subject to the pricing and payment provisions of such agreement or order.

§ 1071.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1071.7 and which is neither an other order plant nor a producer-handler plant.

§ 1071.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association, with respect to milk of its member producers which it causes to be diverted pursuant to § 1071.13 for the account of such association;

(c) Any cooperative association, with respect to milk of its member producers:

(1) For which it elects to report as a handler and which is delivered to the pool plant(s) of another handler in a tank truck owned, operated, or controlled, by such association; or

(2) Delivered for its account to the pool plant of another cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1071.7(c).

§ 1071.10 Producer-handler.

"Producer-handler" means any person who, with the approval of any health authority having jurisdiction in the marketing area, processes milk from his own farm production and disposes of all or a portion of such milk as Class I milk within the marketing area, who receives no milk from producers, and who dis-

poses of no fluid milk products in excess of those (a) received from a pool plant, (b) received from an other order plant that are classified and priced as Class I milk under the other order, and (c) from milk of his own production.

§ 1071.11 [Reserved]

§ 1071.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk under a dairy farm permit or rating issued by the appropriate health authority having jurisdiction in the marketing area over the production of milk disposed of for consumption as Grade A milk whose milk is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1071.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1071.44(a)(8)(iii) and the corresponding step of § 1071.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such order.

§ 1071.13 Producer milk.

"Producer milk" shall be that skim milk and butterfat for each handler's account in milk received from producers pursuant to paragraphs (a) and (b) of this section as follows:

(a) For a handler operating a pool plant, producer milk shall include:

(1) Milk received directly from producers' farms (including such handler's own farm production) at such pool plant, except milk received from a handler described in § 1071.9(c); and

(2) Milk diverted by such pool plant operator pursuant to paragraph (c) of this section.

(b) For a handler described in § 1071.9 (b) or (c), producer milk shall include:

(1) Milk received directly from producers' farms for its account at pool plants (such milk shall be considered as having been received by the handler at the plant to which it is delivered and then transferred to the plant operator); and

(2) Milk diverted for its account pursuant to paragraph (c) of this section.

(c) Milk diverted for the account of a pool plant operator or the account of a cooperative association from producers' farms to a nonpool plant that is not a producer-handler plant shall be considered as diverted by the handler for whose account it was diverted, if the diverting handler claimed the diversion on his report for the month filed pursuant to § 1071.30. Milk diverted shall be considered as received at the pool plant from which it was diverted for the purpose of determining applicable location adjustments.

§ 1071.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1071.40 (b)(1) from any source other than producers, handlers described in § 1071.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1071.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1071.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined, with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1071.40(b)(1)) for which the handler fails to establish a disposition.

§ 1071.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1071.40 (b) or (c)(1) (i) through (v) 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.

§ 1071.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1071.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1071.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and,

(b) Is authorized by its members to make collective sales or to market milk or its products for its members.

§ 1071.19 Delivery period.

"Delivery period" means a calendar month, or any portion thereof during which this part is in effect.

HANDLER REPORTS

§ 1071.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1071.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1071.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1071.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1071.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1071.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1071.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1071.32 Other reports.

(a) Each handler who causes milk to be diverted shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1071.30 and 1071.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1071.40 Classes of utilization.

Except as provided in § 1071.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1071.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(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) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) 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

(vi) 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 § 1071.15; and

(6) In shrinkage assigned pursuant to § 1071.41(a) to the receipts specified in § 107.41(a)(2) and in shrinkage specified in § 1071.41(b) and (c).

§ 1071.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1071.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent (5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in milk received from a handler described in §1071.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent (5 percent with respect to skim milk during the months of April, May, and June);

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1071.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1071.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1071.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1071.44(a)(12) and the corresponding step of § 1071.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1071.44(a)(7) or the corresponding step of § 1071.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1071.44(a) (11) or (12) or the corresponding steps of § 1071.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1071.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i)(*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1071.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1071.43 General classification rules.

In determining the classification of producer milk pursuant to § 1071.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1071.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1071.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1071.40, 1071.41, and 1071.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1071.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1071.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1071.9(a) for each of his pool plants separately and of each handler described in § 1071.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1071.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1071.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1071.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1071.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1071.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources,

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an 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 combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1071.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that

remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handlers; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7), (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1071.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) 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 (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class II combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1071.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) 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 Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1071.9(c) according to the classification of such products pursuant to § 1071.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1071.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1071.44(a)(12) and the corresponding step of § 1071.44 (b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1071.44 on the basis of such report, and, thereafter, any change in such allocation

required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each delivery period, report to each cooperative association which so requests, the amount and class utilization of the milk caused to be delivered to each handler by such cooperative association, either directly or from producers who are members of such cooperative association. For purposes of this report, the milk so delivered by a cooperative association shall be prorated to each class in the proportion that the total quantity of producer milk received by such handler was to the quantity of milk in each class.

CLASS PRICES

§ 1071.50 Class prices.

Subject to the provisions of §1071.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.54: *Provided,* That the price so determined shall be further adjusted by subtracting any amount by which such price exceeds the higher of, or adding any amount by which such price is less than, the lower of the following:

(1) The price for Class I milk of 3.5 percent butterfat content established for the same month or delivery period pursuant to Part 1106 of this chapter regulating the handling of milk in the Oklahoma Metropolitan marketing area less 33 cents; or

(2) The price for Class I milk of 3.5 percent butterfat content established for the same month or delivery period for Zone 1 under Part 1062 of this chapter regulating the handling of milk in the St. Louis-Ozarks marketing area, plus 15 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1071.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1071.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 50 miles by shortest highway distance as measured by the market administrator, from the nearest of the city halls in Joplin or Nevada, Mo., or Chanute or Independence, Kans., and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1071.50(a) shall be reduced by 10 cents if such plant is located more than 50 miles but not more than 60 miles from such city hall and by an additional 2 cents for each 15 miles or fraction thereof that such distance exceeds 60 miles;

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant in a volume not in excess of that by which 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1071.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply; and

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1071.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1071.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1071.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1071.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1071.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1071.44(a)(14) and the corresponding step of § 1071.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1071.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1071.44(a)(9) and the corresponding step of § 1071.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1071.44(a)(7) (i) through (iv) and the corresponding step of § 1071.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1071.44(a)(7) (v) and (vi) and the corresponding step of § 1071.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1071.44(a)(11) and the corresponding step of § 1071.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1071.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1071.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price

per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1071.60 for all handlers who filed the reports prescribed by § 1071.30 for the month and who made the payments pursuant to §§ 1071.71 and 1071.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1071.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1071.60 (f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1071.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments For Milk

§ 1071.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit payments made by handlers pursuant to §§ 1071.71, 1071.76, and 1071.77 and out of which he shall make payments to handlers pursuant to §§ 1071.72 and 1071.77: *Provided,* That payments due to any handler shall be offset by payments due from such handler.

§ 1071.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a) (1) of this section exceeds the amount specified in paragraph (a) (2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1071.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1071.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1071.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b) (1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1071.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1071.71(a) (2) exceeds the amount computed pursuant to § 1071.71(a) (1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1071.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the last day of each delivery period to each producer for milk received from him during the first 15 days of such delivery period at not less than the Class III price for the preceding delivery period: *Provided,* That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payments for such milk, the handler shall, if the cooperative association so requests, pay such cooperative association at least 2 days before the end of the delivery period, an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this paragraph.

(b) On or before the 17th day after the end of each delivery period, for all milk received during such delivery period from such producer at not less than the uniform price for such delivery period computed pursuant to § 1071.61 subject to the following adjustments: (1) The butterfat and location differentials pursuant to §§ 1071.74 and 1071.75; (2) payment made pursuant to paragraph (a) of this section; (3) deductions for marketing services pursuant to § 1071.86, (4) deductions authorized by the producer; and (5) any error in payments to such producer for past delivery periods: *Provided,* That if by such date such handler has not received full payment for milk for such delivery period pursuant to § 1071.72, he may reduce uniformly per hundredweight, for all producers his payments pursuant to this paragraph, by an amount not in excess of the per hundredweight reduction in payments from the market administrator: *Provided further,* That the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments, pursuant to this paragraph, next following that on which such balance of payment is received from the market administrator: *And provided further,* That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk, the handler shall, if the cooperative association so requests, pay such cooperative association, on or before the 15th day after the end of each delivery period an amount equal to the sum of the individual payments otherwise payable to such producer in accordance with this paragraph; and

(c) On or before the 17th day after the end of each delivery period, to each handler described in § 1071.9(c) for milk received from such handler, not less than the value of such milk as is classified pursuant to § 1071.42(a) at the class prices, as adjusted by the butterfat differential specified in § 1071.74, that are applicable at the location of the handler's pool plant.

§ 1071.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1-percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1071.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1071.52.

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1071.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of

the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1071.30(b) and 1071.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1071.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1071.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1071.60 for such handler shall include, in lieu of the value of other source milk specified in § 1071.60(f) less the value of such other source milk specified in § 1071.71(a)(2)(ii), a value of milk determined pursuant to § 1071.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during this month equivalent to the requirements of § 1071.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1071.30(b) and 1071.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1071.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1071.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1071.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1071.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1071.85 Assessment for order administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk received by a pool plant operator (including such handler's own production);

(b) Milk received from a handler described in § 1071.9(c);

(c) Producer milk of a handler described in § 1071.9(b);

(d) Other source milk allocated to Class I pursuant to § 1071.44(a)(7) and (11) and the corresponding step of § 1071.44(b), except such other source milk that is excluded from the computations pursuant to § 1071.60 (d) and (f); and

(e) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1071.76(a)(2).

§ 1071.86 Deduction for marketing services.

(a) *Deduction for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1071.73 shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the delivery period, and shall pay such deductions to the market administrator on or before the 15th day after the end of such delivery period. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received from producers and to provide producers with market information.

(b) *Deductions with respect to members of a cooperative association.* In the

case of producers who are members of a cooperative association, or who have given written authorization for the rendering of marketing services and the taking of deductions therefor by a cooperative association, and for whom the Secretary determines such a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by such producers and on or before the 15th day after the end of such delivery period pay over such deduction to the cooperative association rendering such services.

ADVERTISING AND PROMOTION PROGRAM

§ 1071.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1071.121 (b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1071.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1071.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1071.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1071.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1071.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1071.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1071.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmembers producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1071.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1071.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1071.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1071.110 and 1071.117.

§ 1071.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1071.110 and 1071.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1071.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1071.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1071.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1071.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1071.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1071.121 Duties of the market administrator.

Except as specified in § 1071.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1071.113(c).

(b) Set aside the amounts subtracted under § 1071.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1071.61(d).

(3) After the end of each calendar quarter make a refund to each producer who has made application for such refund pursuant to § 1071.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1071.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1071.110 through 1071.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1071.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1071.70.

PART 1073—MILK IN WICHITA, KANS., MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1073 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1073.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1073.2 Wichita, Kans., marketing area.

"Wichita, Kans., marketing area", hereinafter called the marketing area, means all the territory within the counties enumerated below, all within the State of Kansas, together with all territory within the boundaries so designated which is occupied by government (municipal, State or Federal) reservations or installations:

ZONE I

Barber.	Marion.
Barton.	McPherson.
Butler.	Pawnee.
Comanche.	Pratt.
Cowley.	Reno.
Edwards.	Rice.
Ellis.	Rush.
Harper.	Russell.
Harvey.	Sedgwick.
Kingman.	Stafford.
Kiowa.	Sumner.

ZONE II

Clark.	Lane.
Finney.	Meade.
Ford.	Morton.
Gove.	Ness.
Grant.	Scott.
Gray.	Seward.
Greeley.	Stanton.
Hamilton.	Stevens.
Haskell.	Trego.
Hodgeman.	Wichita.
Kearny.	

§ 1073.3 Route disposition.

"Route disposition" means a delivery from a distributing plant (including a delivery by a vendor, from a plant store or through a vending machine) to a retail or wholesale outlet, other than a plant, of any fluid milk product classified as Class I milk.

§ 1073.4 [Reserved]

§ 1073.5 Distributing plant.

"Distributing plant" means a plant approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month route disposition is made in the marketing area.

§ 1073.6 Supply plant.

"Supply plant" means a plant from which fluid milk products, acceptable to and approved by a duly constituted regulatory agency for distribution under a Grade A label, are shipped during the month to and physically received at a distributing plant.

§ 1073.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has:

(1) Route disposition, except filled milk, during the month of not less than 35 percent (25 percent for each month of March through July) of the fluid milk products, except filled milk, that are approved by a duly constituted regulatory agency for distribution under a Grade A label and are physically received at such plant, or diverted therefrom by the plant operator or a cooperative association to a nonpool plant as producer milk pursuant to § 1073.13, and route disposition, except filled milk, in the marketing area during the month is not less than 10 percent of such fluid milk products. If the entire quantity of fluid milk products, except filled milk, disposed of in packages in a particular size and form is received in such packages from other plants, all such disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate disposition of the receiving plant; or

(2) Qualified as a pool plant in the immediately preceding month on the basis of the performance standards described in paragraph (a)(1) of this section;

(b) A supply plant from which during the month not less than 50 percent of the total quantity of Grade A milk approved by a duly constituted regulatory agency that was physically received at such plant from dairy farmers and handlers described in § 1073.9(c), or diverted therefrom by the plant operator or a cooperative association as producer milk to a nonpool plant pursuant to § 1073.13, is shipped to a plant(s) described in paragraph (a) of this section. A supply plant that was a pool plant pursuant to this paragraph in each of the months of September through December shall be a pool plant in each of the following months of January through August unless the plant operator requests the market administrator in writing that such plant not be a pool plant. Such nonpool status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments; and

(c) A plant that is approved by a duly constituted regulatory agency to handle milk for fluid consumption, that is operated by a cooperative association, and from which during the month not less than 50 percent of the milk of producer members of such association is delivered directly or is transferred by the association to pool plants described in paragraph (a) of this section, unless such plant qualifies for the month as a pool plant under another order issued pursuant to the Act by delivering 50 percent or more of its Grade A receipts from dairy farmers to plants qualified as pool distributing plants under such other order.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in such other Federal order marketing area is greater than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in this marketing area is greater than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) A supply plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August, if such plant retains automatic pooling status under this part.

§ 1073.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant which has route disposition in consumer-type packages or dispenser units in the marketing area during the month; and

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped to a pool plant.

§ 1073.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of producers it diverts pursuant to § 1073.13 from a pool plant to a nonpool plant;

(c) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under

the control of, such association, for delivery to a pool plant(s);

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1073.7(d).

§ 1073.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets the qualifications specified in paragraphs (a) and (b) of this section:

(a) His disposition of fluid milk products does not exceed his own farm production, receipts of fluid milk products from pool plants and receipts of packaged fluid milk products from other order plants; and

(b) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk are the personal enterprise and the personal risk of such person.

§ 1073.11 [Reserved]

§ 1073.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency, which milk is received at a pool plant, diverted to a nonpool plant pursuant to § 1073.13, or accounted for by a cooperative association pursuant to § 1073.13(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 § 1073.44(a)(8)(iii) and the corresponding step of § 1073.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1073.13 Producer milk.

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

(a) Received at a pool plant directly from a producer or a handler described in § 1073.9(c);

(b) Diverted by the operator of a pool plant or by a cooperative association to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (d) of this section; or

(c) The difference between the quantity of milk as received by a handler described in § 1073.9(c) from producers' farms and the quantity of such milk delivered to pool plants. For the purposes of §§ 1073.52 and 1073.75, such milk shall be deemed to have been received by such handler at the pool plant to which all other producer milk in the same tank truck was delivered.

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

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

(2) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of total milk of such person as a producer is received at a pool plant;

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

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

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

(6) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk.

§ 1073.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1073.40(b)(1) from any source other than producers, handlers described in § 1073.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1073.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1073.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1073.40(b)(1)) for which the handler fails to establish a disposition.

§ 1073.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1073.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1073.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1073.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1073.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

HANDLER REPORTS

§ 1073.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1073.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1073.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products 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 § 1073.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1073.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1073.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1073.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1073.32 Other reports.

In addition to the reports required pursuant to §§ 1073.30 and 1073.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1073.40 Classes of utilization.

Except as provided in § 1073.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1073.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) 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

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1073.15; and

(6) In shrinkage assigned pursuant to § 1073.41(a) to the receipts specified in § 1073.41(a)(2) and in shrinkage specified in § 1073.41 (b) and (c).

§ 1073.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1073.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1073.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1073.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank

samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1073.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1073.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1073.44(a)(12) and the corresponding step of § 1073.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1073.44(a)(7) or the corresponding step of § 1073.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1073.44(a)(11) or (12) or the corresponding steps of § 1073.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section;

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1073.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1073.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1073.43 General classification rules.

In determining the classification of producer milk pursuant to § 1073.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1073.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1073.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1073.40, 1073.41, and 1073.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1073.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1073.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1073.9(a) for each of his pool plants separately and of each handler described in § 1073.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1073.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1073.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1073.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1073.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1073.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in

receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1073.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) 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 (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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 another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1073.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) 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 Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1073.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1073.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1073.44(a)(12) and the corresponding step of § 1073.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1073.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 13th day of each month report to each cooperative association, which so requests, the percentage utilization of milk received from producers or from a handler described in § 1073.9(c) in each class by each handler who in the previous month received milk from members of such cooperative association.

CLASS PRICES

§ 1073.50 Class prices.

Subject to the provisions of § 1073.52, the class prices for the month per hundredweight of milk containing 3.5-percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.80. Such price shall not be less than the Class I price established for the same month pursuant to Part 1064 (Greater Kansas City) of this chapter, nor more than the Greater Kansas City Class I price plus 60 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1073.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest 0.1 cent) per 0.1-percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1073.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1073.9 (c) at a plant and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (a)(4) of this section, the price at such plant when located:

(1) In Zone I of the marketing area, shall be that computed pursuant to § 1073.50(a);

(2) In Zone II of the marketing area, shall be 5 cents more than the Zone I price;

(3) Outside the marketing area, shall be the Class I price applicable at the nearest of the city halls in Garden City, Hays, Pratt, or Wichita, Kan., subject to a reduction of 12 cents if the distance to such city hall is 70 miles or more, but less than 80 miles, plus an additional 1.5 cents for each 10 miles or fraction thereof in excess of 79 miles (all distances to be by shortest hard-surfaced highway, as determined by the market administrator); and

(4) For purposes of calculating such location adjustments, transfers of fluid milk products between pool plants shall be assigned Class I milk disposition at the receiving plant, in excess of the sum of receipts at such plant from producers (including receipts from a handler described in § 1073.9(c)) and the pounds assigned as Class I milk to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to shipping plants priced at the same zone price, next to plants priced at the other zone price, and then in sequence beginning with the plant at which the least location adjustment credit would apply.

(b) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1073.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1073.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1073.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1073.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1073.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1073.44(a)(14) and the corresponding step of § 1073.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1073.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(9) and the corresponding step of § 1073.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1073.44(a)(9) and the corresponding step of § 1073.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1073.44 (a)(12) and the corresponding step of § 1073.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(7) (i) through (iv) and the corresponding step of § 1073.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(7) (v) and (vi) and the corresponding step of § 1073.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(11) and the corresponding step of § 1073.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the

difference between the Class I price applicable at the location of the pool plant and the Class III price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1073.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1073.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5-percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1073.60 for all handlers who filed the reports prescribed by § 1073.30 for the month and who made the payments pursuant to § 1073.71 for the preceding month;

(b) Deduct the amount of the plus adjustments and add the amount of the minus adjustments, which are applicable pursuant to § 1073.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1073.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1073.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1073.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1073.71, 1073.76, and 1073.77, and out of which he shall make all payments to handlers pursuant to §§ 1073.72 and 1073.77.

