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PART I

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HEW—NIH: Committee on Cancer Immunodiagnosis to be held at Bethesda, Maryland (closed)..... 7821; 2–28–74

HEW–NIH: Hypertension Research Centers Advisory Committee to be held at Bethesda, Maryland (closed). 7822; 2–28–74

HEW–NIH: National Advisory Research Resources Council to be held at Bethesda, Maryland (open morning only)..... 3306; 1–25–74

HEW–NIH: National Arthritis, Metabolism, and Digestive Diseases Advisory Council to be held at Bethesda, Maryland (open morning only). 5524; 2–13–74

HEW–NIH: Neurological Diseases and Stroke Science Information Program Advisory Committee to be held at Bethesda, Maryland (open morning only)..... 5525; 2–13–74

HEW—Panel on Review of Anesthesiology Devices to be held at San Francisco, California..... 7443; 2–26–74

National Science Foundation—Advisory Panel for Human Cell Biology to be held at Washington, D.C. (closed). 7842; 2–28–74

OMB—Business Advisory Council on Federal Reports to be held at Washington, D.C. (open)..... 7998; 3–1–74

State Department—Study Group 1 of the U.S. National Committee for the International Telegraph and Telephone Consultative Committee to be held at Washington, D.C. (open). 621; 2–21–74

USDA—Deschutes National Forest Multiple Use Advisory Committee to be held at Bend, Oregon (open).... 6630; 2–21–74

Veterans' Administration—Wage Committee to be held at Washington, D.C. (closed) ..... 33697; 12–6–73

### Weekly List of Public Laws

NOTE.—No acts approved by the President were received by the Office of the Federal Register from Friday, February 22 to Friday, March 1, 1974.

# Rules and Regulations

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

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

## Title 5—Administrative Personnel

## CHAPTER I—CIVIL SERVICE COMMISSION

## PART 213—EXCEPTED SERVICE

### Administrative Conference of the United States

Section 213.3319 is added to show that the position of Private Secretary to the Chairman, Administrative Conference of the United States is excepted under Schedule C.

Effective on March 6, 1974, § 213.3319 is added as set out below.

**§ 213.3319 Administrative Conference of the United States.**

(a) One Private Secretary to the Chairman.

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

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74–5069 Filed 3–5–74;8:45 am]

## PART 213—EXCEPTED SERVICE

### Department of Justice

Section 213.3310 is amended to show that one position of Secretary to the Deputy Administrator for Administration, Law Enforcement Assistance Administration, is excepted under Schedule C.

Effective on March 6, 1974, § 213.3310 (s)(9) is added as set out below.

**§ 213.3310 Department of Justice.**

* * * * *

(s) *Law Enforcement Assistance Administration.* * * *

(9) One Secretary to the Deputy Administrator.

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

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74–5070 Filed 3–5–74;8:45 am]

## PART 213—EXCEPTED SERVICE

### Treasury Department

Section 213.3305 is amended to show that one position of Confidential Assistant to the Director of the Mint is reestablished under Schedule C.

Effective on March 6, 1974, § 213.3305 (f)(2) is amended as set out below.

**§ 213.3305 Treasury Department.**

* * * * *

(f) Bureau of the Mint.

* * * * *

(2) One Confidential Assistant to the Director of the Mint.

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

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74–5071 Filed 3–5–74;8:45 am]

## PART 213—EXCEPTED SERVICE

### Department of State

Section 213.3304 is amended to show that one position of Staff Assistant to the Counselor of the Department of State is excepted under Schedule C.

Effective March 6, 1974, § 213.3304(u)(2) is added as set out below.

**§ 213.3304 Department of State.**

* * * * *

(u) *Office of the Counselor.* * * *

(2) One Staff Assistant to the Counselor.

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

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74–5140 Filed 3–5–74;8:45 am]

## PART 213—EXCEPTED SERVICE

### Department of Defense

Section 213.3306 is amended to show that the following positions are excepted under Schedule C: One position of Special Assistant to the Director, Telecommunications and Command and Control Systems; one position of Private Secretary to the Director, Telecommunications and Command and Control Systems; and one Special Assistant for Communication and Community Liaison to the Deputy Assistant Secretary (Equal Opportunity).

Effective March 6, 1974, §§ 213.3306(a)(53), (54) and (55) are added as set out below.

**§ 213.3306 Department of Defense.**

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

(53) One Special Assistant to the Director, Telecommunications and Command and Control Systems.

(54) One Private Secretary to the Director, Telecommunications and Command and Control Systems.

(55) One Special Assistant for Communication and Community Liaison to the Deputy Assistant Secretary (Equal Opportunity).

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

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74–5137 Filed 3–5–74;8:45 am]

## PART 213—EXCEPTED SERVICE

### Department of the Interior

Section 213.3312 is amended to show that one position of Confidential Assistant to the Secretary is excepted under Schedule C.

Effective March 6, 1974, § 213.3312(a)(1) is amended as set out below.

**§ 213.3312 Department of the Interior.**

(a) *Office of the Secretary* (1) Nine Confidential Assistants to the Secretary.

* * * * *

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

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74–5138 Filed 3–5–74;8:45 am]

## PART 213—EXCEPTED SERVICE

### Office of Economic Opportunity

Section 213.3373 is amended to show that one position of Executive Assistant to the Director is excepted under Schedule C.

Effective March 6, 1974, § 213.3373(a)(15) is added as set out below.

**§ 213.3373 Office of Economic Opportunity.**

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

(15) One Executive Assistant to the Director

* * * * *

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

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

[FR Doc.74–5139 Filed 3–5–74;8:45 am]

## Title 6—Economic Stabilization

## CHAPTER I—COST OF LIVING COUNCIL

## PART 150—COST OF LIVING COUNCIL PHASE IV PRICE REGULATIONS

### Automobile Insurance Rates

The purpose of these amendments is to terminate the current automobile insurance rate increase moratorium and to incorporate an essential provision from the Special Rule Applicable to Automobile Rate Increases into the body of the Phase IV insurance regulations.

The Council issued the Special Rule on January 17, 1974, and has continued since that time to review the effect of the energy situation on automobile insurance rates. Further indications of probable improvement in claim frequency are (1) the 25 percent decline in fatalities reported by the National Highway Traffic Safety Administration in the 18 states which had lower maximum speed limits in December 1973 as compared with December 1972 and (2) the 12 percent reduction in fatalities in the 32 states which had not lowered their speed limits resulting in an overall reduction of 16 percent. In January 1974 highway deaths were 23 percent below the January 1973 level. While it may not be accurate to assume that the decline in claim frequencies will correspond exactly with the decline in auto fatalities, the evidence suggests that the energy situation will have a mitigating effect on the occurrence of claims. Therefore, these amendments provide that automobile rate increases after March 4, 1974, must give due consideration to the effect of the energy situation on claim frequency.

With regard to claim severity, however, there are several factors which mitigate against claim costs being reduced. A report of the Industry Advisory Committee to the National Association of Insurance Commissioners Special Task Force entitled "Inflation—the Other Crisis," released on February 22, 1974, contains a discussion of a number of these factors accompanied by appropriate statistics. For example, the NAIC Task Force report points out that:

1. In spite of the continued effects of inflation on the costs of those items paid for by automobile insurance, automobile insurance rates have actually declined during the period in which the Economic Stabilization Program has been in effect.

2. Trends in automobile insurance claim costs track closely with trends in related external costs, such as those of medical and surgical treatment and automobile repairs—both parts and labor.

3. Costs—of claims and the things the claim dollar pays for—have been climbing steadily. While the Economic Stabilization Program brought about a temporary slowdown in 1972 in the rates of increase of those costs, they have been rising with increasing acceleration since mid-1972.

4. Economists forecast a continuation of inflation at a high rate with no sign of a slackening during the first half of 1974, which inevitably will force automobile insurance claim costs up at an even greater rate.

Consequently, the report concludes that "the inevitable increase in claim costs may well offset possible reductions in accident and claim frequency attributable to the energy crisis." In view of these considerations, it is not certain that average claim costs will be favorably affected by changed driving habits, reduced speed limits or the gasoline shortage.

Because these facts have become available in less than 60 days and because many insurers have already devised acceptable methods of giving due consideration to the effects of the energy situation, the Council has decided to terminate the moratorium and incorporate a claim frequency consideration requirement into the regulations governing insurance before the end of the 60-day period.

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

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

In consideration of the foregoing, Part 150 of Title 6 of the Code of Federal Regulations is amended as follows, effective March 4, 1974.

Issued in Washington, D.C. on March 4, 1974.

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

1. Section 150.403(b) is amended to read as follows:

**§ 150.403 Criteria.**

* * * * *

(b) Factors in the ratemaking process or in the actual determination of the final premium that relate to or reflect changes in claim frequency, occurrence or utilization, changes in the classification of risks under class plans already in use or territory relativities, or similar changed conditions of risk may be used in accordance with customary practice provided such factors are supported statistically.

Effective March 4, 1974, no insurer or rating bureau may place into effect a rate increase for automobile insurance for private passenger and commercial vehicles unless that rate increase gives due consideration to the effect on claim frequency attributable to the energy crisis. Factors included in rating plans and procedures already in use which reflect physical conditions affecting exposure to loss may be applied in accordance with customary practice.

* * * * *

2. The "Special Rule Applicable to Automobile Rate Increases" in the Appendix to Subpart M is revoked.

[FR Doc.74–5319 Filed 3–4–74;2:38 pm]

## Title 7—Agriculture

## CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

### SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

[Amdt. 21]

## PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

### Summer Camps as Eligible Recipient Agencies

The regulations for the operation of the Food Distribution Program (31 FR 14297), as amended, are further amended to effect conformity with section 4(b), Pub. L. 93–86 (87 Stat. 249).

Since the statutory provisions upon which this amendment is based are mandatory, compliance with proposed rulemaking and public participation procedures is impracticable and unnecessary.

In § 250.8, paragraph (c), subparagraph (1) is amended to read as follows:

**§ 250.8 Eligible recipient agencies.**

* * * * *

(c) *Summer camps.* (1) Nonprofit summer camps for children are eligible to receive commodities under section 416, section 32, and section 709 if the number of adults participating in the activities of any such camp is not in excess of one for each five children under 18 years of age participating in such activities. Persons such as nurses, therapists, and attendants who perform professional, supervisory, or custodial services are not to be considered as adults participating in the activities of a summer camp if they perform services essential to the participation of mentally, emotionally, or physically handicapped children. However, the number of such persons, together with the number of adults participating in the activities of the camp, shall not exceed one for each five children participating in the activities of the camp unless justified by the sponsor of the camp in its application for commodities and approved by the distributing agency of the State in which the camp is operated.