§ 1073.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1073.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1073.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1073.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1073.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any (for each pool plant, if applicable), by which the amount computed pursuant to § 1073.71(a)(2) exceeds the amount computed pursuant to § 1073.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the markct administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1073.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the second working day following the 12th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price computed pursuant to § 1073.61 for such producer's deliveries of milk, adjusted by the butterfat differential and location adjustments computed pursuant to §§ 1073.74 and 1073.75, and less the amount of the payment made pursuant to paragraph (b) of this section. If by such date such handler has not received full payment pursuant to § 1073.72, he may reduce his total payments uniformly to all producers by not more than the amount of the reduction in payment by the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator;

(b) On or before the 27th day of each month, to each producer:

(1) To whom payment is not made pursuant to paragraph (c) of this section; and

(2) Who is still delivering Grade A milk to such handler, a partial payment with respect to milk received from him during the first 15 days of such month computed at not less than 110 percent of the Class III price for 3.5 percent milk for the preceding month, without deduction for hauling;

(c) On or before the 14th day after the end of each month and on or before the 24th day of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, for milk which it caused to be delivered to such handler from producers, and for which such association is determined by the market administrator to be authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payments due on or before the 14th day after the end of the month shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1073.31, and payments due on or before the 24th day of the month shall be accompanied by a statement of the amount of money for each producer; and

(d) Each handler who receives milk from a handler described in § 1073.9(c), including the milk of producers who are not members of the cooperative association, and who the market administrator determines have authorized such cooperative association to collect for their milk, shall, on or before the second day prior to the date payments are due individual producers, pay such handler for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the amount prescribed in paragraph (b)(2) of this section; and

(2) In making final settlement, the value of such milk at the uniform price, adjusted pursuant to §§ 1073.74 and 1073.75, less payment made pursuant to paragraph (d)(1) of this section.

§ 1073.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1

cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1073.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at plants located outside Zone 1, there shall be added or deducted, as the case may be, an adjustment for each such plant for all milk at the rates specified in § 1073.52(a).

(b) For purposes of computations pursuant to §§ 1073.71(a)(2)(ii) and 1073.72, the uniform price shall be adjusted at the rates set forth in § 1073.52, applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1073.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1073.30(b) and 1073.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1073.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1073.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1073.60 for such handler shall include, in lieu of the value of other source milk specified in § 1073.60(f) less the value of such other source milk specified in § 1073.71(a)(2)(ii), a value of milk determined pursuant to § 1073.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1073.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1073.30(b) and 1073.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1073.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1073.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1073.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1073.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments of any handler discloses error in payments to the producer-settlement fund made pursuant to § 1073.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed;

(b) Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1073.72, the market administrator shall, within 5 days, make payment to such handler;

(c) Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this part, the handler shall make up such payment to the producer not later than the time of making payment to producers next following the disclosure; and

(d) Whenever verification by the market administrator of the payment by a handler to any producer discloses that solely through error in computation, payment to such producer was in an amount more than was required to be paid pursuant to § 1073.73, no handler shall be deemed to be in violation of § 1073.73 if he reduces his next payment to such producer following discovery of such error by not more than such overpayment.

§ 1073.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1073.71, § 1073.77(a), or § 1073.85 shall be increased one-half of 1 percent on the first day of the month following after the date such obligation is due and on the first day of each succeeding month until such obligation is paid. Any remittance received by the market administrator postmarked prior to the first of the month shall be considered to have been received when postmarked.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1073.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1073.13(a)(3)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1073.44(a) (7) and (11) and the corresponding steps of § 1073.44(b), except such other source milk that is excluded from the computations pursuant to § 1073.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1073.76(a)(2).

§ 1073.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 1073.73(a) with respect to all milk of such producer received by such handler during the month and shall pay such deductions to the market administrator on or before the 14th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples and tests of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services; and

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make such deductions from the payments to be made directly to producers pursuant to § 1073.73(a) as are authorized by such producers, and on or before the 14th day after the end of each month, pay over such deductions to the association of which such producers are members. When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and, unless otherwise previously provided, the butterfat test.

ADVERTISING AND PROMOTION PROGRAM

§ 1073.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1073.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1073.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1073.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1073.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1073.113(b), has a majority of the participating producers, represenfation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1073.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1073.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperative shall be eligible to select a representative(s) to the Agency under the rules of § 1073.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1073.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1073.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1073.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1073.110 and 1073.117.

§ 1073.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following.

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1073.110 and 1073.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1073.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1073.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1073.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1073.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1073.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1073.121 Duties of the market administrator.

Except as specified in § 1073.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1073.113(c).

(b) Set aside the amounts subtracted under § 1073.61(d) into an advertising and promotion fund, separately accounted for from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1073.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1073.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1073.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1073.110 through 1073.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1073.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1073.70.

PART 1090—MILK IN THE CHATTANOOGA, TENN., MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1090 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1090.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1090.2 Chattanooga, Tenn., marketing area.

The Chattanooga, Tenn., marketing area, hereinafter called the "marketing area", means all the territory within the boundaries of the following counties:

IN TENNESSEE

Bradley.
Hamilton.
Marion.
McMinn.
Meigs.
Monroe.
Polk.
Rhea.
Sequatchie.

IN GEORGIA

Catoosa.
Chattooga.
Dade.
Fannin.
Murray.
Walker.
Whitfield.

§ 1090.3 Route disposition.

"Route disposition" means any delivery (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk other than a delivery to any milk or filled milk processing plant.

§ 1090.4 [Reserved]

§ 1090.5 [Reserved]

§ 1090.6 [Reserved]

§ 1090.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant approved or recognized by a duly constituted health authority for the receiving or processing of Grade A milk which during the month has route disposition, except filled milk, equal to not less than 50 percent of its receipts of milk from other pool plants and from approved dairy farmers and which has route disposition within the marketing area equal to at least 15 percent of its total Class I disposition.

(b) A supply plant which, during the month, ships fluid milk products, except filled milk, approved or recognized by a duly constituted health authority as eligible for distribution under a Grade A label in a volume equal to not less than 50 percent of its receipts of milk from approved dairy farmers to a plant specified in paragraph (a) of this section: *Provided,* That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July unless the operator of such plant files with the market administrator prior to the first day of any of the months of March–July a written request for withdrawal.

(c) A plant operated by a cooperative association if, during the month, the sum of the milk delivered to other pool plants by approved dairy farmers who are members of such cooperative association plus the milk which is transferred thereto from the plant operated by the cooperative association is equal to not less than 50 percent of the total volume of milk delivered to all plants by approved dairy farmers who are members of the association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; or

(2) Upon application to the market administrator for nonpool status and a subsequent determination by the Secretary, a plant specified in paragraph (d) (2) (i) or (ii) of this section:

(i) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless a greater volume of Class I milk, except filled milk, is disposed of from such plant to retail or wholesale outlets (except pool plants or nonpool plants) in the Chattanooga, Tenn., marketing area than in the marketing area regulated pursuant to such order; or

(ii) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless such plant qualified as a pool plant for each of the preceding months of August through February.

§ 1090.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1090.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to milk of producers diverted for the account of such association pursuant to § 1090.13;

(c) [Reserved]

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1090.7(d).

§ 1090.10 **Producer-handler.**

"Producer-handler" means an approved dairy farmer who:

(a) Operates a plant from which there is route disposition in the marketing area;

(b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

§ 1090.11 **Approved dairy farmer.**

"Approved dairy farmer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority.

§ 1090.12 **Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any approved dairy farmer whose milk is physically received at a pool plant or diverted pursuant to § 1090.13.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1090.44(a)(8)(iii) and the corresponding step of § 1090.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1090.13 **Producer milk.**

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) Received at a pool plant directly from a producer; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant from which diverted;

(2) In any month of September through November that less than 4 days' production of a producer is delivered to pool plants, the quantity of milk of the producer diverted during the month that exceeds that delivered to pool plants shall not be deemed to have been received at a pool plant and shall not be producer milk;

(3) A cooperative association may divert for its account the milk of any member-producer: *Provided*, That in any month of September through November the total quantity of milk so diverted that exceeds 35 percent of the milk physically received from member-producers at all pool plants during the month shall not be deemed to have been received at a pool plant and shall not be producer milk;

(4) The operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association: *Provided*, That in any month of September through November the total quantity of milk so diverted that exceeds 35 percent of the milk physically received at such pool plant during the month from producers who are not members of a cooperative association shall not be deemed to have been received at a pool plant and shall not be producer milk; and

(5) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (3) and (4) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1090.14 **Other source milk.**

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1090.40(b)(1) from any source other than producers or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1090.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1090.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1090.40(b)(1)) for which the handler fails to establish a disposition.

§ 1090.15 **Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1090.40(b) or (c)(1)(i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1090.16 **Fluid cream product.**

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1090.17 **Filled milk.**

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1090.18 **Cooperative association.**

"Cooperative association" means any cooperative association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1090.30 **Reports of receipts and utilization.**

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1090.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1090.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1090.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1090.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1090.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1090.32 Other reports.

(a) Each handler who receives milk from producers shall report to the market administrator:

(1) On or before the date prior to diverting producer milk pursuant to § 1090.13 his intention to divert such milk, the date or dates of such diversions, and the nonpool plant to which such milk is to be diverted.

(2) On or before the sixth day after the end of each of the months of March through July, the aggregate quantity of base milk received during the month at each of his pool plants, and on or before the 20th day after the end of each of the months of March through July the pounds of base milk received during the month from each producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1090.30 and 1090.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1090.40 Classes of utilization.

Except as provided in § 1090.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1090.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(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) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) 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

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph(b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1090.15; and

(6) In shrinkage assigned pursuant to § 1090.41(a) to the receipts specified in § 1090.41(a)(2) and in shrinkage specified in § 1090.41 (b) and (c).

§ 1090.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1090.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1090.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests, determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1090.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1090.44(a)(12) and the corresponding step of § 1090.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1090.44(a)(7) or the corresponding step of § 1090.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1090.44(a)(11) or (12) or the corresponding steps of § 1090.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1090.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1090.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute reg-

ular 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.

§ 1090.43 General classification rules.

In determining the classification of producer milk pursuant to § 1090.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1090.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1090.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1090.40, 1090.41, and 1090.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1090.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1090.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1090.9(a) for each of his pool plants separately and of each handler described in § 1090.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1090.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1090.40 (b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1090.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1090.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1090.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to 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 combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant

to paragraph (a) (7) (vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1090.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) 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 (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1090.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) 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 Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available:

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1090.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

§ 1090.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1090.44(a) (12) and the corresponding step of § 1090.44 (b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a

handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1090.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1090.50 Class prices.

Subject to the provisions of § 1090.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.15.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1090.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1090.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk (for which a location adjustment is applicable) at a plant that is north of either the southern boundary of the State of Tennessee or the northern boundary of the State of South Carolina and more than 65 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the city hall in Chattanooga shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 75 miles (by the shortest hard-surface highway distance as determined by the market administrator) that such plant is from the city hall in Chattanooga.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant, which is in excess of the sum of receipts at such plant from producers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1090.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1090.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1090.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1090.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1090.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1090.44(a)(14) and the corresponding step of § 1090.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1090.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1090.44(a)(9) and the corresponding step of § 1090.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(7) (i) through (iv) and the corresponding step of § 1090.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(7) (v) and (vi) and the corresponding step of § 1090.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(11) and the corresponding step of § 1090.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1090.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) For each month the market administrator shall compute the weighted average price and for each of the months of August through February, the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1090.60 for all handlers who filed the reports prescribed by § 1090.30 for the month and who made the payments pursuant to §§ 1090.71 and 1090.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1090.75;

(3) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included in paragraph (a)(1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to § 1090.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average

price," and shall be the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers in each of the months of August through February.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of such milk which does not exceed the total quantity of producer milk assigned to Class III milk in the pool plants of such handlers by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk which does not exceed the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(3) From the amount resulting from the computations pursuant to paragraph (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1090.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1090.61 for such month.

Payments for Milk

§ 1090.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1090.71, 1090.76, and 1090.77, and out of which he shall make all payments pursuant to §§ 1090.72 and 1090.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1090.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1090.60.

(2) The sum of:

(i) The value of the uniform prices, as adjusted pursuant to § 1090.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1090.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1090.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1090.71(a)(2) exceeds the amount computed pursuant to § 1090.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1090.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s), as adjusted pursuant to §§ 1090.74 and 1090.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1090.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1090.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section; and

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the

market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) for the months of March through July the total pounds of base milk received, (iii) the amount or rate and nature of any deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1090.77.

§ 1090.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1090.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices computed pursuant to § 1090.61 to be paid for producer milk received at a pool plant shall be reduced according to the location of the pool plant where such milk was received each at the rates set forth in § 1090.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1090.52 (a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1090.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1090.30(b) and 1090.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1090.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1090.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1090.60 for such handler shall include, in lieu of the value of other source milk specified in § 1090.60(f) less the value of such other source milk specified in § 1090.71(a)(2)(ii), a value of milk determined pursuant to § 1090.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1090.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1090.30 (b) and 1090.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1090.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1090.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1090.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1090.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1090.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1090.72, the market ad-

ministrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1090.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1090.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to skim milk and butterfat contained in:

(a) Producer milk;

(b) Other source milk allocated to Class I pursuant to § 1090.44(a) (7) and (11) and the corresponding steps of § 1090.44(b), except such other source milk that is excluded from the computations pursuant to § 1090.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1090.76(a) (2).

§ 1090.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1090.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

BASE-EXCESS PLAN

§ 1090.90 Base milk.

"Base milk" means milk received at pool plants from a producer during any of the months of March through July which is not in excess of such producer's daily average base computed pursuant to § 1090.92, multiplied by the number of days in such month.

§ 1090.91 Excess milk.

"Excess milk" means milk received at pool plants from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk received during such months from a producer for whom no daily average base can be computed pursuant to § 1090.92.

§ 1090.92 Computation of daily average base for each producer.

Subject to the rules set forth in § 1090.93, the daily average base for each producer shall be an amount calculated by dividing the total pounds of milk received from such producer at all pool plants during the months of September through January immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of January, inclusive, or by 120, whichever is more: *Provided*, That any producer who, during the preceding months of September through January, delivered his milk to a nonpool plant which became a pool plant after the beginning of such period shall be assigned a base in the same manner as if he had been a producer during such period, calculated from his deliveries during such September–January period to such plant.

§ 1090.93 Base rules.

The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base calculated pursuant to § 1090.92 to each person for whose account producer milk was delivered to pool plants during the months of September through January;

(b) A base which is assigned pursuant to the proviso of § 1090.92 shall be nontransferable. An entire base which is otherwise assigned shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to transferred: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred; and

(c) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to in writing by the partners provided written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month on which such division is to be effective.

§ 1090.94 Announcement of established bases.

On or before March 1 of each year, the market administrator shall notify each producer, and the handler receiving milk from such producer, of the daily average base established by such producer, and shall notify a cooperative association of which such producer is a member of such daily average base if the cooperative association so requests.

PART 1094—MILK IN NEW ORLEANS MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1094.85 Assessment for order administration.
1094.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1094 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674.)

GENERAL PROVISIONS

§ 1094.1 General provisions.

The terms, definitions, and provisions, in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1094.2 New Orleans marketing area.

New Orleans marketing area, hereinafter referred to as the marketing area, means all territory, including incorporated municipalities, within Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, and Terrebonne Parishes, all in the State of Louisiana.

§ 1094.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a milk processing plant to wholesale or retail outlets (including any delivery by a vendor and from a plant store or through a vending machine) other than a delivery to any milk or filled milk receiving and/or processing plant.

§ 1094.4 [Reserved]

§ 1094.5 Distributing plant.

Distributing plant means any plant at which fluid milk products, eligible for distribution in the marketing area under a Grade A label, are processed and packaged and from which there is route disposition of fluid milk products in the marketing area.

§ 1094.6 Supply plant.

Supply plant means any plant at which milk eligible for distribution in the marketing area under a Grade A label is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1094.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month:

(1) Route disposition in the marketing area of fluid milk products, except filled milk, is at least the lesser of a daily average of 1,500 pounds or 20 percent of receipts from dairy farmers, handlers described in § 1094.9(c), and supply plants; and

(2) Total route disposition of fluid milk products, except filled milk, is 50 percent or more of receipts from dairy farmers, handlers described in § 1094.9 (c), and supply plants.

(b) A supply plant from which not less than 45 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped to and received at plants qualifying for the month pursuant to paragraph (a) of this section. Any supply plant meeting such shipping standard for each of the months of August through November shall continue to be a pool plant the following months of December through July unless the operator notifies the market administrator in writing before the first day of any such month of his intent to withdraw such plant as a plant qualified under this paragraph, in which case such plant thereafter shall be a nonpool plant except in any month it meets the above 45 percent shipping standard.

(c) For the purpose of meeting the minimum 45 percent shipping standard of paragraph (b) of this section by a supply plant operated by a cooperative association, all member-dairy farmer milk delivered directly from farms pursuant to § 1094.9(c), to distributing plant(s) qualified under paragraph (a) of this section will be considered to have been first received at that supply plant of the cooperative located nearest New Orleans, La., and then shipped therefrom to such distributing plant(s). The cooperative association may withdraw such supply plant from qualification under this section:

(1) If the cooperative notifies the market administrator in writing prior to or during the month of its intention not to qualify the plant under this section during that month; and

(2) The milk actually shipped during the month from such plant to plant(s) qualified under paragraph (a) of this section is less than 45 percent of the Grade A milk actually received from dairy farmers at such supply plant during the month.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless there is greater route disposition, except filled milk, during the month in the New Orleans marketing area than in the marketing area defined in such other order; and

(3) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to paragraph (b) of this section.

§ 1094.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1094.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant(s);

(b) A cooperative association with respect to milk of producers diverted for the account of such association in accordance with § 1094.13;

(c) Any cooperative association with respect to the milk of producers which it causes to be delivered directly from the farm to the pool plant of another person in a tank truck owned and operated by, under contract to, or under the control of such association (unless the association and the person operating the pool plant both notify the market administrator, in writing, prior to the time of delivery that the pool plant operator is to be held responsible to the pool for such milk). For purposes of pricing, such milk shall be deemed to have been received by the association from producers at the location of the pool plant at which such milk is physically received;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1094.7(d).

§ 1094.10 Producer-handler.

"Producer-handler" means a dairy farmer who operates a distributing plant at which no fluid milk or fluid milk products are received during the month except his own production or transfers from a pool plant(s) and which has no receipts of milk products other than fluid milk products disposed of as Class I milk.

§ 1094.11 [Reserved]

§ 1094.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which is received at a pool plant or by a handler described in § 1094.9(c) or is diverted pursuant to § 1094.13(d).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if

the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1094.44(a)(8)(iii) and the corresponding step of § 1094.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1094.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer;

(b) Received at a pool plant from a handler described in § 1094.9(c);

(c) Diverted from a pool plant to the pool plant of another handler. Milk so diverted shall be deemed to have been received at the location of the plant to which diverted; and

(d) Diverted by the operator of a pool plant or a cooperative association to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) During December through July such diversions may be made without limit;

(2) During August through November such diversions shall be limited to the amounts specified in paragraph (d)(2)(i), (ii), and (iii) of this section:

(i) A cooperative association may divert the milk of any eligible member-dairy farmer without limit during the month if the total volume of milk so diverted does not exceed 35 percent of the cooperative's total member producer milk during that month;

(ii) The operator of a pool plant may divert from such plant the milk of any eligible nonmember dairy farmer without limit during the month if the total volume of milk so diverted does not exceed 35 percent of his nonmember producer milk during that month; and

(iii) If the 35 percent limitation described in paragraph (d)(2)(i) and (ii) of this section is exceeded, the diversion of any eligible dairy farmer's milk shall be limited to 15 days' production during any such month. If this 15-day limitation is exceeded for any such dairy farmer, he shall be eligible for pooling only with respect to that milk physically received at pool plants during the month; and

(3) Diverted milk shall be deemed to have been received at the location of the plant to which diverted.