* * * * *

(Sec. 4(b), Pub. Law 93–86, 87 Stat. 249 (7 U.S.C. 612c note))

(Catalog of Federal Domestic Assistance Program No. 10.550, National Archives Reference Service)

This amendment shall become effective on March 4, 1974.

Dated: March 1, 1974.

CLAYTON YEUTTER,
*Assistant Secretary.*

[FR Doc.74-5111 Filed 3-5-74;8:45 am]

## CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[Milk Order No. 13]

## PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

### Order Suspending Certain Provisions

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southeastern Florida marketing area.

Notice of proposed rulemaking was published in the FEDERAL REGISTER (39 FR 4925) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. None were filed in opposition.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that, for the months of March through December 1974, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1013.73(a)(1) and (2), the words "but not to exceed $6."

STATEMENT OF CONSIDERATION

This suspension order removes the $6 per hundredweight limit on partial payment for milk to producers and cooperative associations. Such payments are made by handlers on the 20th day of the month for milk delivered during the first 15 days of the month and on the 5th day of the following month for milk delivered during the last half of the month. Final settlement is made on the 15th day of the following month.

The suspension was requested by Independent Dairy Farmers' Association, Inc. This organization states that the $6 limit is no longer a reasonable approximation of the value of milk since it is substantially less than the Class II price at the present time. (The Class II price in January was $8.25 per hundredweight.)

The $6 limit was put into the order in 1961 to insure against the possibility of overpayments to producers. In its absence, partial payments will be no less than the uniform price for the preceding month, less 10 percent. On the basis of current market prices and utilizations, the uniform price in any month could not reasonably be 10 percent below the uniform price of the preceding month. Suspension of the $6 limitation will implement prompt advance payments more nearly reflecting the use value of producer milk without placing handlers in jeopardy of overpayment.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that the limit on partial payments to producers has ceased to be a reasonable approximation of the value of milk.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective for the months of March through December 1974.

*It is therefore ordered*, That the aforesaid provisions of the order are hereby suspended for the months of March through December 1974.

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

Effective date: March 1, 1974.

Signed at Washington, D.C., on: February 28, 1974.

CLAYTON YEUTTER,
*Assistant Secretary.*

[FR Doc.74-5110 Filed 3-5-74;8:45 am]

## Title 14—Aeronautics and Space

## CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 73-NE-32]

## PART 73—SPECIAL USE AIRSPACE

### Alteration of Restricted Areas

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to change the using agency of Restricted Areas, R-4105, No Man's Land Island, Mass., and R-4106 North Eastham, Mass.

The U.S. Navy requested the changes in order to correctly identify the organization now responsible for using agency activities within the restricted areas. The Federal Aviation Administration concurred with the Navy's request.

Since this amendment is a minor amendment upon which the public is not particularly interested, notice and public procedure thereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., May 23, 1974, as hereinafter set forth.

In § 73.41 (39 FR 671):

a. Restricted Area R-4105 No Man's Land Island, Mass., is amended by deleting the present using agency and substituting the following therefor:

Commander, Patrol Wing FIVE
NAS Brunswick, Maine

b. Restricted Area R-4106 North Eastham, Mass., is amended by deleting the present using agency and substituting the following therefor:

Commander, Patrol Wing FIVE
NAS Brunswick, Maine

This amendment is made 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 28, 1974.

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

[FR Doc.74-5099 Filed 3-5-74;8:45 am]

[Docket No. 13568; Amdt. No. 906]

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

### Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, D.C. 20591 or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public

procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR–VOR/DME SIAPs, *effective April 18, 1974.*

Centralia, Ill.—Centralia Municipal Arpt., VOR Rwy 36, Amdt. 9.
Chatham, Mass.—Chatham Municipal Arpt., VOR–A, Amdt. 6.
Columbia-Mt. Pleasant, Tenn.—Maury County Arpt., VOR/DME–A, Amdt. 1.
El Dorado, Ark.—Goodwin Field, VOR/DME Rwy 4, Amdt. 3.
El Dorado, Ark.—Goodwin Field, VOR Rwy 22, Amdt. 7.
Escanaba, Mich.—Delta County Arpt., VOR Rwy 9, Amdt. 8.
Escanaba, Mich.—Delta County Arpt., VOR Rwy 18, Admt. 1.
Escanaba, Mich.—Delta County Arpt., VOR Rwy 27, Amdt. 6.
Manhattan, Kans.—Manhattan Municipal Arpt., VOR Rwy 31, Amdt. 5.
Marshalltown, Iowa—Marshalltown Municipal Arpt., VOR Rwy 12, Orig.
Marshalltown, Iowa—Marshalltown Municipal Arpt., VOR Rwy 30, Amdt. 1.

* * * *effective April 4, 1974.*

Findlay, Ohio—Findlay Arpt., VOR Rwy 7, Amdt. 7.

* * * *effective February 26, 1974.*

Victoria, Tex.—Victoria County-Foster Arpt., VOR Rwy 12L, Admt. 6.

* * * *effective February 25, 1974.*

Deer Park, N.Y.—Deer Park Arpt., VOR–1, Amdt. 2, canceled.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF–LOC–LDA SIAPs, *effective March 28, 1974.*

Johnstown, Pa.—Johnstown-Cambria County Arpt., LOC Rwy 33, Orig., canceled.