§ 1094.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1094.40(b)(1) from any source other than producers, handlers described in § 1094.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1094.40.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1094.40(b)(1), and products produced at the plant during the 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 § 1094.40(b)(1)) for which the handler fails to establish a disposition.

§ 1094.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1094.40 (b) or (c) (1)(i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5-percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1094.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1094.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1094.18 Cooperative association.

Cooperative association means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1094.30 Reports of receipts and utilization.

On or before the 5th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1094.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1094.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1094.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1094.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1094.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects

to make payment pursuant to § 1094.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1094.32 Other reports.

(a) Each handler who operates an other order plant with route disposition in the marketing area shall report such disposition to the market administrator on or before the seventh day after the end of each month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1094.30 and 1094.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1094.40 Classes of utilization.

Except as provided in § 1094.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1094.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, and Creole cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, dry curd cottage cheese, and Creole cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) 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

(vi) 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 mlik products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1094.15; and

(6) In shrinkage assigned pursuant to § 1094.41(a) to the receipts specified in § 1094.41(a)(2) and in shrinkage specified in § 1094.41 (b) and (c).

§ 1094.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1094.30, the 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 or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1094.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1094.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1094.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1094.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, re-

spectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1094.44 (a) (12) and the corresponding step of § 1094.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1094.44(a) (7) or the corresponding step of § 1094.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1094.44(a) (11) or (12) or the corresponding steps of § 1094.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant; and

(4) Unless a different utilization is claimed by both handlers, skim milk or butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as the operator of a pool plant or as a handler described in § 1094.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class at the pool plant of the transferee-handler after the computations pursuant to § 1094.44(a) (13) (i) and the corresponding step of § 1094.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b) (3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1094.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d) (2) (i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d) (2) (ii) through (ix) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1094.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Except as provided in paragraph (d) (2) (ix) of this section, transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant;

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products trans-

ferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph; and

(ix) Transfers of bulk fluid milk products from a nonpool plant to a pool plant that are not in excess of bulk receipts during the month at such nonpool plant from pool plants shall be classified pursuant to paragraph (a) of this section as if moved directly from the first pool plant to the second pool plant with Class II or Class III utilization indicated. If the classification limitations provided in paragraph (a) of this section result in any skim milk or butterfat classified as Class I from pool plants of two or more handlers, such classification shall be shared pro rata between such handlers unless at or before the time of reporting, signed statements by operators of such plants indicate agreement on a different sharing of such Class I classification.

§ 1094.43 General classification rules.

In determining the classification of producer milk pursuant to § 1094.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1094.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1094.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1094.40, 1094.41, and 1094.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1094.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1094.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1094.9(a) for each of his pool plants separately and of each handler described in § 1094.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1094.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1094.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1094.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1094.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1094.40(b)(1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1094.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by

the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1094.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) 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 (excluding any duplication of utilization in each class resulting from transfers between 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 sutracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be sutracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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)(ii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) 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 sutracted 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 to all handlers in each class as announced for the month pursuant to § 1094.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between 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 exceed ir 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 Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv.) 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 Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III, combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant or a handler described in § 1094.9(c) according to the classification of such products pursuant to § 1094.42(a); and

(ii) A handler described in § 1094.9 (c) according to the classification of such products pursuant to § 1094.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1094.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1094.44(a)(12) and the corresponding step of § 1094.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1094.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to

an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1094.50 Class prices.

Subject to the provisions of § 1094.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.85.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1094.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1094.52 Plant location adjustments for handlers.

(a) For that milk which is received from producers or from a handler described in § 1094.9(c) at a pool plant more than 50 miles by shortest toll-free highway distance, as determined by the market administrator, from the nearer of the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma, La., and utilized as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1094.50 (a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

	Rate per hundredweight (cents)
Zones measured from the nearer of the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma, La. (miles):	
More than 50 but not more than 60	13.5
Each additional 10 miles or fraction thereof	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The market administrator shall determine and publicly announce the zone location of each plant of each handler according to the shortest toll-free highway distance between such plant and the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1094.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1094.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1094.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1094.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1094.44(a)(14) and the corresponding step of § 1094.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1094.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1094.44 (a)(9) and the corresponding step of § 1094.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1094.44(a)(7) (i) through (iv) and the corresponding step of § 1094.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1094.44(a)(7) (v) and (vi) and the corresponding step of § 1094.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1094.44 (a)(11) and the corresponding step of § 1094.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1094.61 Computation of uniform price.

For each month, the market administrator shall compute the 3.5 percent value of all milk as follows:

(a) Combine into one total the individual values of milk of all handlers computed pursuant to § 1094.60 except those of handlers who failed to make payments required pursuant to §§ 1094.71 and 1094.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1094.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the produce-settlement fund;

(d) Divide the amount computed pursuant to paragraphs (a) through (c) of this section by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk included pursuant to paragraph (a) of this section; and

(2) The total hundredweight for which a value is computed pursuant to § 1094.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers.

§ 1094.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1094.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1094.71, 1094.76, and 1094.77, and out of which he shall make all payments pursuant to §§ 1094.72 and 1094.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1094.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1094.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1094.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1094.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1094.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1094.71(a)(2) exceeds the amount computed pursuant to § 1094.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1094.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer, who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, each handler shall make payment to each producer for milk which was received from him during the month at not less than the uniform price, as adjusted pursuant to §§ 1094.74 and 1094.75, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1094.86;

(iii) Plus or minus adjustments for errors made in previous payments to such producer;

(iv) Less deductions authorized in writing by such producer; and

(v) If by such date such handler has not received full payment from the market administrator pursuant to § 1094.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Each handler shall furnish to the producer the following information:

(1) On or before the 25th day of the month, the pounds of milk received from the producer during the first 15 days of such month;

(2) On or before the 15th day of the following month (i) the pounds of milk received from the producer each day and the total for the month, together with the butterfat content of such milk, (ii) the amount (or rate) and nature of deductions made from payments, and (iii) the amount and nature of payments due pursuant to § 1094.77.

(c) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any claim on the part of the association, each handler:

(1) Shall pay to the cooperative association, in lieu of payments pursuant to paragraph (a) of this section, on or before the 2d day prior to the date on which payments are due individual producers, an amount equal to not less than the amount due such certified members as determined pursuant to paragraph (a) of this section;

(2) Report to the cooperative association on or before the 25th day of the month, the pounds of milk received from each member of the cooperative association during the first 15 days of such month and on or before the 7th day of the following month to the cooperative association for its individual members the following information: (i) The pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) the amount (or rate) and nature of deductions made from payments and (iii) the amount and nature of payments due pursuant to § 1094.77. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

(3) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) Each handler shall make payment to a cooperative association for milk received from such association in its capac-

ity as a handler pursuant to § 1094.9(a) and § 1094.9(c) as follows:

(1) On or before the 22d day of each month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from any cooperative association during the first 15 days of the current month; and

(2) On or before the 12th day after the end of each month in which it was received at not less than the class prices, as adjusted by the butterfat differential specified in § 1094.74, that are applicable at the location of the receiving handler's pool plant, plus the amount due the market administrator from the cooperative association on such milk pursuant to § 1094.85, less amounts paid pursuant to paragraph (d)(1) of this section.

§ 1094.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1094.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant, each at the rates set forth in § 1094.52(a); and

(b) The uniform price applicable to other source milk shall be adjusted at the rates set forth in § 1094.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1094.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1094.30(b) and 1094.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1094.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1094.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1094.60 for such handler shall include, in lieu of the value of other source milk specified in § 1094.60(f) less the value of such other source milk specified in § 1094.71(a)(2)(ii), a value of milk determined pursuant to § 1094.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1094.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1094.30(b) and 1094.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1094.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1094.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1094.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1094.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set

forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1094.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may, from time to time, prescribe, to be announced by the market administrator on or before the 11th day after the end of such month, with respect to all skim milk and butterfat received by such handler in:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1094.44(a) (7) and (11) and the corresponding steps of § 1094.44(b), except such other source milk that is excluded from the computations pursuant to § 1094.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1094.76(a)(2).

§ 1094.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1094.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1096—MILK IN NORTHERN LOUISIANA MARKETING AREA

Subpart—Order Regulating Handling

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1096.85 Assessment for order administration.
1096.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1096 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1096.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1096.2 Northern Louisiana marketing area.

"Northern Louisiana marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the Parishes of Bossier, Caddo, Claiborne, De Soto, Lincoln, Morehouse, Ouachita, Red River, Union, and Webster, all in the State of Louisiana.

§ 1096.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product(s) classified as Class I milk from a plant to wholesale or retail outlets (including any disposition by a vendor, from a plant store, or through a vending machine) other than a delivery to another plant.

§ 1096.4 Plant.

"Plant" means the land, buildings together with their surroundings, facilities and equipment whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and/or processed or packaged: *Provided*, That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distributing depot for fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1096.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition of Grade A fluid milk products during the month in the marketing area.

§ 1096.6 Supply plant.

"Supply plant" means a plant from which fluid milk products eligible for distribution in the marketing area under a Grade A label are moved to a distributing plant during the month.

§ 1096.7 Pool plant.

Except as provided in paragraph (d) of this section, pool plant" means:

(a) A distributing plant from which during the month there is route disposition, except filled milk, of not less than 50 percent of the fluid milk products, except filled milk, that are approved by a duly constituted regulatory agency for distribution under a Grade A label and that are physically received at such plant or diverted to a nonpool plant as producer milk pursuant to § 1096.13 and total route disposition, except filled milk, in the marketing area during the month is not less than 10 percent of such fluid milk products.

(b) A supply plant from which during the month not less than 50 percent of the total quantity of Grade A milk approved by a duly constituted regulatory agency that was physically received at such plant from dairy farmers and handlers described in § 1096.9(c) or diverted therefrom by the plant operator or a cooperative association as producer milk to a nonpool plant pursuant to § 1096.13 is shipped during the month to a plant(s) described in paragraph (a) of this section. A supply plant that was a pool plant pursuant to this paragraph in each of the months of September through January shall be a pool plant in each of the following months of February through August in which it does not meet the shipping requirements, unless written request is filed with the market administrator prior to the beginning of any such month for nonpool status for any of the remaining months through August.

(c) A nondistributing plant, which is operated by a cooperative association and which did not meet the shipping requirements of paragraph (b) of this section, shall be a pool plant in any month in which the volume of milk received at pool distributing plants directly from member producers or a handler described in § 1096.9(c) is not less than 60 percent of the total pounds of member producer milk pooled during the month, except that on written request for nonpool status for any month, made to the market administrator prior to the beginning of such month, the plant shall be a nonpool plant for the month and for each of the succeeding 11 months in which it does not qualify as a pool plant pursuant to paragraph (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant operated by a governmental agency;

(3) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which the Secretary determines route disposition, except filled milk, during the month in such other Federal order marketing area was greater than route disposition in this marketing area, and which was fully subject to the classification and pooling provisions of such other order; and

(4) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

§ 1096.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is not an other order plant, a producer-handler plant, or an exempt plant.

(e) "Exempt plant" means a plant operated by a governmental agency.

§ 1096.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to milk of producers it diverts pursuant to § 1096.13;

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

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1096.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1096.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and whose only source of supply for Class I milk is his own farm production and transfers from pool plants: *Provided*, That such person furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of Class I milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprises of and at the personal risk of such person.

§ 1096.11 [Reserved]

§ 1096.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency, which milk is received at a pool plant or accounted for by a cooperative association pursuant to § 1096.13(c), or is diverted pursuant to § 1096.13(b).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1096.44(a)(8)(iii) and the corresponding step of § 1096.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1096.13 Producer milk.

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

(a) Received at a pool plant directly from a producer or a handler described in § 1096.9(c);

(b) Diverted by the operator of a pool plant or by a cooperative association to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (d) of this section; or

(c) The difference between the quantity of milk received by a handler described in § 1096.9(c) from producers' farms and the quantity of such milk delivered to pool plants. For the purposes of §§ 1096.52 and 1096.75, such milk shall be deemed to have been received by such handler at the pool plant to which all other producer milk in the same tank truck was delivered.

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

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

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

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

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

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

§ 1096.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1096.40 (b) (1) from any source other than producers, handlers described in § 1096.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1096.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1096.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1096.40(b) (1)) for which the handler fails to establish a disposition.

§ 1096.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1096.40 (b) or (c) (1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1096.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1096.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1096.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1096.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1096.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1096.40(b) (1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1096.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products, in such manner as the market administrator may prescribe.

§ 1096.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1096.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and addess;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1096.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1096.32 Other reports.

(a) Each handler, who causes milk to be diverted for his account directly from a producer's farm to a nonpool plant, shall prior to such diversion report to the market administrator and to the cooperative association of which such producer is a member his intention to divert such milk, the proposed date or dates of such diversion, and the name of the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1096.30 and 1096.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1096.40 Classes of utilization.

Except as provided in § 1096.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1096.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing estab-

lishment (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 other than that specified in paragraph (c)(1)(iv) of this section;

(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) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) 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

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1096.15; and

(6) In shrinkage assigned pursuant to § 1096.41(a) to the receipts specified in § 1096.41(a)(2) and in shrinkage specified in § 1096.41(b) and (c).

§ 1096.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1096.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1096.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products 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 § 1096.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1096.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1096.44(a)(12) and the corresponding step of § 1096.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1096.44(a)(7) or the corresponding step of § 1096.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1096.44(a)(11) or (12) or the corresponding steps of § 1096.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such

classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1096.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt plant shall be classified:

(1) As Class I milk, if moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1096.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Except as provided in paragraph (d)(2)(ix) of this section, transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant;

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph; and

(ix) Transfers of bulk fluid milk products from a nonpool plant to a pool plant shall be classified as if they were a direct transfer pursuant to paragraph (a) of this section from one pool plant to another pool plant with Class II or Class III utilization indicated: *Provided,* That if the classification limitations provided in paragraph (a) of this section result in any skim milk or butterfat covered by this subdivision being classified as Class I from pool plants of two or more handlers, such classification shall be shared pro rata between such handlers according to the respective quantities of fluid milk products each handler transferred to the nonpool plant unless, at or before the time of reporting, signed statements by operators of such plants indicate agreement on a different sharing of such Class I classification.

§ 1096.43 General classification rules.

In determining the classification of producer milk pursuant to § 1096.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1096.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1096.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1096.40, 1096.41, and 1096.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1096.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1096.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1096.9(a) for each of his pool plants separately and of each handler described in § 1096.9 (b) and (c) by allocating the handler's receipts of skim

milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1096.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1096.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1096.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1096.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1096.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in suh classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, milk from a handler described in § 1096.9(c), and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1096.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) 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 (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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), (iii), and (iv) of this section, such subtraction shall be prorata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1096.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between 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 pound 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 Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the the pounds of skim milk remaining in each class at this allocation step at the pounds of skim milk in Class I shall be decreased by a like amount. In such case, handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) 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 Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(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 § 1096.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

§ 1096.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1096.44(a) (12) and the corresponding step of § 1096.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1096.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 11th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

CLASS PRICES

§ 1096.50 Class prices.

Subject to the provisions of § 1096.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.47.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1096.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1096.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located more than 50 miles, by the shortest hard-surfaced highway distance as determined by the market administrator, from the nearer of the City Hall in Minden or Monroe, Louisiana, and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1096.50(a) shall be reduced 1.5 cents for each 10 miles or fraction thereof that

such plant is from the nearer of the City Hall in Minden or Monroe.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1096.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1096.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1096.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1096.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1096.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1096.44(a)(14) and the corresponding step of § 1096.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1096.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1096.44(a)(9) and the corresponding step of § 1096.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1096.44(a)(7) (i) through (iv) and the corresponding step of § 1096.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1096.44(a)(7) (v) and (vi) and the corresponding step of § 1096.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1096.44(a)(11) and the corresponding step of § 1096.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1096.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1096.61 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1096.60 for all pool handlers who made reports prescribed in § 1096.30 for such month and who have made payments for the previous month pursuant to § 1096.71;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1096.75;

(c) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1096.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for producer milk.

§ 1096.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1096.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1096.71, 1096.76, and 1096.77 and out of which he shall make payments to handlers pursuant to §§ 1096.72 and 1096.77: *Provided*, That payments due to any handler shall be offset by any payment due from such handler.

§ 1096.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1096.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1096.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1096.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the

location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1096.72 Payments from the producer-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 § 1096.71(a)(2) exceeds the amount computed pursuant to § 1096.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1096.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 28th day of each month, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month;

(b) On or before the 15th day after the end of each month for milk received during the month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1096.61, subject to the butterfat differentials and location adjustments computed pursuant to §§ 1096.74 and 1096.75, respectively; and

(1) Less payment made pursuant to paragraph (a) of this section;

(2) Less deductions for marketing services pursuant to § 1096.86;

(3) Plus or minus adjustments pursuant to § 1096.77 for errors in previous payments made to such producers; and

(4) Less proper deductions authorized by such producer;

(c) On or before the 25th and 13th days of each month, in lieu of the payment pursuant to paragraphs (a) and (b) of this section, respectively, each handler shall pay to a cooperative association which so requests, with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers;

(d) In making the payments to producers pursuant to paragraph (b) or (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer;

(e) Each handler shall make payment to a cooperative association for each hundredweight of milk received from such association in its capacity as a handler pursuant to § 1096.9(a) as follows:

(1) On or before the 25th day of each month for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 13th day after the end of each month an amount equal to not less than the applicable class prices adjusted pursuant to § 1096.74, (i) less the amounts paid pursuant to paragraph (e)(1) of this section, and (ii) plus or minus adjustments pursuant to § 1096.77 for errors in previous payments made to such cooperative association; and

(f) Each handler shall make payment to a cooperative association for milk received from such association in its capacity as a handler described in § 1096.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized such cooperative association to collect for their milk as follows:

(1) On or before the 25th day of each month for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 13th day after the end of each month at not less than the uniform price adjusted pursuant to §§ 1096.74 and 1096.75, less payment made pursuant to paragraph (f)(1) of this section.

§ 1096.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1096.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk shall be reduced according to the location of the plant at which the milk was physically received, at the rates set forth in § 1096.52.

(b) For purposes of computations pursuant to §§ 1096.71 and 1096.72 the uniform price shall be adjusted at the rates set forth in § 1096.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1096.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1096.30(b) and 1096.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations;

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under an order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1096.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall

be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1096.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1096.60 for such handler shall include, in lieu of the value of other source milk specified in § 1096.60(f) less the value of such other source milk specified in § 1096.71(a)(2)(ii), a value of milk determined pursuant to § 1096.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1096.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1096.30(b) and 1096.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1096.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1096.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterbasis by the butterfat differential specified in § 1096.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1096.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, discloses errors resulting in moneys due (a) the market administrator from such handler; (b) such handler from the market administrator; or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1096.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part each handler, except a producer-handler, shall pay to the market administrator on or before the 15th day after the end of the month, 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, as follows:

(a) Each pool handler with respect to (1) all receipts of producer milk including such handler's own production, and (2) other source milk allocated to Class I pursuant to § 1096.44(a)(7) and (11) and the corresponding steps of § 1096.44(b), except such other source milk that is excluded from the computations pursuant to § 1096.60(d) and (f);

(b) Each cooperative association on producer milk diverted to a nonpool plant for the account of such association or received by such association as a handler described in § 1096.9(c); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1096.76(a)(2).