* * * *effective March 14, 1974.*

Ithaca, N.Y.—Tompkins County Arpt., LOC Rwy 32, Orig.

* * * *effective February 27, 1974.*

Moline, Ill.—Quad-City Arpt., LOC (BC) Rwy 27, Amdt. 13.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, *effective April 18, 1974.*

Columbia-Mt. Pleasant, Tenn.—Maury County Arpt., NDB Rwy 5, Amdt. 2.
Columbia-Mt. Pleasant, Tenn.—Maury County Arpt., NDB Rwy 23, Amdt. 2.
Marshalltown, Iowa—Marshalltown Municipal Arpt., NDB Rwy 12, Amdt. 3.

* * * *effective April 11, 1974.*

Atlanta, Ga.—The William B. Hartsfield Atlanta Int'l. Arpt., NDB Rwy 26, Amdt. 10.

* * * *effective March 21, 1974.*

Gainesville, Tex.—Gainesville Municipal Arpt., NDB Rwy 17, Orig.

* * * *effective February 27, 1974.*

Moline, Ill.—Quad-City, NDB Rwy 9, Amdt. 17.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, *effective April 18, 1974.*

Westhampton Beach, N.Y.—Suffolk County Arpt., ILS Rwy 24, Amdt. 1.

* * * *effective April 11, 1974.*

Atlanta, Ga.—The William B. Hartsfield Atlanta Int'l Arpt., ILS Rwy 26, Amdt. 7.

* * * *effective March 28, 1974.*

Johnstown, Pa.—Johnstown-Cambria County Arpt., ILS Rwy 33, Orig.

* * * *effective February 27, 1974.*

Moline, Ill.—Quad-City Arpt., ILS Rwy 9, Amdt. 17.

* * * *effective February 26, 1974.*

Meridian, Miss.—Key Field, ILS Rwy 1, Amdt. 17.
Victoria, Tex.—Victoria County-Foster Arpt., ILS Rwy 12L, Amdt. 1.

5. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, *effective March 7, 1974.*

Lansing, Mich.—Capital City Arpt., RADAR–1, Amdt. 1.

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, *effective April 11, 1974.*

Stockton, Calif.—Stockton Metropolitan Arpt., RNAV Rwy 29R, Amdt. 2.

* * * *effective February 27, 1974.*

Moline, Ill.—Quad-City, RNAV Rwy 30, Amdt. 1.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1948; (49 U.S.C. 1438, 1354, 1421, 1510), Sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1)).

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

JAMES M. VINES,
*Chief,*
*Aircraft Programs Division.*

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610), approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.74–5098 Filed 3–5–74;8:45 am]

## Title 21—Food and Drugs

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

### SUBCHAPTER A—GENERAL

### PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

### Nutrition Labeling; Foods Used Under Medical Supervision

In promulgating new § 1.17 (21 CFR 1.17) governing nutrition labeling of foods, the Commissioner of Food and Drugs exempted so-called "medical foods" in § 1.17(h)(4). The specific language used in that provision was later changed when Parts 80 and 125 (21 CFR Parts 80 and 125) were promulgated. The Commissioner has therefore concluded that § 1.17(h)(4) should be revised to use the final language adopted in Parts 80 and 125.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 403, 701(a), 52 Stat. 1040–1042 as amended, 1047, 1055; 21 U.S.C. 321, 343, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), § 1.17(h)(4) is revised to read as follows:

**§ 1.17 Food; nutrition labeling.**

* * * * *

(h) * * *

(4) Foods represented for use solely under medical supervision to meet nutritional requirements in specific medical conditions shall be labeled in compliance with Part 125 of this chapter.

* * * * *

The Commissioner finds that because this is a technical clarification of this provision intended solely for consistency of language, and does not change the intended meaning of the previous promulgation, notice and public procedure and delayed effective date are unnecessary and contrary to the public interest.

*Effective date.* This order shall be effective on March 6, 1974.

(Secs. 201, 403, 701(a), 52 Stat. 1040–1042 as amended, 1047, 1055 (21 U.S.C. 321, 343, 371(a)))

Dated: February 27, 1974.

SAM D. FINE,
*Associate Commissioner*
*for Compliance.*

[FR Doc.74–5158 Filed 3–5–74;8:45 am]

### SUBCHAPTER C—DRUGS

### PART 167—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

### Labeling Requirements; Extension of Effective Date

In an order published in the FEDERAL REGISTER of March 15, 1973 (38 FR 7096), the Commissioner of Food and Drugs established labeling requirements and procedures for developing standards for in vitro diagnostic products. This order was based on a proposal published in the FEDERAL REGISTER of August 17, 1972 (37 FR 16613). The effective date for complying with the labeling requirements set forth in § 167.2 (a), (b), and (d) (21 CFR 167.2 (a), (b), and (d)) was March 15, 1974.

Petitions requesting a stay of the effective date have been submitted to FDA and based on grounds set forth in these petitions and other relevant information, the Commissioner concludes that the order of March 15, 1973 should be amended to extend the effective date as it applies to § 167.2 (a), (b), and (d). Copies of the petitions are available for viewing

at the Office of the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 701, 52 Stat. 1055–1056; 21 U.S.C. 371) and under authority delegated to the Commissioner (21 CFR 2.120), Part 167 is amended by revising the effective date to read as follows:

*Effective date.* This order shall be effective on March 15, 1973, except that § 167.2 (a), (b), and (d) shall be effective on September 15, 1974, and § 167.2 (c) shall be effective on September 17, 1973.