§ 1096.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1096.73 shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to provide market information and to verify the weights, samples and tests of milk received from such producers during the month. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the service set forth in paragraph (a) of this section and for whom a cooperative association is authorized to receive payment for marketing services as set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payment to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and shall pay such deductions to the cooperative association entitled to receive it, on or before the 15th day after the end of the month during which such milk was received. Such deductions shall be accompanied by a statement showing the quantity of milk for which such deduction was computed for each producer. In lieu of such statement, the handler may request the market administrator to furnish such cooperative association the information reported for such producers pursuant to § 1096.31.

PART 1097—MILK IN MEMPHIS, TENNESSEE, MARKETING AREA

Subpart—Order Regulating Handling

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1097.121 Duties of the market administrator.
1097.122 Liquidation.

AUTHORITY: The provisions of this Part 1097 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–67).

GENERAL PROVISIONS

§ 1097.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1097.2 Memphis, Tennessee, marketing area.

"Memphis, Tennessee, marketing area" means all the territory, including incorporated municipalities and military reservations, within the Tennessee counties of Fayette, Hardeman (except Civil Districts 5 and 6), Haywood, Lauderdale, Madison (except Civil Districts 4 and 9), Shelby and Tipton; the Mississippi counties of De Soto, Tate, Panola (except the village of Crowder), Tunica, Lafayette, and Marshall (exclusive of Beat 5); and the townships of Mississippi and Proctor in Crittenden County, Arkansas.

§ 1097.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a delivery to a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets, without intermediate movement to another milk or filled milk plant.

§ 1097.4 [Reserved]

§ 1097.5 [Reserved]

§ 1097.6 [Reserved]

§ 1097.7 Fluid milk plant.

Except as provided in paragraph (c) of this section, "fluid milk plant" means:

(a) Any milk processing or packaging plant from which a volume of Class I milk, except filled milk, equal to an average of 1,000 pounds or more per day, or not less than 5.0 percent of the Class I milk, except filled milk, of such plant, is disposed of during the month as route disposition in the marketing area.

(b) Any plant from which during the month fluid milk products (bulk or packaged), except filled milk, in excess of 70,000 pounds are moved to and received at a plant(s) described pursuant to paragraph (a) of this section.

(c) The term "fluid milk plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) or (b) of this section which would be fully regulated pursuant to the provisions of another order issued pursuant to the Act and from which the market administrator determines that a greater volume of fluid milk products, except filled milk, was disposed of during the month from such plant as route disposition in the marketing area regulated by the other order and as fluid milk products transferred as Class I milk to plants fully regulated by such other order than as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants: *Provided*, That a plant which was a fluid milk plant pursuant to paragraph (a) or (b) of this section in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of fluid milk products, except filled milk, is disposed of as route disposition in such other marketing area or to plants fully subject to such other order, unless the other order requires regulation of the plant without regard to its qualifying as a fluid milk plant for regulation under this order subject to the proviso of this subparagraph; and

(3) A plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements for fully regulated plants under another Federal order and from which the market administrator determines a greater volume of fluid milk products, except filled milk, is disposed of during the month as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants than as route disposition in the other marketing area and fluid milk products transferred as Class I milk to plants fully regulated by such other order, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation under the particular circumstances described herein of having greater route disposition under the Memphis, Tenn., order.

§ 1097.8 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk manufacturing, processing, or packaging plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonfluid milk plant from which fluid milk products are moved during the month to a fluid milk plant and which is not an other order plant nor a producer-handler plant.

§ 1097.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more fluid milk plants;

(b) Any cooperative association with respect to milk of its member producers diverted by it pursuant to § 1097.12 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its member-producers which it causes to be delivered directly from the farm to the fluid milk plant(s) of another handler in a bulk tank truck owned and operated by, or under contract to, or under control of such cooperative, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing, that it wishes to become the handler for such milk. The cooperative association shall be considered the handler for such bulk tank milk, effective the first day of the month following receipt of such notice, and shall account for the actual receipts from each producer as determined at the farm at prices applicable to receipts from producers at plants to which the cooperative

association delivers the milk. The cooperative association, once it becomes the handler for such bulk tank milk, shall remain the handler for such bulk tank milk from month to month until the cooperative association notifies the market administrator and handler that such status is to be discontinued, effective the first day of the month following receipt of such notice;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1097.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1097.10 Producer-handler.

"Producer-handler" means any person who operates an approved plant from which Class I milk is disposed of in the marketing area but who receives no milk from other dairy farmers.

§ 1097.11 [Reserved]

§ 1097.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is:

(1) Received at a fluid milk plant; or

(2) Diverted from a fluid milk plant to a nonfluid milk plant that is not a producer-handler plant for the account of the handler. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the plant from which it was diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a fluid milk plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1097.44 (a)(8)(iii) and the corresponding step of § 1097.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1097.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk from producers (in an amount determined by weights and measurements for individual producers, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is:

(a) Received directly from producers at a fluid milk plant;

(b) Diverted pursuant to § 1097.12; or

(c) Received by a handler described in § 1097.9(c).

§ 1097.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1097.40 (b)(1) from any source other than producers, handlers described in § 1097.9(c), or fluid milk plants;

(b) Receipts in packaged form from other plants of products specified in § 1097.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1097.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1097.40(b)(1)) for which the handler fails to establish a disposition.

§ 1097.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1097.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1097.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1097.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1097.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1097.30 Reports of receipts and utilization.

By mailing on or before the sixth day after the end of each month or by delivery not later than the eighth day after the end of such month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his fluid milk plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the fluid milk plant to other plants;

(2) Receipts of milk from handlers described in § 1097.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other fluid milk plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1097.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler described in § 1097.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled

milk, and milk products in such manner as the market administrator may prescribe.

§ 1097.31 Payroll reports.

(a) By mailing on or before the sixth day after the end of the month, or by delivery not later than the eighth day after the end of such month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer:

(1) His name and address;

(2) The number of days on which milk was received from such producer;

(3) The total pounds of milk received from such producer;

(4) The average butterfat content of such milk;

(5) The location at which such milk was received; and

(6) The amount of any deductions authorized in writing by the producer to be made in making payments to such producer.

(b) On or before the 21st day of each month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in detail and on forms prescribed by him, the name and address or appropriate identification of each producer from whom milk was received during the first 15 days of such month, the total pounds of milk received from each producer, the location at which such milk was received, the amount of any deductions authorized in writing by producers from whom such handler received milk, the total pounds of milk received from each handler described in § 1097.9(c), and the name and address of each such cooperative association.

§ 1097.32 Other reports.

(a) Each handler operating a partially regulated distributing plant shall report on or before the seventh day after the end of the month, the respective amounts of skim milk and butterfat in route disposition in the marketing area.

(c) In addition to the reports required pursuant to §§ 1097.30 and 1097.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1097.40 Classes of utilization.

Except as provided in § 1097.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1097.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(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) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) 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

(vi) 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 § 1097.15; and

(6) In shrinkage assigned pursuant to § 1097.41(a) to the receipts specified in § 1097.41(a)(2) and in shrinkage specified in § 1097.41 (b) and (c).

§ 1097.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1097.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each fluid milk plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1097.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other fluid milk plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in para-

graph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1097.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1097.42 Classification of transfers and diversions.

(a) *Transfers to fluid milk plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another fluid milk plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the conditions set forth in paragraph (a) (1), (2), and (3) of this section. For purposes of this paragraph, skim milk and butterfat transferred as bulk milk to the fluid milk plant of another handler by a handler described in § 1097.9(c) shall be considered a receipt of producer milk in the transferee plant.

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1097.44(a)(12) and the corresponding step of § 1097.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1097.44(a)(7) or the corresponding step of § 1097.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1097.44(a) (11) or (12) or the corresponding steps of § 1097.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the fluid milk plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1097.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a fluid milk plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonfluid milk plants.* Skim milk or butterfat transferred or diverted in the following forms from a fluid milk plant to a nonfluid milk plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if tranferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonfluid milk plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1097.30 for the month within which such transaction occurred; and

(*b*) The nonfluid milk plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonfluid milk plant and transfers of packaged fluid milk products from such nonfluid milk plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonfluid milk plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonfluid milk plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonfluid milk plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonfluid milk plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonfluid milk plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonfluid milk plant's receipts from dairy farmers who the market administrator determines constitute

regular sources of Grade A milk for such nonfluid milk plant; and

(b) To such nonfluid milk plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonfluid milk plant;

(vii) Receipts of bulk fluid cream products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonfluid milk plant; and

(viii) In determining the nonfluid milk plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonfluid milk plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1097.43 General classification rules.

In determining the classification of producer milk pursuant to § 1097.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1097.30 and shall compute separately for each fluid milk plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1097.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1097.40, 1097.41, and 1097.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1097.9 (b) or (c) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association.

§ 1097.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1097.9(a) for each of his fluid milk plants separately and of each handler described in § 1097.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1097.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1097.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1097.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order; and

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess 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 the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all fluid milk plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between fluid milk plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all fluid milk plants of the handler of producer milk, milk from a handler described in § 1097.9(c), fluid milk products from fluid milk plants of other handlers, and bulk fluid milk products from other order plants; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from

an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1097.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler (excluding any duplication of utilization in each class resulting from transfers between fluid milk plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess 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 the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subject to the provisions of paragraph (a)(12)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler (excluding any duplication of utilization in each class resulting from transfers between fluid milk plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section and that were not offset by transfers or diversions of bulk fluid milk products to the same other order 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 Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess 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 the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another fluid milk plant according to the classification of such products pursuant to § 1097.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1097.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1097.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating a fluid milk plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of milk delivered by such association or by its members which was allocated to each class by each handler receiving such milk.

Class Prices

§ 1097.50 Class prices.

Subject to the provisions of § 1097.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.94.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1097.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differen-

tial (rounded to the nearest 0.1 cent) per 0.1-percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1097.52 Plant location adjustments for handlers.

For that milk which is received at a fluid milk plant (from producers or from a handler described in § 1097.9(c)), located 50 miles or more from the city hall in Memphis, Tenn., by shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred in the form of products designated as Class I milk in § 1097.40(a) to another fluid milk plant and assigned to Class I pursuant to the calculation provided in this section, or otherwise classified as Class I milk, the price specified in § 1097.50(a) shall be adjusted at the rate set forth in the following schedule according to the location of the fluid milk plant where such milk is received:

Location of plant	*Rate per hundredweight*
In the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Add 9 cents.
For each additional 10 miles in excess of 50 miles	Add an additional 1.5 cents.
Outside the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Subtract 9 cents.
For each additional 10 miles in excess of 50 miles	Subtract an additional 1.5 cents.

For purposes of calculating such location adjustment, fluid milk products transferred in bulk between fluid milk plants shall be assigned to the Class I disposition at the transferee-plant in excess of the sum of receipts at such plant from producers and from handlers described in § 1097.9(c) times 1.05, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment or a plus location adjustment is applicable and then in sequence beginning with the plant at which the smallest minus location adjustment would apply.

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1097.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1097.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1097.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1097.44(a)(14) and the corresponding step of § 1097.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1097.74, that are applicable at the location of the fluid milk plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the fluid milk plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after the computations pursuant to § 1097.44(a)(11) and the corresponding step of § 1097.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months; and

(e) In computing, for the purposes of § 1097.61, the value of milk of a handler described in § 1097.9(c), the value of milk received by fluid milk plants of other handlers shall be the sum of the amounts assigned pursuant to § 1097.61(a)(2) with respect to such milk as adjusted pursuant to § 1097.75 for the location of the fluid milk plant to which delivered.

§ 1097.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).

(a) For each of the months of August through February the market administrator shall compute for each handler a uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1097.60 by adding or subtracting, as the case may be, the total of the location adjustments applicable pursuant to § 1097.75;

(2) For each handler operating a fluid milk plant receiving milk from a handler described in § 1097.9(c), prorate the resulting amount between such milk and producer milk;

(3) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform prices for the preceding month;

(4) Subtract an amount computed by multiplying the total hundredweight of producer milk in each class by 5 cents; and

(5) Divide the resulting amount by the total hundredweight of producer milk received by the handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content f.o.b. market.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to producer milk, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided for in paragraph (a)(1), (2), (3), and (4) of this section;

(2) Compute the value of excess milk received by such handler as producer milk and bulk milk from a handler described in § 1097.9(c) as follows:

(i) Multiply the quantity of such milk, not in excess of the total Class III milk included in this computation, by the Class III price less 5 cents;

(ii) Multiply the remaining quantity of such milk, not in excess of the total Class II milk included in this computation, by the Class II price less 5 cents;

(iii) Multiply the remaining quantity of excess milk by the Class I price less 5 cents; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such excess milk and adjust to the nearest cent. The resulting figure shall be the uniform price for such handler for all excess milk of 3.5 percent butterfat content;

(4) Subtract, for each handler, the value of such handler's excess milk obtained in paragraph (b)(3) of this section from the value of all milk obtained for such handler pursuant to paragraph (b)(1) of this section; and

(5) Divide the amount obtained in paragraph (b)(4) of this section by the total hundredweight of base milk received by such handler. The result, less any fraction of a cent per hundredweight, shall be the uniform price for such handler for base milk of 3.5 percent butterfat content.

§ 1097.62 Announcement of uniform prices for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 13th day after the end of each month the applicable uniform prices for each handler pursuant to § 1097.61 for such month.

PAYMENTS FOR MILK

§ 1097.71 Payments to market administrator.

(a) On or before the 25th day of each month each handler operating a fluid milk plant shall pay to the market administrator a sum of money calculated by multiplying the hundredweight of milk received from producers and from a handler described in § 1097.9(c) during the first 15 days of such month by the Class III price for the preceding month, less proper deductions authorized in writing by producers from whom such handler received milk.

(b) On or before the 12th day after the end of each month, each handler operating a fluid milk plant shall pay to the market administrator an amount of money equal to such handler's value of milk for such month as determined pursuant to § 1097.60, as adjusted pursuant to § 1097.74, less payments made pursuant to paragraph (a) of this section for such month and less proper deductions authorized in writing by producers from whom such handler received milk.

§ 1097.72 [Reserved]

§ 1097.73 Payments to producers and to cooperative associations.

(a) On or before the last day of each month, the market administrator shall make payment to each producer for milk received from such producer during the first 15 days of such month by handlers from whom the appropriate payments pursuant to § 1097.71(a) have been received at not less than the Class III price per hundredweight for the preceding month;

(b) On or before the 15th day after the end of each month, the market administrator shall make payment to each producer for milk received from such producer or cooperative association during the month by each handler from whom the appropriate payments have been received pursuant to § 1097.71(b), such payments by the market administrator to be at not less than the uniform price(s) computed pursuant to § 1097.61 (a) or (b), as applicable, subject to the following:

(1) Adjustment pursuant to §§ 1097.74 and 1097.75;

(2) Less payments made pursuant to paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1097.86;

(4) Less proper deductions authorized in writing by the producer;

(5) Adjusted for any error in calculating payment to such individual producer for past months; and

(6) If the market administrator has not received full payment from any handler for such month, pursuant to § 1097.71, he shall reduce uniformly per hundredweight his payments due for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall make such balance of payment to such producers on or before the next date (for making payments pursuant to this paragraph) following that on which such balance of payment is received from such handler;

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section the market administrator shall, on or before the second day prior to the date payments are due to individual producers, make payment to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payment has been received, and to a handler described in § 1097.9(c), a total amount equal to, but not less than, the sum of the individual payments otherwise payable to such producers pursuant to this section; and

(d) In making the payments pursuant to paragraphs (b) and (c) of this section, the market administrator shall furnish each producer or cooperative association with a statement, in such form that it may be retained by the producer or cooperative association which shall show:

(1) The delivery period and the identity of the handler and the producer;

(2) The total pounds of milk received from the producer, including for the months of March through July, such producer's deliveries of base and excess milk;

(3) The average butterfat content of the total pounds of milk received from the producer during the month;

(4) The minimum rates at which payment to the producer or cooperative association is required;

(5) The amount or rates per hundredweight of each deduction, together with a description of the respective deductions; and

(6) The net amount of payment to the producer or cooperative association.

§ 1097.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1097.75 Plant location adjustments for producers.

In making payment pursuant to § 1097.73, the applicable uniform prices for all milk received shall be adjusted according to the location of the fluid milk plant where such milk was received at the rate provided pursuant to § 1097.52.

§ 1097.76 [Reserved]

§ 1097.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due the market administrator from such handler, or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1097.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to (a) receipts of milk at fluid milk plants from producers (including receipts from a handler described in § 1097.9(c) and such handler's own production), (b) other source milk allocated to Class I pursuant to § 1097.44 (a) (7) and (11) and the corresponding steps of § 1097.44(b), (c) receipts of milk by a handler described in § 1097.9(c) in excess of that specified in paragraph (a) of this section, and (d) receipts of milk by a handler described in § 1097.9(b).

§ 1097.86 Deduction for marketing services.

(a) The market administrator in making payments to producers pursuant to § 1097.73 shall:

(1) Deduct 7 cents per hundredweight or such amount not exceeding 7 cents per hundredweight as may be prescribed by the Secretary, with respect to milk (other than milk of a handler's own production) of those producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association; or

(2) If so requested in writing by a cooperative association, deduct such amount as may be authorized by the member producers of such association from the payment to be made to such producers for whom the cooperative is performing the services specified in paragraph (b) of this section and pay such amounts to the cooperative association on or before the date for making payment to producers.

(b) The monies received by the market administrator pursuant to paragraph (a)(1) of this section shall be used by the market administrator to provide

market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

BASE-EXCESS PLAN

§ 1097.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1097.93.

§ 1097.91 Excess milk.

"Excess milk" means milk received by a handler from a producer during any of the months of March through July, which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1097.93.

§ 1097.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tenn.; Fort Smith, Ark.; and Central Arkansas marketing areas (this Part 1097 and Parts 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January, by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a fluid milk plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a fluid milk plant during such period.

§ 1097.93 Determination of monthly base of each producer.

Subject to the rules set forth in § 1097.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month.

(b) If milk is received as producer milk from the same farm by more than one handler and/or by handlers fully regulated under the terms of the Central Arkansas (Part 1108 of this chapter) or Fort Smith, Ark. (Part 1102 of this chapter), orders during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1097.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1097.94 Base rules.

The following rules shall apply in connection with the establishment of bases for each producer computed pursuant to § 1097.92:

(a) An entire base or share of a joint holder shall be transferred from a person holding such base to other persons as of the end of the month during which an application for the transfer of such base is received by the market administrator, such application to be on forms approved by the market administrator and signed by the base holder(s) or by the heirs and by the person to whom such base is to be transferred subject to the following conditions:

(1) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to one of the joint holders;

(2) The share of a joint base holder may be transferred to a person other than a joint holder of the base only if all shares of the entire base are at the same time transferred to the same or other persons; and

(3) If one or more bases are transferred to a producer already holding a base, a new base shall be computed by adding together the total eligible deliveries during the period of September through January of all persons in whose names such bases were earned and dividing the total by the total number of days in such period beginning with the first day on which milk was received during the months of September through January from any of such persons but not less than 120 days.