*Effective date.* This order shall be effective on March 6, 1974.

(Sec. 701, 52 Stat. 1055–1056 (21 U.S.C. 371))

Dated: March 1, 1974.

WILLIAM F. RANDOLPH,
*Acting Associate Commissioner for Compliance.*

[FR Doc.74–5226 Filed 3–5–74;8:45 am]

## Title 23—Highways

### CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

### REDESIGNATION OF RIGHT-OF-WAY AND ENVIRONMENT

The contents of Subchapter J of Chapter I of Title 23, Code of Federal Regulations, are transferred to and redesignated as Subchapter H of that Chapter and Title. The designation Subchapter J is abolished.

The statement that Subchapter G through I are reserved is amended to read that Subchapter G is reserved and Subchapter I is abolished.

Part 72—Land Acquisition, of Subchapter H is retitled APPRAISAL.

Part 713—Right - of - Way—Property Management is added to Subchapter H.

Subpart A of Part 713 is reserved.

Subpart E—Use of Airspace, of Part 720 is redesignated as Subpart B of Part 713.

NORBERT T. TIEMANN,
*Federal Highway Administrator.*

[FR Doc.74–5088 Filed 3–5–74;8:45 am]

## Title 29—Labor

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

### PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

#### Approval of Indiana Plan

1. *Background.* Part 1902 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) whereby the several States may submit for approval under the requirements of that section, plans for the development and enforcement of State occupational safety and health standards.

Indiana submitted a plan pursuant to Part 1902 on December 21, 1972, which was formally submitted to the Assistant Secretary for Occupational Safety and Health on April 18, 1973. Notice of receipt of the plan was published in the FEDERAL REGISTER on April 23, 1973 (38 FR 10049). Pursuant to said notice interested persons were afforded thirty (30) days from the date of publication to submit written comments concerning the plan. Further, interested persons were given an opportunity to request an informal hearing with respect to the plan or any part thereof.

Written comments concerning the plan were submitted on behalf of the American Federation of Labor and Congress of Industrial Organizations Standing Committee on Safety and Occupational Health; Indiana State AFL–CIO; Lake and Porter Counties AFL–CIO; United Steelworkers of America, Local 1066; United Steelworkers of America, Local 1014; United Steelworkers of America, Local 6787; Allied Industrial Workers of America; AFL–CIO District 31, Local 3008; United Auto Workers, Local 1122; Hoosier Air Transport, Local Lodge 2294; International Association of Machinists, Lincoln Lodge 209; and Oil, Chemical and Atomic Workers, Local 7–1. Written comments were also received from the Indiana Chamber of Commerce; the Indiana Manufactures Association; United States Steel Corporation; and Miles Laboratories.

Requests for an informal hearing were made by the following: AFL–CIO Standing Committee on Safety and Occupational Health; Indiana State AFL–CIO; Allied Industrial Workers of America; and United Steel Workers of America, Local 1014.

In response to such comments and questions raised by the Office of Federal and State Operations, Indiana made many significant modifications to this plan. The Assistant Secretary then found it appropriate to afford under § 1902.12 of Title 29, Code of Federal Regulations, an additional opportunity for public comment on the modifications of the plan. Notice of such modifications was published in the FEDERAL REGISTER on September 26, 1973 (38 FR 26837).

Pursuant to said notice, comments were received from the AFL–CIO Standing Committee on Safety and Occupational Health; the Indiana State AFL–CIO; Lake and Porter Counties AFL–CIO; United Steel workers of America, Local 1066; United Steel workers of America Safety and Health Department; United Steel workers of America District 31, Subdistrict 2; Allied Industrial Workers of America; and the United Paperworkers International Union. Written comments were also received from the Indiana Chamber of Commerce; the Indiana Manufacturers Association; AMOS, Inc.; and the Migrant Legal Reform and Rural Development Project (AMOS, Inc.).

Requests for an informal hearing were made by the following: the AFL–CIO Standing Committee on Safety and Occupational Health; the Indiana State AFL–CIO; and the Allied Industrial Workers of America.

In a letter dated December 14, 1973, Governor Otis R. Bowen, assured Assistant Secretary John H. Stender that the State's supplemental operating budget, containing an additional appropriation for the Division of Labor, would be introduced in the 1974 Indiana General Assembly. The supplemental budget, as passed in 1974, insured an increase of 34 State inspectors under the plan thus raising the total number of inspectors to 69 during the first year of operation.

As there are no significant objections which are outstanding to the Plan, as amended, all requests for a public hearing are denied. None of the questions raised in the public comments are of such a nature as to require a hearing under § 1902.11(f) of Title 29, Code of Federal Regulations.

The Plan identifies the Indiana Division of Labor as the state agency designated to administer the Plan throughout the State. It defines the covered occupational safety and health issues as defined by the Secretary of Labor in § 1902.2 (c)(1). Indiana has adopted all Federal occupational safety and health standards contained in 29 CFR Part 1910 and in 29 CFR Part 1926 and the legislation provides for the automatic adoption of future Federal standards within sixty (60) days of their effective date. The State retains the authority to adopt alternative standards at least as effective as the Federal standards. The legislation provides for coverage of all possible employees in the State including maritime employees not included in the exclusive Federal jurisdiction.