§ 1097.95 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer, or shall notify the cooperative association of which such producer is a member of such daily average base.

ADVERTISING AND PROMOTION PROGRAM

§ 1097.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1097.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1097.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1097.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1097.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1097.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1097.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1097.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1097.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) hav-

ing less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1097.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1097.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1097.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1097.110 and 1097.117.

§ 1097.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1097.110 and 1097.117;

(c) Keep minutes, books and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1097.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1097.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1097.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1097.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1097.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1097.121 Duties of the market administrator.

Except as specified in § 1097.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1097.113(c).

(b) Set aside the amounts substracted under § 1097.61(a)(4) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that ex-

ceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1097.61(a)(4).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1097.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1097.61(a)(4) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1097.110 through 1097.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1097.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall be distributed in an equitable manner to producers by the market administrator.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1098 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1098.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1098.2 Nashville, Tennessee, marketing area.

"Nashville, Tennessee, marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the following:

(a) Tennessee counties of:

Bedford.	Maury.
Cannon.	Montgomery.
Cheatham.	Overton.
Clay.	Perry.
Coffee.	Pickett.
Davidson.	Putnam.
DeKalb.	Robertson.
Dickson.	Rutherford.
Fentress.	Smith.
Giles.	Stewart.
Hickman.	Sumner.
Houston.	Trousdale.
Humphreys.	Warren.
Jackson.	Wayne.
Lawrence.	White.
Lewis.	Williamson.
Macon.	Wilson.
Marshall.	

(b) Kentucky counties of:

Allen.	Monroe.
Barren.	Simpson.
Metcalf.	Warren.

(c) Fort Campbell military reservation.

§ 1098.3 Route disposition.

"Route disposition" means any delivery (including delivery by a vendor or a sale from a plant store) of any fluid milk product classified as Class I milk other than a delivery to a milk or filled milk processing plant.

§ 1098.4 [Reserved]

§ 1098.5 Approved plant.

"Approved plant" means the premises, buildings and facilities of any milk processing or packaging plant from which during the month Grade A milk is shipped to a pool plant, or from which there is route disposition in the marketing area.

§ 1098.6 [Reserved]

§ 1098.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any approved plant at which during the month fluid milk products are processed or packaged and from which (1) route disposition of fluid milk products, except filled milk, is at least 50 percent of total receipts of Grade A milk and (2) route disposition of fluid milk products, except filled milk, in the marketing area is at least 15 percent of its total route disposition of fluid milk products, except filled milk.

(b) Any approved plant from which during the month there has been delivered to plants described in paragraph (a) of this section fluid milk products, except filled milk, approved by any health authority having jurisdiction in the marketing area as eligible for distribution under a Grade A label in a volume not less than 50 percent of its receipts of milk from approved dairy farmers: *Provided*, That any plant which qualified as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July, unless the operator of such plant files with the market administrator a written request for withdrawal prior to the first day of the month for which nonpool status is requested, in which case the plant shall remain a nonpool plant until it again qualifies for pool status.

(c) A plant operated by a cooperative association if, during the month, the sum of the milk received at other pool plants from producers who are members of such cooperative association, plus the milk which was transferred thereto from the plant operated by the cooperative association, is not less than two-thirds of the total volume of milk delivered to all plants by producers who are members of the association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the

provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tenn., marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order, subject to the proviso of this paragraph: *And provided further*, On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Nashville, Tenn., marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Nashville, Tenn., order; and

(4) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of paragraph (b) of this section during the preceding August through January period:

§ 1098.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1098.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plant(s);

(b) A cooperative association with respect to milk of its producer members diverted pursuant to § 1098.13 for the account of such association;

(c) A cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant(s) of another handler in a tank truck owned, operated by or under contract to, such cooperative association for the account of the cooperative association if the cooperative association has notified in writing, prior to delivery, both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. Such milk shall be considered as having been received at the location of the plant to which it was delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1098.7(d).

§ 1098.10 Producer-handler.

"Producer-handler" means a person who:

(a) Produces milk and operates an approved plant;

(b) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(c) Receives no fluid milk products during the month except milk of his own production and transfers from pool plants.

§ 1098.11 [Reserved]

§ 1098.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority or produces milk acceptable for fluid consumption at Federal, State, or municipal establishments within the marketing area, which milk is received at a pool plant or diverted pursuant to § 1098.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1098.44(a)(8)(iii) and the corresponding step of § 1098.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1098.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk of a producer which is:

(a) Received at a pool plant directly from a dairy farmer or a handler described in § 1098.9(c): *Provided*, That if the milk received at a pool plant from a handler described in § 1098.9(c) is purchased on a basis other than weights determined by farm bulk tank calibrations and butterfat tests determined by farm bulk tank samples the amount by which the total of such farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1098.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant.

§ 1098.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1098.40(b)(1) from any source other than producers, handlers described in § 1098.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1098.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1098.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1098.40(b)(1)) for which the handler fails to establish a disposition.

§ 1098.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1098.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened),

formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1098.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1098.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1098.18 Cooperative Association.

"Cooperative Association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified pursuant to the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be authorized by its members to make collective sales of or to market milk or its products for its members.

HANDLER REPORTS

§ 1098.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1098.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1098.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1098.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1098.31 Payroll reports.

(a) On or before the sixth day after the end of each month, each handler described in § 1098.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information for each producer for such month:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The total pounds of base milk and excess milk;

(4) The average butterfat content of such milk; and

(5) The amount of any deductions authorized in writing by such producer to be made from payments due for milk delivered.

(b) On or before the 21st day of each month, each handler described in § 1098.9 (a), (b), and (c) shall report to the market administrator, in the detail and on forms prescribed by him, the name and address of each producer from whom milk was received during the first 15 days of such month, and the pounds of milk so received during said period from such producer.

(c) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1098.76 (b) shall report on or before the 15th day after the end of the month for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section plus the amount paid each dairy farmer.

§ 1098.32 Other reports.

(a) On or before the third day after the end of the month:

(1) Each handler described in § 1098.9 (c) shall report to each pool plant operator purchasing producer milk from such handler, on a basis of weights determined by farm bulk tank calibrations and butterfat tests determined from farm bulk tank samples, the total pounds and butterfat content of such milk delivered to each pool plant operator during the month; and

(2) The operator of each pool plant purchasing producer milk from a handler described in § 1098.9(c), on a basis other than weights determined by farm bulk tank calibrations and butterfat tests determined from farm bulk tank samples, shall report to such handler the total pounds and butterfat content of such milk received by the pool plant during the month.

(b) On or before the 21st day of each month each handler described in § 1098.9(c) shall report to the market administrator the quantities of producer milk delivered to each pool plant for the first 15 days of such month.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1098.30 and 1098.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1098.40 Classes of utilization.

Except as provided in § 1098.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1098.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are

packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) 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

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1098.15; and

(6) In shrinkage assigned pursuant to § 1098.41(a) to the receipts specified in § 1098.41(a)(2) and in shrinkage specified in § 1098.41 (b) and (c).

§ 1098.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1098.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1098.9 (c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1098.9(c), except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1098.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1098.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1098.44(a)(12) and the corresponding step of § 1098.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1098.44(a)(7) or the corresponding step of § 1098.44 (b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1098.44(a)(11) or (12) or the corresponding steps of § 1098.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market adminstrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an

other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1098.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(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 filed with their respective paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1098.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1098.43 General classification rules.

In determining the classification of producer milk pursuant to § 1098.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1098.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1098.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1098.40, 1098.41, and 1098.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1098.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1098.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1098.9(a) for each of his pool plants separately and of each handler described in § 1098.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1098.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1098.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1098.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the pro-

visions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month:

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1098.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1098.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any 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 combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1098.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) 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 (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available:

(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), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1098.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be substracted, 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) 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 Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from an other pool plant according to the classification of such products pursuant to § 1098.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1098.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1098.44(a)(12) and the corresponding step of § 1098.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in 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 § 1098.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 15th day after the end of each delivery period, the market administator shall report to each cooperative association, upon request by such association, the percentage of milk caused to be delivered by such association or by its members which was used in each class by each handler receiving any such milk. For the purpose of this report, any milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler are allocated to such class.

Class Prices

§ 1098.50 Class prices.

Subject to the provisions of § 1098.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.58.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1098.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1098.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside the State of Tennessee and 50 miles or more by shortest hard-surfaced highway distance as determined by the market administrator, from the State Capitol at Nashville, Tennessee, and classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the price computed pursuant to § 1098.50(a) shall be reduced by 10.0 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 70 miles; and

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant which is in excess of the sum of receipts at such plant from producers and handlers described in § 1098.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rate set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1098.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1098.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Prices

§ 1098.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1098.9 (b), and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1098.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1098.44(a)(14) and the corresponding step of § 1098.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1098.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1098.44(a)(9) and the corresponding step of § 1098.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1098.44(a)(7)(i) through (iv) and the corresponding step of § 1098.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1098.44(a)(7)(v) and (vi) and the corresponding step of § 1098.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1098.44(a)(11) and the corresponding step of § 1098.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1098.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) For each month the market administrator shall compute the weighted average price and for each of the months of August through February the uniform price per hundredweight of milk received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1098.60 for all handlers who filed the reports prescribed by § 1098.30 for the month and who are not in default of payments pursuant to § 1098.71;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1098.75;

(3) Add an amount equal to the unobligated balance on hand in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included in paragraph (a)(1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to §1098.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and also the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers in the months of August through February.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class III milk by the Class III price;

(ii) Multiply the remaining quantity of excess milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II price;

(iii) Multiply the remaining quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(3) From the amount resulting from the computations in paragraph (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract from the value determined pursuant to paragraph (b)(3) of this section, the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section by the hundredweight of excess milk;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1098.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1098.61 for such month.

PAYMENTS FOR MILK

§ 1098.70 Producer-settlement fund.

The market administrator shall maintain a producer-settlement fund into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1098.71, 1098.76, and 1098.77, and out of which he shall make appropriate payments required pursuant to §§ 1098.73 and 1098.77.

§ 1098.71 Payments to the producer-settlement fund.

(a) On or before the 25th day of each month each handler receiving milk from producers or from a handler described in § 1098.9(c) (except for producers having made deliveries for less than 20 days during the month) shall pay to the market administrator for deposit into the producer-settlement fund an amount of money calculated by multiplying the hundredweight of producer milk received by him during the first 15 days of such month by the Class III price for the preceding month.

(b) On or before the 12th day after the end of each month, each person shall pay to the market administrator for deposit into the producer-settlement fund an amount of money equal to such handler's value of milk for such month as determined pursuant to § 1098.60(a), adjusted by the butterfat differential specified in § 1098.74, and § 1098.60 (b) through (f), less:

(1) Payments made pursuant to paragraph (a) of this section for such month;

(2) An amount computed by multiplying the quantities of receipts of other source milk for which a value is computed pursuant to § 1098.60(f) by the weighted average price computed pursuant to § 1098.61(a) as adjusted pursuant to § 1098.75; and

(3) Proper deductions authorized in writing by producers from whom such handler received milk.

(c) On or before the 25th day after the end of the month each handler who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route

disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (c)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1098.72 [Reserved]

§ 1098.73 Payments to producers and to cooperative associations.

(a) On or before the last day of each month, the market administrator shall make payment to each producer for milk received from such producer during the first 15 days of such month by handlers from whom the appropriate payments have been received pursuant to § 1098.71 (a) at not less than the Class III price per hundredweight for the preceding month;

(b) On or before the 15th day after the end of each month, the market administrator shall make payment to each producer for milk received from such producer during the month by handlers from whom the appropriate payments have been received pursuant to § 1098.71 (b), such payments by the market administrator to be at not less than the uniform price computed pursuant to § 1098.61(a) for the months for which such uniform prices are computed, and such payments to be for base and excess milk at not less than the uniform prices for base and excess milk, respectively, computed pursuant to § 1098.61(b) for the months for which such uniform prices for base and excess milk are computed subject to the following: (1) adjustments pursuant to §§ 1098.74 and 1098.75, (2) less payments made pursuant to paragraph (a) of this section, (3) less deductions for marketing services pursuant to § 1098.86, (4) less proper deductions authorized in writing by the producer, and (5) adjusted for any error in calculating payment to such individual producer for past months: *Provided*, That if the market administrator has not received full payment from any handler for such month, pursuant to § 1098.71, he shall reduce uniformly per hundredweight his payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler: *And provided further*, That the market administrator shall make such balance of payment to producers on or before the next date for making payments pursuant to this paragraph following that on which such balance of payment is received from such handler;

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the second day prior to the date payments are due to individual producers, to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payments has been received, a total amount equal to the sum of the individual payments otherwise payable to such producers pursuant to this section; and

(d) In making the payments required by paragraph (b) of this section, the market administrator shall furnish each producer or cooperative association with a supporting statement in such form that it may be retained by the producer or cooperative association which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk delivered by the producer, including for the months in which base and excess prices apply, the pounds of base and excess milk;

(3) The minimum rate or rates at which payment to the producer or cooperative association is required;

(4) The amount or the rate per hundredweight of each deduction claimed by the handler including any deductions made pursuant to § 1098.86, together with a description of the respective deductions; and

(5) The net amount of payment to the producer or cooperative association.

§ 1098.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1098.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1098.73(b), the uniform price and the uniform price for base milk pursuant to § 1098.61 for producer milk received at a pool plant shall be reduced according to the location of the pool plant, each at the rates set forth in § 1098.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1098.52 (a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1098.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1098.30(b) and 1098.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1098.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants

that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1098.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1098.60 for such handler shall include, in lieu of the value of other source milk specified in § 1098.60(f) less the value of such other source milk specified in § 1098.71(a)(2)(ii), a value of milk determined pursuant to § 1098.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1098.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1098.30(b) and 1098.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1098.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1098.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1098.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1098.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records or accounts or other verification discloses errors resulting in money due the market administrator from such handler, or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1098.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to receipts during the month of:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1098.44(a)(7) and (11) and the corresponding steps of § 1098.44(b), except such other source milk that is excluded from the computations pursuant to § 1098.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1098.76(a)(2).

§ 1098.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator, in making payments to producers pursuant to § 1098.73, shall deduct an amount not exceeding 6 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk received by a handler(s) from producers during the month. Such moneys shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers who are members of a cooperative association which the Secretary determines is performing the services specified in paragraph (a) of this section for its members, the market administrator shall, in lieu of the deductions provided in paragraph (a) of this section, make such deductions as are authorized by such producers, and on or before the 15th day after the end of each month, pay the money so deducted to such cooperative association.

Base-Excess Plan

§ 1098.90 Base milk.

"Base milk" means milk received at pool plants from a producer during any of the months specified in § 1098.61 for the computation of uniform base and excess prices, which is not in excess of such producer's daily average base computed pursuant to § 1098.92, multiplied by the number of days in such month.

§ 1098.91 Excess milk.

"Excess milk" means milk received at pool plant from a producer during any of the months specified in § 1098.61 for the computation of uniform base and excess prices, which is in excess of the base milk of such producer for such month, and shall include all milk received during such month from a producer for whom no daily average base can be computed pursuant to § 1098.92.

§ 1098.92 Computation of daily average base for each producer.

Subject to the rules set forth in § 1098.93, the daily average base for each producer shall be an amount calculated by dividing the total pounds of producer milk received from such producer at all pool plants during the months of September through January immediately preceding by 153: *Provided,* That the base of a producer, who delivers milk during August and whose deliveries are temporarily discontinued during the base-forming period, shall be determined by dividing by the number of days for which deliveries are made or by 138, whichever is higher: *And provided further,* That in the case of producers delivering milk to a pool plant which was not a pool plant during all of the preceding months of September through January a daily average base for each such producer shall be computed pursuant to this paragraph on the basis of his verifiable deliveries of milk to such plant during the period September through January preceding the month in which the plant became a pool plant.

§ 1098.93 Base rules.

The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the market administrator shall assign a base as calculated pursuant to § 1098.92 to each person for whose account producer milk was delivered to pool plants during the months specified in § 1098.92 for computation of base;

(b) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to in writing by the partners provided written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month in

which such division is to be effective; and

(c) An entire base shall be transferred from a person holding such base to any other person, effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided*, That an entire base or any portion thereof may be transferred from a producer to any other person upon adequate proof that such producer has discontinued marketing milk: *And provided further*, That if a base is held jointly, it shall be transferable only upon the receipt of such application signed by all joint holders or their heirs.

§ 1098.94 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer and the handler receiving milk from such producer of the daily average base established by such producer.

PART 1102—MILK IN FORT SMITH, ARKANSAS, MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1102 issued under Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1102.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1102.2 Fort Smith, Ark., marketing area.

"Fort Smith, Ark., Marketing Area," called the marketing area in this part, means all territory within the corporate limits of Fort Smith, Ark. and Van Buren, Ark. and within the boundaries of the Camp Chaffee military reservation.

§ 1102.3 [Reserved]

§ 1102.4 [Reserved]

§ 1102.5 [Reserved]

§ 1102.6 [Reserved]

§ 1102.7 Approved plant.

Except as provided in paragraph (b) of this section, "approved plant" means:

(a) Any milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores).

(b) The term "approved plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) Any plant operated by a handler who the Secretary determines disposes of a greater portion of his fluid milk products, except filled milk, as Class I milk in another marketing area regulated by a milk marketing agreement or order issued pursuant to the Act.

§ 1102.8 Unapproved plant.

"Unapproved plant" means any milk or filled milk receiving, manufacturing, or processing plant other than an approved plant. The following categories of unapproved plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means and unapproved plant which is not an other order plant nor a producer-handler plant and from which fluid milk products eligible for distribution in the marketing area for fluid consumption are moved during the month to an approved plant.

§ 1102.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores); and

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted pursuant to § 1102.12 for the account of such cooperative association.

§ 1102.10 Producer-handler.

"Producer-handler" means any person who (a) produces milk, and (b) operates a milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products for fluid consumption are disposed of in the marketing area on wholesale or retail routes (including plant stores), and (c) receives no milk from producers.

§ 1102.11 [Reserved]

§ 1102.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk which is received at an approved plant: *Provided*, That such milk is produced under a dairy farm inspection permit or inspec-

tion rating issued by any health authority having jurisdiction in the marketing area for the production of milk to be disposed of for consumption as fluid milk. "Producer" shall include any such person whose milk is caused to be diverted by a handler to an unapproved plant, and milk so diverted shall be deemed to have been received at an approved plant by the handler who causes it to be diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to an approved plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1102.44(a)(8)(iii) and the corresponding step of § 1102.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1102.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer which is received by a handler directly from producers.

§ 1102.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1102.40(b)(1) from any source other than producers or approved plants;

(b) Receipts in packaged form from other plants of products specified in § 1102.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1102.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1102.40(b)(1)) for which the handler fails to establish a dispositon.

§ 1102.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1102.40(b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quality of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1102.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1102.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1102.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act,";

(b) to have full authority in the sale of milk of its members; and

(c) to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1102.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his approved plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk; including producer milk diverted by the handler from the approved plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other approved plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1102.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler described in § 1102.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1102.31 Payroll reports.

On or before the 20th day after the end of each month, each handler who operates an approved plant and each handler described in § 1102.9(b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(a) His name and address;

(b) The total pounds of milk received from such producer;

(c) The average butterfat content of such milk; and

(d) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

§ 1102.32 Other reports.

(a) Each handler who operates an approved plant and each handler described in § 1102.9(b) shall report to the market administrator in the detail and on forms prescribed by the market administrator on or before the seventh day of each month of April through August, for each producer for the preceding month:

(1) His name and address or other appropriate identification;

(2) The total pounds of milk and butterfat received from such producer;

(3) The location at which such milk was received; and

(4) The number of days on which milk was received from each producer.

(b) In addition to the reports required pursuant to §§ 1102.30 and 1102.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1102.40 Classes of utilization.

Except as provided in § 1102.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1102.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise pro-

vided 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 other than that specified in paragraph (c)(1)(iv) of this section;

(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) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) 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

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1102.15; and

(6) In shrinkage assigned pursuant to § 1102.41(a) to the receipts specified in § 1102.41(a)(2) and in shrinkage specified in § 1102.41 (b) and (c).

§ 1102.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1102.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each approved plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other approved plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1102.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1102.42 Classification of transfers and diversions.

(a) *Transfers to approved plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from an approved plant to another approved plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1102.44(a)(12) and the corresponding step of § 1102.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1102.44(a)(7) or the corresponding step of § 1102.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1102.44(a)(11) or (12) or the corresponding steps of § 1102.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from an approved plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the approved plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order classification under this paragraph shall be in accordance with the provisions of § 1102.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from an approved plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other unapproved plants.* Skim milk or butterfat transferred or diverted in the following forms from an approved plant to an unapproved plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the unapproved plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1102.30 for the month within which such transaction occurred; and

(*b*) The unapproved plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the unapproved plant and transfers of packaged fluid milk products from such unapproved plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such unapproved plant from approved plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such unapproved plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such unapproved plant from approved plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such unapproved plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the unapproved plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such unapproved plant from approved plants and other order plants;

(iv) Transfers of bulk fluid milk products from the unapproved plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such unapproved plant from approved plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such unapproved plant from other order plants;

(v) Any remaining unassigned Class I disposition from the unapproved plant shall be assigned to the extent possible in the following sequence:

(*a*) To such unapproved plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such unapproved plant; and

(*b*) To such unapproved plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such unapproved plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the unapproved plant from approved plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such unapproved plant;

(vii) Receipts of bulk fluid cream products at the unapproved plant from approved plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such unapproved plant; and

(viii) In determining the unapproved plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such unapproved plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1102.43 General classification rules.

In determining the classification of producer milk pursuant to § 1102.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1102.30 and shall compute separately for each approved plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1102.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1102.40, 1102.41, and 1102.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1102.9(b) shall be determined separately from the operations of any approved plant operated by such cooperative association.

§ 1102.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1102.9(a) for each of his approved plants separately and of each handler described in § 1102.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1102.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1102.40(b)(1) that were received in packaged form from other plans, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1102.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1102.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1102.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order; and

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other approved plant of the handler, and then at each successively more distant approved plant of the handler) by an amount equal to such excess 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 the handler's other approved plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all approved plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between approved plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all approved plants of the handler of producer milk, fluid milk products from approved plants of other handlers, and bulk fluid milk products from other order plants; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this approved plant is of all such receipts remaining at this allocation step at all approved plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1102.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all approved plants of the handler (excluding any duplication of utilization in each class resulting from transfers between approved plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other approved plant of the handler, and then at each successively more distant approved plant of the handler) by an amount equal to such excess 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 the handler's other approved plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other approved plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subject to the provisions of paragraph (a)(12) (i) and (ii) of this section, subtract from the pounds of skim

milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all approved plants of the handler (excluding any duplication of utilization in each class resulting from transfers between approved plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section and that were not offset by transfers or diversions of bulk fluid milk products to the same other order 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 Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other approved plant of the handler, and then at each successively more distant approved plant of the handler) by an amount equal to such excess 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 the handler's other approved plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other approved plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another approved plant according to the classification of such products pursuant to § 1102.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1102.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1102.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating an approved plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

Class Prices

§ 1102.50 Class prices.

Subject to the provisions of § 1102.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.95.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class price shall be the basic formula price for the month.

§ 1102.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1102.52 Plant location adjustments for handlers.

(a) For milk received from producers at an approved plant located more than 50 miles by the shortest highway distance, as determined by the market administrator, from the county courthouse in Fort Smith, Ark., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1102.50(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is distant from the county courthouse in Fort Smith, Ark.; and

(b) For purposes of calculating such adjustment, transfers of fluid milk products between approved plants shall be assigned to Class I disposition at the transferee-plant which is in excess of the sum of receipts as such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

§ 1102.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1102.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Prices

§ 1102.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1102.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1102.44(a)(14) and the corresponding

step of § 1102.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1102.74, that are applicable at the location of the approved plant; and

(c) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

§ 1102.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).

(a) For each of the months of August through February, the market administrator shall compute for each handler a uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1102.60 by adding the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month;

(2) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1102.75;

(3) Subtract an amount computed by multiplying the total hundredweight of producer milk in each class by 5 cents; and

(4) Divide the resulting amount by the total hundredweight of milk received from producers by such handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to milk received from producers, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided for in paragraph (a) (1), (2), and (3) of this section;

(2) Compute the value of excess milk received by such handler from producers as follows:

(i) Multiply the quantity of such milk that is not in excess of the total Class III milk included in this computation by the Class III price less 5 cents;

(ii) Multiply the remaining quantity of such milk that it not in excess of the total Class II milk included in this computation by the Class II price less 5 cents;

(iii) Multiply the remaining quantity of excess milk by the Class I price less 5 cents; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such milk, and adjust to the nearest cent. The resulting figure shall be the uniform price for such handler for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract, for each handler, the value of such handler's excess milk obtained in paragraph (b)(3) of this section from the value of all milk obtained for such handler pursuant to paragraph (b) (1), (2), and (3), of this section and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent; and

(5) Divide the amount obtained in subparagraph (b)(4) of this section by the total hundredweight of such handler's base milk included in this computation. The result shall be such handler's uniform price for base milk of 3.5 percent content.

§ 1102.62 Announcement of uniform prices for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the applicable uniform prices for each handler pursuant to § 1102.61 for such month.

PAYMENTS FOR MILK

§ 1102.73 Payments to producers and to cooperative associations.

Each handler shall make payment to producers as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer except as provided in paragraph (c) of this section, at not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1102.74 and 1102.75, for all milk received from such producer during the preceding month less the amount of payment made pursuant to paragraph (b) of this section.

(b) On or before the last day of each month, each handler shall make payment for milk received from producers during the first 15 days of the month to each producer, except as provided in paragraph (c) of this section, at not less than the Class III price for the preceding month.

(c) On or before the 13th and the third from the last day of each month, in lieu of payments pursuant to paragraphs (a) and (b) respectively of this section, each handler shall make payment to a cooperative association which so requests, with respect to producers for which such cooperative association is authorized to collect payment, in an amount equal to the sum of the individual payments otherwise payable to such producers.

§ 1102.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1102.75 Plant location adjustments for producers.

The uniform price for producer milk received at an approved plant shall be reduced according to the location of the approved plant at the rates set forth in § 1102.52.

§ 1102.76 [Reserved]

§ 1102.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler; (b) such handler from the market administrator; or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1102.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month four cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) producer milk (including such handler's own production); and

(b) other source milk allocated to Class I pursuant to § 1102.44(a) (7) and (11) and the corresponding steps of § 1102.44(b).

§ 1102.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1102.73, shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 15th day after the end of each month and pay such deduction to the cooperative association of which such producers are members, furnishing a statement showing the amount of any

such deductions, and the amount and average butterfat test of milk for which such deduction was computed for each producer. In lieu of such statement a handler may authorize the market administrator to furnish such cooperative association the information with respect to such producers reported pursuant to § 1102.31.

BASE-EXCESS PLAN

§ 1102.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1102.93.

§ 1102.91 Excess milk.

"Excess milk" means milk received by a handler from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1102.93.

§ 1102.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tenn.; Fort Smith, Ark.; and Central Arkansas marketing areas (Parts 1097, 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a plant which first became an approved plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the plant had been an approved plant during such period.

§ 1102.93 Determination of monthly base for each producer.

Subject to the rules set forth in § 1102.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1102.92 by the number of days in such month.

(b) If milk is received as producer milk from the same farm by more than one handler and/or by handlers fully regulated under the terms of the Memphis, Tenn. (Part 1097 of this chapter), or Central Arkansas (Part 1108 of this chapter) orders during the month, multiply such producer's daily average base computed pursuant to § 1102.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1102.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1102.94 Base rules.

The following rules shall apply in connection with the transfer of daily average bases for each producer computed pursuant to § 1102.92.

(a) An entire base shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the base-holder, or his heirs, and by the person to whom such base is to be transferred.

(b) If a base is held jointly, the entire base shall be transferred only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1102.95 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1102.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1102.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1102.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1102.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1102.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1102.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1102.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1102.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1102.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator

shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1102.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1102.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1102.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1102.110 and 1102.117.

§ 1102.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1102.110 and 1102.117;

(c) Keep minutes, books, and records, and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1102.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1102.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1102.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1102.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence or those which are criminal in nature.

§ 1102.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1102.121 Duties of the market administrator.

Except as specified in § 1102.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1102.113(c).

(b) Set aside the amounts subtracted under § 1102.61(a)(3) and received pursuant to § 1102.123 into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1102.61(a)(3).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1102.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1102.61(a)(3) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1102.110 through 1102.123).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1102.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall be distributed in an equitable manner to producers by the market administrator.

§ 1102.123 Payment of advertising and promotion funds.

On or before the 15th day after the end of each month during which producer milk was received, each handler shall turn over to the market administrator the advertising and promotion funds deducted pursuant to § 1102.61(a)(3).

PART 1108—MILK IN CENTRAL ARKANSAS MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1108 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1108.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1108.2 Central Arkansas marketing area.

"Central Arkansas marketing area", called the "marketing area" in this part, means all the territory included within the boundaries of the counties of Clark, Conway, Craighead, Cross, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lee, Lonoke, Monroe, Phillips, Poinsett, Pope, Prairie, Pulaski, Saline, St. Francis, White, and Woodruff, all in the State of Arkansas.

§ 1108.3 [Reserved]

§ 1108.4 [Reserved]

§ 1108.5 Distributing plant.

"Distributing plant" means an approved plant from which Class I milk, except filled milk, equal to not less than 50 percent of its receipts of producer milk, milk from a handler described in § 1108.9(c), and fluid milk products, except filled milk, from other pool plants is disposed of during the month, on routes or through plant stores, to wholesale or retail outlets (except pool plants) and from which Class I milk, except filled milk, equal to not less than 10 percent of such receipts is disposed of during the month on routes or through plant stores, to wholesale or retail outlets (except pool plants) located in the marketing area.

§ 1108.6 Supply plant.

"Supply plant" means:

(a) An approved plant from which fluid milk products, except filled milk, in an amount not less than 50 percent of its receipts of producer milk and milk received from a handler described in § 1108.9(c) is moved during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months during the period October through January shall upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September; or

(b) An approved plant which is operated by a cooperative association having member producers which delivers 50 percent or more of its member milk to the pool plants of other handlers and from which fluid milk products in an amount not less than 25 percent of its receipts of producer milk during the month at such plant are shipped during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months October through January shall, upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September.

§ 1108.7 Pool plant.

(a) Except as provided in paragraph (b) of this section, "pool plant" means a distributing plant or a supply plant.

(b) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless a greater volume of Class I milk, except filled milk, was disposed of from such plant during the 6-month period immediately preceding to retail or wholesale outlets (except pool plants or nonpool plants) in the Central Arkansas marketing area than in the marketing area regulated pursuant to such other order; and

(3) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant for each of the preceding months of August through January.

§ 1108.7a Approved plant.

"Approved plant" means all of the buildings, premises and facilities of a plant (a) in which milk or skim milk is processed or packaged and from which

any fluid milk product is disposed of during the month on routes (including routes operated by vendors and sales through plant stores) to wholesale or retail outlets (except pool plants) located in the marketing area, or (b) from which milk or skim milk is shipped during the month to a distributing plant.

§ 1108.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are shipped during the month to a pool plant qualified pursuant to § 1108.7, and which is not an other order plant nor a producer-handler plant.

§ 1108.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more approved plants.

(b) A cooperative association with respect to milk of producers diverted for the account of such association in accordance with the provisions of § 1108.12.

(c) Any cooperative association with respect to the milk of its producer members which is delivered to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing, that it will be the handler for such milk for the month, such cooperative handler status to be effective the first day of the month following receipt by the market administrator of such notice and to continue until the first day of the month following receipt of a request to discontinue such cooperative handler status. Milk so delivered shall be considered to have been received by the cooperative association at the plant to which delivered and then transferred to the handler operating the plant.

(d) Any person who operates a partially regulated distributing plant.

§ 1108.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant which during the month has no other source milk, producer milk in § 1108.9(c).

§ 1108.11 [Reserved]

§ 1108.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is received during the month at a pool plant: *Provided*, That if such milk is diverted by a handler for his account from a pool plant to a nonpool plant that is not a producer-handler plant any day during the months of February through August, or on not more than 10 days during any other month, the milk so diverted shall be deemed to have been received at a pool plant at the location of the plant from which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1108.44(a)(8)(iii) and the corresponding step of § 1108.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1108.13 Producer milk.

"Producer milk" shall be that skim milk or butterfat for each handler's account in milk (in an amount determined by weights and measurements for individual producer's deliveries, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is received pursuant to paragraphs (a) and (b) of this section and diverted pursuant to § 1108.12 as follows:

(a) Received directly from producers' farms at a pool plant by the operator of the pool plant (except that received from a handler described in § 1108.9(c)) or diverted by the pool plant operator pursuant to § 1108.12.

(b) Received directly from producers' farms for his account by a handler described in § 1108.9(c) or diverted for his account pursuant to § 1108.12.

§ 1108.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1108.40(b)(1) from any source other than producers, handlers described in § 1108.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1108.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1108.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1108.40(b)(1)) for which the handler fails to establish a disposition.

§ 1108.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1108.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1108.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1108.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1108.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1108.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1108.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1108.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

(c) Each handler described in § 1108.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1108.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1108.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1108.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1108.32 Other reports.

(a) Each handler, except a producer-handler and a handler making payments pursuant to § 1108.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the seventh day of each month of April through August, for each producer for the preceding month:

(i) His name and address or other appropriate identification;

(ii) The total pounds of milk and butterfat received from such producer, including, for the months of March through July, the pounds of base milk;

(iii) The location at which such milk was received; and

(iv) The number of days on which milk was received from such producer;

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to § 1108.12 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1108.30 and 1108.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1108.40 Classes of utilization.

Except as provided in § 1108.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1108.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milk fat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) 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

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1108.15; and

(6) In shrinkage assigned pursuant to § 1108.41(a) to the receipts specified in § 1108.41(a)(2) and in shrinkage specified in § 1108.41 (b) and (c).

§ 1108.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a

handler pursuant to § 1108.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1108.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1108.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1108.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1108.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1108.44(a)(12) and the corresponding step of § 1108.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1108.44(a)(7) or the corresponding step of § 1108.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1108.44 (a) (11) or (12) or the corresponding steps of § 1108.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant; and

(4) If a specified utilization of skim milk and butterfat transferred by a handler described in § 1108.9(c) to a pool plant of another handler is not claimed by both handlers, such skim milk and butterfat shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class at the pool plant of the transferee-handler after the computations pursuant to § 1108.44(a)(13)(i) and the corresponding step of § 1108.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3), of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1108.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1108.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1108.43 General classification rules.

In determining the classification of producer milk pursuant to § 1108.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1108.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1108.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1108.40, 1108.41, and 1108.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1108.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1108.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1108.9(a) for each of his pool plants separately and of each handler described in § 1108.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1108.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1108.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1108.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1108.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1108.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1108.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handlers; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1108.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) 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 (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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), (iii), and (iv) 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 § 1108.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between 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 Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess 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 the handler's other pool plants shall be

adjusted in the reverse direction by a like amount; and

(iv) 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 Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant or a handler described in § 1108.9(c) according to the classification of such products pursuant to § 1108.42(a); and

(ii) A handler described in § 1108.9(c) according to the classification of such products pursuant to § 1108.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding steps of paragraph (b) of this section.

§ 1108.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1108.44(a)(12) and the corresponding step of § 1108.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1108.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1108.50 Class prices.

Subject to the provisions of § 1108.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.94.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1108.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 60 miles, by shortest highway distance as measured by the market administrator, from the nearest of the County Courthouse in Arkadelphia, Ark., the County Courthouse in Forrest City, Ark., or the State Capitol in Little Rock, Ark., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1108.50(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof between such plant and such nearest point.

(b) For purposes of calculating such adjustment, transfers of fluid milk products between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1108.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1108.54 Equivalent price.

If for any reason a price or pricing constitutent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constitutent that is required.

UNIFORM PRICES

§ 1108.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1108.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1108.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1108.44(a)(14) and the corresponding step of § 1108.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1108.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim

milk and butterfat subtracted from Class I and Class II pursuant to § 1108.44(a)(9) and the corresponding step of § 1108.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1108.44(a)(7)(i) through (iv) and the corresponding step of § 1108.44(b), excluding receipts of bulk fluid cream products from another plant.

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1108.44(a)(7)(v) and (vi) and the corresponding step of § 1108.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1108.44(a)(11) and the corresponding step of § 1108.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1108.61 Computation of uniform price (including weighted average price and base and excess prices).

(a) For each month the market administrator shall compute the uniform price (or weighted average price) per hundredweight of milk received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1108.60 for all handlers who filed the reports prescribed by § 1108.30 for the month and who made the payments pursuant to §§ 1108.71 and 1108.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to §1108.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section by 5 cents;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1108.60(f); and

(6) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for the months of March through July, shall be the "uniform price" for milk of 3.5 percent butterfat content received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk as follows:

(1) Subtract from the amount resulting from the computations made pursuant to paragraph (a)(1) through (4) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(5)(ii) of this section by the weighted average price;

(2) Compute the aggregate value of excess milk by assigning such milk, in series beginning with Class III, to the hundredweight of producer milk in each class, multiplying the quantities of milk so assigned to each class by the respective class prices less 5 cents and adding together the resulting amounts;

(3) Divide the aggregate value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such milk, adjust to the nearest cent and subtract 4 cents. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract an amount determined by multiplying the uniform price obtained in paragraph (b)(3) of this section, plus 4 cents, times the hundredweight of excess milk from the aggregate value of milk obtained in paragraph (b)(1) of this section;

(5) Divide the result obtained in paragraph (b)(4) of this section by the total hundredweight of base milk of handlers included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1108.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform prices for such month.

PAYMENTS FOR MILK

§ 1108.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1108.71, 1108.76 and 1108.77, and out of which he shall make all payments pursuant to §§ 1108.72 and 1108.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1108.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1108.60.

(2) The sum of:

(i) The value at the uniform prices, as adjusted pursuant to § 1108.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1108.60.

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1108.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1108.71(a)(2) exceeds the amount computed pursuant to § 1108.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1108.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s) adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1108.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1108.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section.

(c) Each handler shall furnish the person to whom payment is to be made pursuant to this section with the following information:

(1) On or before the 25th day of the month, the pounds of milk received from the producer or from each member of the cooperative association during the first 15 days of such month:

(2) On or before the 7th day of the following month to a cooperative association for its individual members, or on or before the 15th day of the following month to producers:

(i) The pounds of milk received each day and the total for the month, together with the butterfat content of such milk;

(ii) For the months of March through July, the pounds of base milk received;

(iii) The amount or rate and nature of deductions made from payments; and

(iv) The amount and nature of payments due pursuant to § 1108.77.