The Plan includes legislation enacted and effective April 1, 1971, the Indiana Occupational Safety and Health Law of 1971 (IC 1971, 22–8–1.1), as amended by legislation enacted and effective May 1, 1973, and certain revisions dated July 19, 1973, with a letter of the Governor's support. There is also contained within the Plan letters from the State dated July 19, 1973, September 25, 1973, December 14, 1973 and February 20, 1974, which modify the Plan to bring it into full conformity with Part 1902.

2. *Issues.* As noted above, the State has modified and clarified its Plan in order to meet the objections that had been raised in the following areas during the review process.

(a) *General.* The State has agreed to amend its legislation to define "employment" to include all services, not just those rendered for pay, and to require employers and employees to comply with applicable rules and regulations as well as standards.

(b) *Standards.* The State will amend its statute to make clear what procedures will be followed in promulgating alternative State standards at least as effective as the Federal standards and to include a provision that any standards developed for products used or distributed in interstate commerce will be required by local conditions and will not

be an undue burden on interstate commerce. Notice of hearings on alternative State standards must be published at least ten days prior to the date of the hearing, according to the State's administrative rules and regulations. Where, however, the State automatically adopts Federal standards (and thus no hearing is required) the State has agreed to publish such standards in a newspaper having general circulation in Marion County ten days prior to the actual adoption of the Federal standards by the State. Considerable public comment questioned the adequacy of the State's provisions for publication in only one newspaper of general circulation in Marion County. It is our understanding that such newspaper in effect has Statewide circulation, that this is the general provision for legal notice in the State, and, on this basis there would appear to be sufficient legal notice of State actions provided.

(2) The State will amend its temporary emergency standard provisions to match the Federal provisions in order to provide that State emergency standards will be effective until superseded by a permanent standard. A permanent standard, however, must be promulgated within 6 months after publication of the temporary emergency standard. Assurances are provided by the State that all federal temporary emergency standards will be adopted by the States ten days after promulgation by the Department of Labor.

(3) Indiana has promised to amend its provisions dealing with the granting of temporary variances to allow the Commissioner to grant an interim order until a hearing can be held and a decision made based on the hearing. The interim order, like that in the Federal Act, may be renewed twice for a total of 180 days.

(4) The Plan as modified provides for a notice to be given at least 20 days prior to a hearing on a proposed standard. The Industrial Code, in contrast, provided for only 10 days notice.

(5) The rendering of a Declaratory judgment on a standard is possible through Indiana's adoption of the Uniform Declaratory Judgment Act (IC 1971, 34–4–10) and section 19 of the State Act.

(c) *Penalty provisions.* The State has agreed to amend section 49 of its enacted legislation to eliminate, except as it applies to employers, a penalty of up to $500 and/or imprisonment not to exceed six months for any person who willfully violates any provision of the legislation for which no specific penalty is prescribed.

(2) The State has also agreed to amend its legislation to provide for the recovery of penalties through the civil court proceedings.

(3) In addition the State will amend its legislation to provide for a penalty for the failure by employers to post required documents as provided for in section (7) (c) of the Federal Act.

(d) *Review procedures.* The Commissioner of Labor is required by § 28.3 of the enacted legislation and by the State's Administrative Procedure Act to affirm, modify, or dismiss a contested safety order or penalty within five days. He must also refer the contested order or penalty to the review body immediately upon receipt. This dual review, modification or dismissal power will be carefully evaluated and monitored during the Plan's operation to ensure its effectiveness.

(e) *Recordkeeping.* Assurances from the State have been provided to the effect that the Division of Labor shall refer all recordkeeping and reporting variance requests which pertain to information covered by 29 CFR Part 1904 to the Bureau of Labor Statistics, the United States Department of Labor.

(f) *Enforcement.* The Indiana Plan did not specify that entry by inspectors shall be "without delay." The State, in proposed legislation, has included this provision and, while not providing for the issuance of a warrant directly, the proposed legislative in conjunction with *See* v. *Seattle*, 387 U.S. 541 (1967) and *Camera* v. *Municipal Court*, 387 U.S. 523 (1967) is at least as effective as the warrant provisions of the Federal Act. In addition, the State has promised to amend § 23.1 of its Act to provide that the Commissioner can provide for the attendance and testimony of witnesses during an inspection and that an inspector must consult with a reasonable number of employees if there is no employee representative available.

(2) The State has provided assurances that former as well as present employees will be promptly notified of exposure to toxic materials above the prescribed limit.

(3) Included in the proposed amendments to the legislation is the requirement that the Commissioner must issue a citation for failure to abate a violation if, upon reinspection, the original violation still exists. This amendment would bring § 26.1 of the State act into substantial agreement with section 10(b) of the Federal Act.

(4) The State law provides for the issuance of subpoenas by the Commissioner of Labor for the attendance of witness (IC 1971, 22–1–1).

(5) The State will provide, as part of its developmental program, that a procedure for on-site consultation will be part of the amendments for the State act.

(f) *Resources.* The State has given assurances that it will provide a total of 69 inspectors during the first year of operation; this assurance was provided when the State agreed to supply funds for an additional 34 inspectors. Only with 69 inspectors will the State be able to provide a level of enforcement personnel sufficient to conduct an effective occupational safety and health program.

3. *Decision.* After careful consideration of the Indiana Plan, including modifications thereof, and comments submitted regarding the plan, the plan is hereby approved under section 18 of the Act and Part 1902.

This decision incorporates requirements of the Act and implementing regulations applicable to State plans generally. It also incorporates intentions as to continued Federal enforcement of Federal standards in areas covered by the plan and the state's developmental schedule as set out in § 1952.323 below.

Pursuant to § 1902.20(b)(1)(iii) of Title 29 of the Code of Federal Regulations, the present level of Federal enforcement in Indiana will be continued with present priorities to the extent necessary to provide safe and healthful workplaces in the State. An evaluation of the State plan, as implemented, will be made on a continuing basis to assess the appropriate level of Federal enforcement activity. Federal enforcement authority will continue to be exercised to the degree necessary to assure occupational safety and health protection for employees in the State of Indiana. Part 1952 is hereby amended by adding thereto a new subpart effective reading as follows:

## Subpart Z—Indiana

Sec.

1952.320 Description of the plan.
1952.321 Where the plan may be inspected.
1952.322 Level of Federal enforcement.
1952.323 Developmental schedule.

AUTHORITY: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

### § 1952.320 Description of the plan.

(a)(1) The plan identifies the Indiana Division of Labor as the State agency designated to implement and carry out the State plan. Within this structure, the Occupational Safety Standards Commission has the responsibility to adopt standards and dispose of variance applications; the Commissioner of Labor is charged with the administration and enforcement of the Act; and the Board of Safety Review is to conduct and decide contested cases. The State Board of Health, Industrial Hygiene Division, pursuant to an agreement with the Division of Labor will provide laboratory services and will conduct occupational health inspections as scheduled by the Division of Labor.

(2) The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). Further, Indiana has adopted all Federal safety and health standards contained in 29 CFR Parts 1910 and 1926. The State program is to extend its protection to all employees in the State including those employed by it and its political subdivisions.

(b) The plan includes existing enabling legislation and the Indiana Occupational Safety and Health Act (IC 1971, 22–8–1.1 *et seq.*) as well as amendments to this Act which were passed and became effective on May 1, 1973. Under the Act as amended the Division of Labor has authority to administer and enforce the provisions of the State plan.

(c) The legislation provides procedures for the promulgation of standards; furnishing information to employees on hazardous and toxic substances; and procedures for granting temporary and permanent variances. The law also contains procedures for inspections includ-

ing inspections in response to complaints; ensures employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations before, during and after inspections; protection of employees against discharge or discrimination in terms or conditions of employment through court suits brought by the Attorney General at the request of the Commissioner; notice to employees of their protections and obligations under the State law; prompt restraint of imminent danger situations; safeguard to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; and employer right to review of alleged violations, abatement periods, and proposed penalties with an opportunity for employee participation and employee right of review of such abatement periods.

(d) The plan also contains a voluntary compliance program. The State will conduct seminars, conferences and meetings designed for management, supervisory personnel, employees and union representatives to transmit information about its safety and health program. These programs are specifically designed to cover the following areas: general industrial safety, construction safety, first aid instruction, supervisory safety training, hazard recognition, Indiana occupational health and safety laws, federal occupational safety and health laws, State health and safety standards, injury and illness reporting procedures requirements, rights and obligations to employers and employees, enforcement programs. On-site consultation services will be available for employers upon request as part of the developmental plan.

(e) Also included in the plan are proposed budgets to be devoted to it as well as descriptions of the job classifications and personnel who will be carrying out the program. Further, the plan sets out goals and provides a timetable for bringing it into full conformity with 29 CFR Part 1902.

**§ 1953.321 Where the plan may be inspected.**

A copy of the complete Indiana plan may be inspected and copied during normal business hours at the State of Indiana Division of Labor, Room 1913, State Office Building, Indianapolis, Indiana 46202; Assistant Regional Director, Occupational Safety and Health Administration, U.S. Department of Labor, 300 South Wacker Drive, Room 1201, Chicago, Illinois 60606; and the Office of Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210.

**§ 1952.322 Level of Federal enforcement.**

Pursuant to § 1902.20(b)(1)(iii) of Title 29 of the Code of Federal Regulations, Federal enforcement authority will be exercised in Indiana to the extent necessary to supplement the State's compliance activities and to assure occupational safety and health protection to employees in the State of Indiana.

**§ 1952.323 Developmental schedule.**

(a) Proposed legislative amendments to be introduced in the 1974 session of the State legislature;

(b) Refresher Course for inspectors will be completed by September 1, 1974;

(c) A full complement of 69 inspectors will be hired by the end of the first year of plan operation; the State will add 10 inspectors for each of the two succeeding years;

(d) Development of a State employee safety program within nine months following plan approval;

(e) Establishment of the rules of procedure for on-site consultations within nine months following plan approval;

(f) Within three years of plan approval all developmental steps will be fully implemented.

Signed at Washington, D.C. this 25th day of Feb., 1974.