(d) To a cooperative association with respect to receipts of milk for which it is the handler described in § 1108.9(c):

(1) On or before the 2d day prior to the last day of the delivery period, an amount equal to the rate specified in paragraph (a)(1) of this section times the volume received during the first 15 days of the delivery period; and

(2) On or before the 13th day after the end of each delivery period, an amount equal to not less than the value of such milk at applicable class price(s) adjusted by the butterfat differential pursuant to § 1108.74 less payment made pursuant to paragraph (d)(1) of this section.

§ 1108.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1108.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices to be paid for producer milk received at a pool plant located 60 miles or more from the County Courthouse in Arkadelphia, Ark., the County Courthouse in Forrest City, Arkansas, or the State Capital in Little Rock, Ark., whichever is nearer by the shortest highway distance, as determined by the market administrator, shall be reduced according to the distance of the plant from the respective buildings designated above at the rate of 1.5 cents for each 10 miles or residual fraction thereof.

(b) For purposes of computations pursuant to §§ 1108.71 and 1108.72 the weighted average price shall be adjusted at the rates set forth in § 1108.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price plus 5 cents shall not be less than the Class III price.

§ 1108.76. Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1108.30(b) and 1108.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1108.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers re-

maining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1108.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1108.60 for such handler shall include, in lieu of the value of other source milk specified in § 1108.60(f) less the value of such other source milk specified in § 1108.71(a)(2)(ii), a value of milk determined pursuant to § 1108.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1108.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1108.30(b) and 1108.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1108.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1108.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1108.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1108.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1108.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk received by a handler described in § 1108.9(c), except that transferred to another handler operating a pool plant;

(b) Producer milk of a handler operating a pool plant (including such handler's own production), plus milk received from a handler described in § 1108.9(c);

(c) Other source milk allocated to Class I pursuant to § 1108.44(a)(7) and (11) and the corresponding steps of § 1108.44(b), except such other source milk that is excluded from the computations pursuant to § 1108.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1108.76(a)(2).

§ 1108.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1108.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Base-Excess Plan

§ 1108.90 Base milk.

"Base milk" means milk received by handlers from a producer during any of the months of March through July which is not in excess of such producer's base computed pursuant to § 1108.93.

§ 1108.91 Excess milk.

"Excess milk" means milk received by handlers from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1108.93.

§ 1108.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1097, 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a plant which first became a pool plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the plant had been a pool plant during such period.

§ 1108.93 Determination of monthly base of each producer.

Subject to the rules set forth in § 1108.-94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by handlers as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1108.92 by the number of days in such month;

(b) If milk is received as producer milk from the same farm by handlers

regulated under this part and by handlers fully regulated under the terms of the Memphis, Tennessee (Part 1097 of this chapter), or Fort Smith, Arkansas (Part 1102 of this chapter), orders during the month, multiply such producer's daily average base computed pursuant to § 1108.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1108.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1108.94 Base rules.

The following rules shall apply in connection with the transfer of daily average bases for each producer computed pursuant to § 1108.92:

(a) An entire base shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred; and

(b) If a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1108.95 Announcement of established bases.

On or before February 25 of each year the market administrator shall notify each producer of the daily average base established by such producer.

§ 1108.96 Monthly announcement of base milk and excess milk for each producer.

On or before the 11th day after the end of each of the months March through July, the market administrator shall notify each handler of the amount of base milk and excess milk received from each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1108.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1108.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1108.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1108.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1108.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1108.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1108.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1108.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1108.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1108.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1108.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1108.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1108.110 and 1108.117.

§ 1108.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1108.110 and 1108.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1108.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1108.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1108.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1108.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1108.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1108.121 Duties of the market administrator.

Except as specified in § 1108.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1108.113(c).

(b) Set aside the amounts subtracted under § 1108.61(a)(4) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1108.61(a)(4).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1108.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1108.61(a)(4) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1108.110 through 1108.122).

(d) Make the necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1108.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1108.70.

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PART III

FEDERAL ENERGY OFFICE

■

NATIONAL UTILITY RESIDUAL FUEL OIL ALLOCATION

Supplier Percentage Notice

FEDERAL ENERGY OFFICE

NATIONAL UTILITY RESIDUAL FUEL OIL ALLOCATION

Suppliers Percentage Notice

Pursuant to the provisions of 10 CFR 211.163(b), 211.164 and 211.165(d)(2), the Federal Energy Office (FEO) hereby provides notice of the volumes of residual fuel oil allocated to each utility for March 1974, and the percentages of such volumes required to be supplied by each supplier for delivery in March 1974. This information is set forth in the Appendix to this notice. Adjustments of certain supplier base period percentages have been made at the request of affected utilities, pursuant to the criteria of 10 CFR 205.24 and are reflected in the Appendix.

The utility allocations were determined after review of the impact of reduced fuel supplies between utility and non-utility uses of residual fuel oil. In calculating the allocation level for each utility the FEO considered all of the factors enumerated in 10 CFR 211.163(b) and also the following other factors:

1. The data contained in the revised Federal Power Commission (FPC) form 23 submitted by utilities for March;

2. Utility residual oil requirements were assumed to be reduced as a result of conservation efforts by utilities designed to achieve at least seven (7) percent load reduction below normal trends;

3. Residual oil needs for utilities were assumed to be reduced as the result of contemplated power purchases from coal and hydro-based utility systems which were considered feasible by the Federal Power Commission;

4. Recognizing the general need for utilities to initiate inventory buildups after several months of declining inventories, a modest incremental increase has been included in the scheduled delivery levels above their burn level, adjusted for energy conservation. The individual utility inventory buildup is based upon an amount equal to approximately a four-day projected burn rate for each utility on the West Coast and Hawaii and three days for utilities in the remainder of the country.

The amounts shown in the Appendix are the quantities of fuel oil to be delivered to the utility listed during the month of March 1974. Some utilities will not receive any allocation for March. This is due to either the fact that these utilities either burn other fuels primarily and use residual fuel only for stand-by inventory purposes, or use residual fuel only in small percentages of the plant's capacity. In some of the latter instances, even the small amount of residual fuel involved is eliminated by the conservation guides established for utilities. Where the utility proposed burn was zero or negligible no inventory buildup was intended for the month of March.

The Appendix provides the name of the suppliers obligated to supply each utility and the supplier's percentage and volume of the month's allocation. The first column of the Appendix lists each utility with its suppliers. The second and third columns provide each supplier's respective percentage and volume share of a utility's allocated volume. The fourth column provides the total volume for each utility from all suppliers. Following the name of certain suppliers, an additional supplier is shown in parenthesis. The supplier in parenthesis is presumed, on the basis of the best information available, to be the source of supply for certain resellers supplying utility end-users. This information is provided for the convenience of such suppliers and the FEO requests any additions or corrections in this regard be forwarded to: Residual Fuels Manager for Utilities, P.O. Box 2887, Washington, D.C. 20013.

The Appendix also contains for the month of March the FEO recommended total residual fuel burn after conservation adjustments for the utility. Residual fuel delivery levels are keyed to the FEO burn. Thus, in March because of the proposed inventory buildup most utility companies are being allocated delivery levels in excess of the FEO recommended burn. The excess amounts are intended as an incremental addition to inventory. Adjustments have been made in the allocation levels of certain utilities to reflect necessary corrections in the delivery levels authorized in February.

FEO expects the utilities to consume supplies at or below FEO burn levels which are based on the utilities' proposed burn less adjustments for conservation efforts. Where a utility fails to encourage conservation to observe FEO burn levels, its allocation for following months will be appropriately adjusted downward. FEO will consider special circumstances such as unexpected outages which may cause fuel consumption to exceed FEO burn levels in any month.

The utility residual fuel allocation program is based in part on the data derived from utilities' filings of FPC Form 23. Prior to publication of the April allocation list any utility which requires residual fuel must submit a revised Form 23 to the FEO and FPC, to reflect any changes in need resulting from the March allocation or other factors which would assure updated information. As an addendum to the Form 23 revision, each utility must include the following data:

1. Ending February inventory (include any fuel to be credited to February allocation which is scheduled for delivery within the 12-day grace period provided for in CFR 211.165(d)(3));

2. Actual February residual fuel consumption and megawatt-hours generated from oil;

3. Actual net energy for load for February;

4. Total February residual fuel deliveries segregated by suppliers and by sulfur content;

5. Residual fuel deliveries scheduled during the 12-day grace period;

6. Maximum usable capacity of all onsite and nearby utility owned for leased residual storage tanks;

7. Capacity of any other offsite utility owned or leased storage tanks.

A copy of the revised Form 23 with addendum must be delivered to both the FEO and FPC by March 8, 1974. Any Form 23 received after March 8, 1974, may be limited to consideration in connection with the utility allocation program for May. Reports should be addressed to "Data Collection", FEO, Box 2887, Washington, D.C. 20013.

WILLIAM E. SIMON,
Administrator,
Federal Energy Office.

APPENDIX

RESIDUAL OIL ALLOCATIONS TO UTILTITIES FOR THE MONTH OF MARCH

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
1. NORTHEAST POWER COORDINATING COUNCIL AREA (NPCC)			
CONNECTICUT			
NORTHEAST UTILITIES (FEO BURN - 2,000,555)			1,950,255
AMERADA HESS CORPORATION	68.0	1,326,173	
TAD JONES CO INC (GULF)	21.0	409,554	
WYATT INC (EXXON)	10.0	195,025	
H N HARTWELL & SON INC	1.0	19,503	
UNITED ILLUMINATING CO (FEO BURN - 847,905)			942,005
TEXACO INC	87.0	819,544	
WYATT INC (EXXON)	13.0	122,461	
MAINE			
BANGOR HYDRO ELEC. CO. (FEO BURN - 60,047)			67,487
C H SPRAGUE & SONS CO	100.0	67,487	
CENTRAL MAINE POWER CO. (FEO BURN - 346,913)			388,413
TEXACO INC	100.0	388,413	
MAINE PUBLIC SERVICE CO. (FEO BURN - 19,318)			21,534
DEAD RIVER OIL CO (SPRAGUE)	100.0	21,534	
MASSACHUSETTS			
BOSTON EDISON CO. (FEO BURN - 1,198,531)			1,337,431
WHITE FUEL CORP (TEXACO)	46.0	615,218	
EXXON CORPORATION	42.0	561,721	
C H SPRAGUE & SONS	12.0	160,492	
BRAINTREE ELEC. LT. DEPT. (FEO BURN - 5,769)			7,661
C.K. SMITH & CO (GOLDEN EAGLE)	100.0	7,661	
E.UTIL.ASSOC.(MONTAUP&BLACKST. V) (FEO BURN - 321,238)			359,368
TEXACO INC	100.0	359,368	
FITCHBURG GAS & EL. (FEO BURN - 24,000)			26,946
NORTHEAST PETROLEUM IND. INC	100.0	26,946	
HOLYOKE GAS AND ELECTRIC (FEO BURN - 27,691)			30,515
WYATT INC (EXXON)	100.0	30,515	
NEW ENGLAND ELECTRIC SYSTEM(FEO BURN - 997,907)			1,116,907
ASIATIC PETROLEUM CORPORATION	60.0	670,144	
GOLDEN EAGLE REFINING COMPANY INC	40.0	446,763	
NEW ENGLAND GAS & EL. ASSN.(FEO BURN - 704,566)			718,166
NEW ENGLAND PETROLEUM	84.8	609,005	
WHITE FUEL CORP (TEXACO)	15.2	109,161	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
PEABODY ELECTRIC LT DEPT (FEO BURN - 2,210)			5,018
PICKERING OIL (NORTHEAST PETROLEUM)	100.0	5,018	
TAUNTON MUN. LT. (FEO BURN - 47,357)			52,757
QUINCY OIL CO (EXXON)	100.0	52,757	
NEW HAMPSHIRE			
PUB SER OF N.H. (FEO BURN - 54,989)			271,389
C H SPRAGUE & SONS CO	26.3%	71,375	
CONTINENTAL OIL COMPANY	73.7%	200,014	
NEW YORK			
CENTRAL HUDSON GAS & ELEC. CO. (FEO BURN - 362,587)			402,211
AMERADA HESS CORPORATION	100.0	402,211	
CONSOL EDISON OF NY (FEO BURN - 3,439,646)			3,972,046
NEW ENGLAND PETROLEUM	45.5	1,761,781	
EXXON CORPORATION	20.8	805,386	
AMERADA HESS CORPORATION	22.3	863,466	
TEXACO INC	11.4	441,413	
FREEPORT, VILLAGE OF (FEO BURN - 21,574)			23,634
BURNS BROS OIL (NEPCO)	100.0	23,634	
LAWRENCE PARK HEAT & LIGHT (FEO BURN - 0)			0
CASTLE COAL & OIL (EXXON)	43.0	0	
PUBLIC FUEL SERVICE (EXXON)	7.0	0	
CIRILLO BROS OIL	51.0	0	
LONG ISLAND LIGHT CO. (FEO BURN - 1,518,859)			1,677,359
NEW ENGLAND PETROLEUM	100.0	1,677,359	
NIAGARA MOHAWK POWER CO. (FEO BURN - 95,946)			166,062
NEW ENGLAND PETROLEUM	100.0	166,062	
ORANGE & ROCKLAND UTILITIES (FEO BURN - 665,122)			743,599
NEW ENGLAND PETROLEUM	31.2	232,003	
HOWARD FUEL CORPORATION	67.4	501,186	
STEPHENS INTERNATIONAL	1.4	10,410	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
ROCHESTER GAS & ELECTRIC (FEO BURN - 9,406)			11,328
ALLIED OIL COMPANY	29.7	3,364	
MONOCO OIL COMPANY	70.3	7,964	
RHODE ISLAND			
NEWPORT ELECTRIC CORP (FEO BURN - 7,080)			26,675
C K SMITH & CO	100.0	26,675	
VERMONT			
CENTRAL VERMONT PUB SERV (FEO BURN - 0)			0

2. MID-ATLANTIC AREA COORDINATION AGREEMENT (MAAC)

DELAWARE			
DELMARVA PWR & LT (FEO BURN - 722,252)			805,396
STEUART PETROLEUM CO	22.0	177,187	
TEXACO INC	5.0	40,270	
GULF OIL CORPORATION	8.0	64,432	
CONTINENTAL OIL COMPANY	65.0	523,507	
DOVER, CITY OF (FEO BURN - 17,839)			21,472
TEXACO INC	100.0	21,472	
DISTRICT OF COLUMBIA			
POTOMAC ELEC. PWR. (FEO BURN - -504,976)			560,976
ASIATIC PETROLEUM CORPORATION	79.0	443,171	
R STEUART PETROLEUM COMPANY	21.0	117,805	
MARYLAND			
BALTIMORE GAS & ELECTRIC (FEO BURN - 912,410)			1,014,060
AMERADA HESS CORPORATION	52.7	534,410	
EXXON CORPORATION	47.3	479,650	
NEW JERSEY			
ATLANTIC CITY ELECTRIC COMPANY (FEO BURN - 118,328)			131,099
AMERADA HESS CORPORATION	46.6	61,092	
CONTINENTAL OIL COMPANY	53.4	70,007	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
GPU INTEGRATED SYSTEM (FEO BURN - 0)			113,035
AMERADA HESS CORPORATION	94.0	106,253	
SWANN OIL INC	5.0	5,652	
SHIPLEY-HUMBLE	1.0	1,130	
PUBLIC SERVICE ELECTRIC (FEO BURN - 1,613,106)			1,785,506
AMERADA HESS CORPORATION	83.4	1,489,112	
EXXON CORPORATION	16.6	296,394	
VINELAND, CITY OF ELEC. (FEO BURN - 56,627)			63,027
SWANN OIL INC	100.0	63,027	
PENNSYLVANIA			
PHILADELPHIA ELECTRIC CO. (FEO BURN - 1,185,710)			1,336,170
ATLANTIC RICHFIELD COMPANY	21.8	291,285	
AMERADA HESS CORPORATION	24.4	326,025	
GULF OIL CORPORATION	10.2	136,289	
NEW ENGLAND PETROLEUM	2.3	30,732	
TEXACO INC	27.3	364,774	
CONTINENTAL OIL COMPANY	14.0	187,064	

3. SOUTHEASTERN ELECTRIC RELIABILITY COUNCIL (SERC)

FLORIDA			
FLORIDA KEYS ELEC COOP (FEO BURN - 9,144)			10,085
BELCHER OIL CO (EXXON)	100.0	10,085	
FLORIDA POWER & LIGHT CO. (FEO BURN - 2,041,421)			2,461,346
EXXON CORPORATION	15.0	369,202	
BELCHER OIL CO (EXXON)	85.0	2,092,144	
FLORIDA POWER CORPORATION (FEO BURN - 1,306,096)			1,458,321
EXXON CORPORATION	60.0	874,993	
AMERADA HESS CORPORATION	40.0	583,328	
FORT PIERCE, CITY OF (FEO BURN - 21,924)			24,372
NEW ENGLAND PETROLEUM	100.0	24,372	
GAINESVILLE, CITY OF (FEO BURN - 34,955)			39,733
EASTERN SEABOARD PETROLEUM	100.0	39,733	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
GULF POWER CO. (FEO BURN - 0)			2,125
BAKER SERVICE CO (EXXON)	100.0	2,125	
JACKSONVILLE ELEC. AUTH. (FEO BURN - 624,276)			690,248
VEN FUEL INC	82.6	570,145	
CONTINENTAL OIL COMPANY	17.4	120,103	
KEY WEST UTILITIES (FEO BURN - 58,691)			64,626
STANDARD OIL - KENTUCKY	100.0	64,626	
LAKE WORTH LIGHTING (FEO BURN - 19)			0
BELCHER OIL COMPANY (EXXON)	100.0	0	
LAKELAND LIGHT & WTR DEPT (FEO BURN - 93,470)			103,364
BELCHER OIL CO (EXXON)	100.0	103,364	
NEW SMYRNA BEACH (FEO BURN - 0)			0
BELCHER OIL COMPANY (EXXON)	100.0	0	
ORLANDO UTILITIES COMM (FEO BURN - 341,597)			377,853
NEW ENGLAND PETROLEUM	100.0	377,853	
SEBRING UTILITIES COMM (FEO BURN - 3,374)			3,760
UNION OIL COMPANY OF CA	100.0	3,760	
TALLAHASSEE, CITY OF (FEO BURN - 74,851)			83,230
UNION OIL COMPANY OF CA	100.0	83,230	
TAMPA ELECTRIC CO. (FEO BURN - 24,759)			38,319
WESTERN FUELS (STANDARD-OIL-KY)	100.0	38,319	
VERO BEACH MUNICIPAL POWER (FEO BURN - 19,700)			21,673
BELCHER OIL CO (EXXON)	100.0	21,673	
GEORGIA			
GEORIGA POWER COMPANY (FEO BURN - 0)			12,119
NEW ENGLAND PETROLEUM	100.0	12,119	
SAVANNAH ELECTRIC & POWER CO. (FEO BURN - 210,687)			232,677
COLONIAL OIL INDUSTRIES (EXXON)	100.0	232,677	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
MISSISSIPPI			
MISSISSIPPI POWER CO. (FEO BURN - 30,000)			30,000
ERGON INC (INTL TRADING)	45.0	13,500	
BAKER SERVICE CO (EXXON)	55.0	16,500	
SOUTH MISSISSIPPI ELEC (FEO BURN - 63,837)			90,734
SOUTHLAND OIL (HOWELL HYDROCARBON)	83.0	75,309	
AMERADA HESS CORPORATION	17.0	15,425	
NORTH CAROLINA			
CAROLINA POWER & LT. (FEO BURN - 465)			40,345
EXXON CORPORATION	100.0	40,345	
SOUTH CAROLINA			
SOUTH CAROLINA ELEC & GAS (FEO BURN - 90,424)			329,933
EXXON CORPORATION	100.0	329,933	
SOUTH CAROLINA PUB SERV (FEO BURN - 25,915)			52,275
AMERADA HESS CORPORATION	100.0	52,275	
VIRGINIA			
VIRGINIA ELECTRIC POWER (FEO BURN - 1,352,521)			1,531,621
EXXON CORPORATION	68.6	1,050,692	
AMERADA HESS CORPORATION	24.2	370,652	
AMOCO OIL COMPANY	7.2	110,277	
4. SOUTHWEST POWER POOL COORDINATION COUNCIL (SPP)			
ARKANSAS			
ARKANSAS ELEC COOP (FEO BURN - 65,554)			74,954
LOGICON INC (SHELL)	80.0	59,963	
E L BRIDE COMPANY (TEXACO)	20.0	14,991	
JONESBORO WATER AND LIGHT PLANT (FEO BURN - 0)			0
DELTA REFINING COMPANY	83.0	0	
E L BRIDE CO (MIDLAND)	17.0	0	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
KANSAS			
CENTRAL KANSAS PWR (FEO BURN - 1,428)			2,317
GREAT PLAINS OIL (CRA-FARMLAND)	100.0	2,317	
CHANUTE,CITY OF (FEO BURN - 170)			614
MID AMERICA REFINING CO	100.0	614	
COFFEYVILLE LT & PWR (FEO BURN - 0)			0
CRA-FARMLAND	100.0	0	
KANSAS GAS & ELEC (FEO BURN - 0)			0
KANSAS POWER & LIGHT (FEO BURN - 25,165)			29,665
PHILLIPS PETROLEUM COMPANY	46.1	13,676	
GREAT PLAINS OIL CO	38.4	11,391	
NATIONAL COOPERATIVE REFINERY ASSN	15.5	4,598	
LARNED WTR & ELEC (FEO BURN - 413)			0
MCPHERSON BD OF PUB UTIL(FEO BURN - 2,288)			2,708
NATIONAL COOPERATIVE REFINERY ASSN	100.0	2,708	
OTTAWA WTR & LT (FEO BURN - 0)			0
CARTER WATERS CORP (AMOCO)	100.0	0	
LOUISIANA			
CENTRAL LOUISIANA ELECTRIC COMPANY (FEO BURN - 0)			0
JONESBORO POWER & LIGHT (FEO BURN - 0)			0
MIDDLE SOUTH SERVICES (FEO BURN - 1,122,307)			1,276,957
MURPHY OIL CORPORATION	30.0	383,087	
TAUBER OIL CO	20.5	261,776	
SHELL OIL COMPANY	21.3	271,992	
EXXON CORPORATION	12.9	164,727	
TENNECO OIL COMPANY	9.5	121,311	
ERGON INC (EXXON)	3.8	48,524	
E L BRIDE CO (OKC REF.)	1.7	21,708	
REESE OIL CO (SUN OIL)	.3	3,831	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
SOUTHWESTERN ELECTRIC POWER COMPANY (FEO BURN - 0)			0
MISSISSIPPI			
CLARKSDALE WTR & LT (FEO BURN - 0)			0
SOUTHLAND OIL (HOWELL HYDROCARBON)	100.0	0	
YAZOO CITY PUB SERV (FEO BURN - 2,505			2,934
SOUTHLAND OIL (HOWELL HYDROCARBON)	100.0	2,934	
MISSOURI			
EMPIRE DIST ELEC (FEO BURN - 0)			0
ST JOSEPH LT & PWR (FEO BURN - 0)			0
NEBRASKA			
CENTRAL TEL & UTIL (FEO BURN - 0)			0
AMOCO OIL COMPANY	73.0	0	
NORTH AMERICAN PETROLEUM	23.0	0	
CARTER WATERS CORP (THREE RIVERS)	4.0	0	
OKLAHOMA			
BLACKWELL WTR & LT (FEO BURN - 0)			0
MANGUM LT & PWR (FEO BURN - 0)			0
DEAD RIVER OIL CO	100.0	0	
OKLAHOMA GAS & ELEC (FEO BURN - 0)			0
WESTERN FARMERS ELEC COOP (FEO BURN -0)			0
TEXAS			
GULF STATES UTILITIES (FEO BURN - 167,742)			213,142
COASTAL STATES MARKETING	37.5	79,928	
TENNECO OIL COMPANY	16.1	34,316	
UNITED PETROLEUM DISTRIBUTORS INC	4.0	8,526	
EXXON CORPORATION	20.1	42,842	
SOUTH HAMPTON CO	22.3	47,531	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
5. ELECTRIC RELIABILITY COUNCIL OF TEXAS (ERCOT)			
AUSTIN CITY-ELEC DEPT (FEO BURN - 12,102)			15,302
TESORO PETROLEUM CORPORATION	100.0	15,302	
BRYAN, CITY OF (FEO BURN - 16,826)			18,566
PETROLEUM TRADING & TRANS.(3 RIVERS)	100.0	18,566	
COMMUNITY PUB SERV (FEO BURN - 0)			0
STANDARD OIL COMPANY OF TEXAS	100.0	0	
DALLAS POWER &LT. (FEO BURN - 0)			3,000
FORT WORTH REFINING COMPANY	18.2	546	
KERR MCGEE OIL COMPANY	18.9	567	
J & W REFINING INC	47.2	1,416	
BEE OIL AND REFINING CO	15.6	468	
EL PASO ELECTRIC (FEO BURN - 48,134)			54,484
STANDARD OIL OF TEXAS	74.5	40,591	
TESORO PETROLEUM CORPORATION	25.5	13,893	
GARLAND,CITY OF (FEO BURN - 5,723)			6,463
PRIDE REFINERY INC	74.7	4,828	
DELTA REFINING COMPANY	25.3	1,635	
LOWER COLORADO RIVER AUTH (FEO BURN - 0)			0
MEDINA ELEC COOP (FEO BURN - 0)			0
TESORO PETROLEUM CORPORATION	100.0	0	
SAN ANTONIO PUB SERV (FEO BURN - 47,532)			53,652
TESORO PETROLEUM CORPORATION	100.0	53,652	
TEXAS ELEC SERV (FEO BURN - 0)			3,000
TESORO PETROLEUM CORPORATION	10.5	315	
SHELL OIL COMPANY	24.1	723	
WINSTON REFINING CO	61.3	1,839	
J & W REFINING INC	4.1	123	
TEXAS PWR & LT (FEO BURN -0)			4,166
RIFFE PETROLEUM CO (BELL REF.)	.3	13	
LA GLORIA OIL AND GAS COMPANY	31.1	1,296	
J & W REFINING INC	49.0	2,041	
SOUTHLAND OIL (HOWELL HYDROCARBON)	1.2	50	
TESORO PETROLEUM CORPORATION	11.5	479	
PRIDE REFINING INC	11.5	479	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
WEST TEXAS UTIL (FEO BURN - 0)			5,600
PRIDE REFINING INC	100.0	5,600	
6. MID-AMERICA INTERPOOL NETWORK (MAIN)			
ILLINOIS			
COMMONWEALTH EDISON CO. (FEO BURN - 76,949)			110,949
ALLIED OIL COMPANY	98.0	108,730	
CLARK OIL & REFINING CORPORATION	2.0	2,219	
ILLINOIS POWER CO (FEO BURN - 0)			
ALLIED OIL COMPANY	100.0	5,483	5,483
MISSOURI			
UNION ELECTRIC (FEO BURN - 0)			3,520
APEX OIL COMPANY	100.0	3,520	
WISCONSIN			
LAKE SUPERIOR DIST PWR (FEO BURN - 0)			482
DOME PETROLEUM	100.0	482	
SUPERIOR WTR & LT (FEO BURN - 0)			1,477
MURPHY OIL CORPORATION	100.0	1,477	
WISCONSIN ELEC PWR (FEO BURN - 0)			0
7. MID-CONTINENT AREA RELIABILITY COORDINATION AGREEMENT (MARCA)			
IOWA			
ATLANTIC MUNICIPAL UTILITIES (FEO BURN - 0)			0
MCMILLAN OIL CO	100.0	0	
INTERSTATE POWER (FEO BURN - 39,730)			51,740
NORTHWESTERN REFINING COMPANY	100.0	51,740	
MANNING MUNICIPAL LIGHT PLANT (FEO BURN - 0)			0
MINNESOTA			
AUSTIN UTILITIES (FEO BURN - 1,920)			2,257
NORTHWESTERN REFINING	100.0	2,257	
FAIRMONT WTR & LT (FEO BURN - 165)			0

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
MARSHALL MUNICIPAL UTIL (FEO BURN - 0)			0
E L BRIDE COMPANY	100.0	0	
MINNESOTA PWR & LT (FEO BURN - 44,405)			64,057
MURPHY OIL CORPORATION	100.0	64,057	
NORTHERN STATES PWR (FEO BURN - 0)			2,050
E. L. BRIDE (TEXACO, WESCO)	100.0	2,050	
OWATONNA MUN UTIL			11,070
NORTHWESTERN REFINING COMPANY	60.0	6,642	
GUSTAFSON OIL CO	40.0	4,428	
WORTHINGTON, CITY OF (FEO BURN - 5,998)			6,773
ALLIED OIL COMPANY	100.0	6,773	
NEBRASKA			
CENTRAL NEBRASKA PUBLIC (FEO BURN - 0)			0
FARMLAND INDUSTRIES	100.0	0	
FAIRBURY LT & WTR (FEO BURN - 1,091)			1,276
CARTER WATERS CORP (TEXACO)	100.0	1,276	
GRAND ISLAND ELEC (FEO BURN - 16,505)			18,410
EL BRIDE COMPANY	100.0	18,410	
HASTINGS UTILITIES DEPT (FEO BURN - 0)			0
NEBRASKA PUBLIC POWER DISTRICT (FEO BURN - 0)			0
OMAHA PUB PWR DIST (FEO BURN - 0)			0
UNK			
LINCOLN ELECTRIC SYSTEM (FEO BURN - 314)			0

8. EAST CENTRAL AREA RELIABILITY COORDINATION AGREEMENT (ECAR)

INDIANA			
INDIANAPOLIS POWER & LIGHT COMPANY (FEO BURN - 0)			0

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
MICHIGAN			
CLINTON LT & WTR (FEO BURN - 955)			1,207
CRYSTAL REFINING COMPANY	100.0	1,207	
CONSUMERS POWER (FEO BURN - 218,207)			243,693
CONSUMERS POWER-CRUDE	54.0	131,594	
LAKESIDE REFINING COMPANY	14.0	34,117	
OSCEOLA REFINING COMPANY	8.0	19,495	
TOTAL LEONARD INC	4.0	9,748	
MURPHY MILES DIV AMOCO	6.0	14,622	
ENTERPRISE OIL COMPANY	6.0	14,622	
BORON OIL (STANDARD)	3.0	7,311	
INDUSTRIAL FUEL & ASPHALT	2.0	4,874	
RUPP OIL COMPANY	2.0	4,874	
GLADIEUX REFINERY INC	1.0	2,437	
DETROIT EDISON CO. (FEO BURN - 918,261)			1,014,211
SUN OIL LTD	67.07	680,211	
CANADIAN FUEL MARKETEERS	9.86	100,000	
ENTERPRISE OIL	4.83	49,000	
PETRO PRODUCTS	5.42	55,000	
MARATHON OIL	9.86	100,000	
SUN, U. S.	2.96	30,000	
GRAND HAVEN BD PUB (FEO BURN - 0)			0
HILLSDALE BD OF PUB WORKS (FEO BURN - 7,930)			8,807
LEWIS SALES (GLADIEUX REF.)	100.0	8,807	
OHIO			
CLEVELAND ELEC ILLUMIN (FEO BURN - 121,857)			145,814
ALLIED OIL COMPANY (ASHLAND)	100.0	145,814	
TOLEDO EDISON (FEO BURN - 0)			0
PENNSYLVANIA			
ALLEGHENY POWER SERVICE (FEO BURN - 50,000)			58,700
ALLIED OIL COMPANY (NEPCO)	100.0	58,700	
9. WESTERN SYSTEMS COORDINATING COUNCIL (WSCC)			
ARIZONA			
ARIZONA PUBLIC SERVICE CO. (FEO BURN - 136,943)			175,024
UNION OIL COMPANY OF CA	47.2	82,611	
PACIFIC SOUTHWEST PIPE	16.5	28,879	
SAN JOAQUIN REFINING CO	32.0	56,008	
BASIN FUELS	4.3	7,526	

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	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
SALT RIVER PROJECT (FEO BURN - 17,238)			41,565
TESORO PETROLEUM CORPORATION	12.4	5,154	
DOUGLAS OIL CO	2.8	1,164	
EDGINGTON OIL COMPANY	5.6	2,328	
GUSTAFSON OIL CO	.9	374	
MACMILLAN RING FREE OIL CO INC	17.0	7,066	
POWERINE OIL COMPANY	12.5	5,196	
LITTLE AMERICA REFINING COMPANY	19.7	8,188	
SAN JOAQUIN REFINING CO	29.1	12,095	
TUCSON GAS & ELEC (FEO BURN - 247,329)			284,165
GOLDEN GATE PETROLEUM COMPANY	22.0	62,516	
NAVAJO REFINING COMPANY	5.0	14,208	
TOSCO PETROLEUM	43.0	122,191	
UNION OIL COMPANY OF CA	25.0	71,041	
HOLLAND OIL COMPANY (TOSCO)	5.0	14,208	
CALIFORNIA			
BURBANK CITY PUBLIC SER. (FEO BURN - 89,000)			111,942
CARSON OIL (GOLDEN EAGLE)	100.0	111,942	
GLENDALE PUBLIC SERVICES (FEO BURN - 31,645)			41,285
POWERINE OIL COMPANY	100.0	41,285	
IMPERIAL IRRIGATION DISTR (FEO BURN - 38,170)			43,993
CRESCENT REFINING & OIL (GULF)	100.0	43,993	
LOS ANGELES DEPT OF WATER & POWER (FEO BURN - 1,063,000)			1,429,204
ATLANTIC RICHFIELD COMPANY	43.5	621,704	
COASTAL STATES MARKETING	27.2	388,743	
EDGINGTON OIL COMPANY	15.3	218,668	
PETROBAY	5.5	78,606	
NEWHALL REFINING CO INC	3.6	51,451	
SAN JOAQUIN REFINING CO	2.6	37,159	
POWERINE OIL COMPANY	2.3	32,872	
PACIFIC GAS & ELECTRIC CO (FEO BURN - 2,067,335)			2,494,355
ATLANTIC RICHFIELD COMPANY	71.3	1,778,475	
UNION OIL COMPANY OF CALIF	4.7	117,235	
PHILLIPS PETROLEUM COMPANY	24.0	598,645	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
PASADENA POWER CO. (FEO BURN - 63,543)			75,056
GOLDEN EAGLE REFINING COMPANY INC	100.0	75,056	
SAN DIEGO GAS & ELECTRIC CO. (FEO BURN - 865,256)			995,562
UNION OIL COMPANY OF CA	29.8	296,677	
HIRI	16.2	161,291	
EDGINGTON OIL CO	21.3	212,055	
TESORO PETROLEUM CORPORATION	32.7	325,549	
SOUTHERN CALIF EDISON (FEO BURN - 4,017,776)			4,565,044
STANDARD OIL COMPANY OF CALIFORNIA	59.1	2,698,532	
TEXACO INC	8.0	365,284	
ATLANTIC RICHFIELD COMPANY	6.4	292,227	
EXXON CORPORATION	16.7	762,529	
PACIFIC RESOURCES INC	5.6	255,698	
MACMILLAN RING FREE OIL CO INC	2.4	109,585	
CONTINENTAL OIL COMPANY	1.8	82,189	
COLORADO			
COLORADO SPRINGS LT & PWR (FEO BURN - 1,592)			10,895
ACCENT PETROLEUM	100.0	10,895	
LAMAR LT & PWR (FEO BURN - 0)			0
PUB SERV COLORADO (FEO BURN - 3,102)			8,672
PLATEAU INC	100.0	8,672	
MONTANA			
MONTANA POWER (FEO BURN - 0)			354
CONTINENTAL OIL COMPANY	100.0	354	
NEVADA			
NEVADA POWER COMPANY (FEO BURN - 23,350)			49,714
GUSTAFSON OIL CO	54.0	26,846	
HUSKY OIL COMPANY	46.0	22,868	
SIERRA PACIFIC POWER (FEO BURN - 13,359)			16,695
GOLDEN GATE PETROLEUM COMPANY	100.0	16,695	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
NEW MEXICO			
PLAINS ELEC GEN & TRANSM (FEO BURN - 0)			0
PLATEAU INC	97.8	0	
CARIBOU FOUR CORNERS INC	2.2	0	
PUB SERV NEW MEXICO (FEO BURN - 21,772)			24,857
PLATEAU INC	39.8	9,893	
SHELL OIL COMPANY	26.4	6,562	
THRIFTWAY REFINING	5.4	1,342	
NAVAJO REFINING CO	24.1	5,991	
STANDARD OIL COMPANY OF TEXAS	4.3	1,069	
OREGON			
PACIFIC POWER & LIGHT CO (FEO BURN - 0)			0
UTAH			
UTAH POWER &LIGHT CO. (FEO BURN - 0)			2,588
BLACKLINE ASPHALT SALES, INC.	32.1	831	
COWBOY OIL COMPANY	60.4	1,563	
ARIZONA FUEL COMPANY	7.5	194	
WASHINGTON			
PUGET SOUND POWER &LIGHT CO. (FEO BURN - 0)			0
SEATTLE DEPT OF LI (FEO BURN - 0)			2,800
SHELL	100.0	2,800	
TACOMA DEPT OF PUBLIC UTILITIES			0

10. ASCC

HAWAII			
HAWAIIAN ELECTRIC COMPANY (FEO BURN - 647,153)			734,143
STANDARD OIL COMPANY OF CALIFORNIA	100.0	734,143	
HILO ELEC LT (FEO BURN - 44,343)			50,492
STANDARD OIL COMPANY OF CALIFORNIA	100.0	50,492	
KAUAI ELECTRIC (FEO BURN - 11,074)			12,795
STANDARD OIL COMPANY OF CALIFORNIA	100.0	12,795	

	PCT	BY SUPPLIER (BARRELS)	TOTAL (BARRELS)
MAUI ELECTRIC (FEO BURN - 24,278)			27,644
STANDARD OIL COMPANY OF CALIFORNIA	100.0	27,644	

11. UNK

UNK

PUERTO RICO WATER RESOURCES AUTHORIT (FEO BURN - 1,325,551)			1,492,307
COMMONWEALTH OIL REFINING CO	50.0	746,154	
PUERTO RICO SUN OIL CO	30.0	447,692	
CARIBBEAN GULF REFINING CORP	20.0	298,461	

TOTAL NUMBER OF UTILITIES = 155

TOTAL NUMBER OF UTILITIES WITH A POSITIVE DELIVERY = 114

TOTAL NUMBER OF UTILITIES SHOWING SUPPLIERS = 121

TOTAL DELIVERY IN BARRELS (ALL UTILITIES) = 43,960,417

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