JOHN STENDER,
*Assistant Secretary of Labor.*

[FR Doc.74-5105 Filed 3-5-74; 8:45 am]

## PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

### Approval of the Nevada Plan; Correction

The document approving the Nevada Occupational Safety and Health Plan published in the FEDERAL REGISTER on January 4, 1974 (39 FR 1008) is corrected as follows:

1. On page 1008 the reference in the preamble to "December 12, 1972" as the date of the plan's submission should have been to "December 20, 1972";

2. On pages 1008 of the preamble, 1009 (§ 1952.290(a)), and 1010 (§ 1952.291) the references to the "Department of Industrial Safety of the Industrial Commission of the State of Nevada" should have been to the "Department of Occupational Safety and Health of the Nevada Industrial Commission";

3. The references to "motor vehicles" on pages 1008 of the preamble and 1010 (§ 1952.290(b)) should have been to "highway motor vehicles"; and

4. On page 1009, the preamble discussion of program financing should read:

(d) *Financing.* Public comments also expressed concern that the plan's provision for administrative financial support to be obtained through pro-rata contributions by all employers may create problems with respect to the obtaining of sufficient funds or assuring freedom from employer influence. There appears to be no cause for assuming that the State's method of financing the enforcing agency will be defective, especially since the method proposed has had a record of success in connection with the administration of several State workmen's compensation programs (see *Report of the National Commission on State Workmen's Compensation Laws*, page 104).

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Washington, D.C. this 1st day of March, 1974.

JOHN STENDER,
*Assistant Secretary of Labor.*

[FR Doc.74-5172 Filed 3-5-74; 8:45 am]

## Title 33—Navigation and Navigable Waters

## CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD-73-31R]

## PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT AREAS

### Fifth Coast Guard District

These amendments revise the descriptions of the three captain of the port areas and the three marine inspection zones of the Fifth Coast Guard District.

In § 3.25-10 the Portsmouth Marine Inspection Zone is renamed to be the Hampton Roads Marine Inspection Zone; and its office location is changed from Portsmouth to Norfolk, Virginia. The boundaries of the marine inspection zones described in §§ 3.25-10(b) and 3.25-20(b) are revised to clarify the location of their intersection with the North Carolina seacoast by describing the location in terms of geographic coordinates.

The Hampton Roads Area Captain of the Port is renamed to be the Hampton Roads Captain of the Port. The boundaries of the three captain of the port areas are revised to make them coincide with the boundaries of the marine inspection zones in which the captain of the port offices are located. Thus, these revisions substantially enlarge the captain of the port areas which at present comprise only the cities in which their offices are located and the area in the immediate vicinity of these cities. The descriptions of the three captain of the port areas, as amended in this document, are transferred to §§ 3.25-10, 3.25-15, and 3.25-20. Accordingly, §§ 3.25-55, 3.25-60 and 3.25-65, which contain the present descriptions of these areas, are deleted.

Since these amendments are matters relating to agency organization, they are exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 553(b).

In accordance with the foregoing, part 3 of Chapter I of Title 33 of the Code of Federal Regulations is amended as follows:

1. Section 3.25-10 is revised to read as follows:

**§ 3.25-10 Hampton Roads Marine Inspection Zone and Captain of the Port.**

(a) The Hampton Roads Marine Inspection Office and the Hampton Roads Captain of the Port Office are located in Norfolk, Virginia.

(b) The boundary of the Hampton Roads Marine Inspection Zone, and of the Hampton Roads Captain of the Port Area, starts at the intersection of the Virginia-Maryland boundary and the coastline and follows the Virginia-Mary-

land boundary to a point 37°57.2′ N. latitude, 76°03′ W. longitude on Chesapeake Bay; thence to a point 37°56.5′ N. latitude, 76°10.5′ W. longitude; thence to a point 37°55′ N. latitude, 76°16.8′ W. longitude; thence to a point 37°55′ N. latitude, 76°28.2′ W. longitude; thence to a point 38°19.5′ N. latitude, 77°25.2′ W. longitude; thence to a point 39°06′ N. latitude, 78°30′ W. longitude on the Virginia-West Virginia boundary; thence southerly along the Virginia-West Virginia boundary to the Tennessee boundary; thence eastward along the Virginia-Tennessee boundary to the Virginia-North Carolina boundary; thence eastward along the Virginia-North Carolina boundary to Kerr (Buggs Island) Lake; thence along the shoreline of Kerr Lake in North Carolina back to the Virginia-North Carolina boundary; thence eastward along the Virginia-North Carolina boundary to the west bank of the Chowan River; thence southerly along the west bank of the Chowan River to a point 36°00′ N. latitude, 76°41′ W. longitude; thence generally southerly and easterly along the border of Washington, Beaufort, and Hyde Counties to a point 35°37′ N. latitude, 76°32′ W. longitude; thence easterly to a point 35°37′ N. latitude, 76°00.5′ W. longitude; thence generally southwesterly to a point 35°01.5′ N. latitude, 76°20′ W. longitude; thence easterly to a point 35°01.5′ N. latitude, 76°10′ W. longitude; thence southeasterly to the sea at 34°59.8′ N. latitude, 76°07.8′ W. longitude.

2. Section 3.25–15 is revised to read as follows:

**§ 3.25–15 Baltimore Marine Inspection Zone and Captain of the Port.**

(a) The Baltimore Marine Inspection Office and the Baltimore Captain of the Port Office are located in Baltimore, Maryland.

(b) The boundary of the Baltimore Marine Inspection Zone, and of the Baltimore Captain of the Port Area, starts at the intersection of the Delaware-Maryland boundary and the coastline and follows the Delaware-Maryland boundary west and north to the Pennsylvania boundary but includes the Chesapeake and Delaware Canal and the reaches of the Nanticoke River; thence due west along the Pennsylvania-Maryland boundary to the West Virginia boundary; thence south and eastward along the Maryland-West Virginia boundary to the Virginia boundary; thence southwestward along the Virginia-West Virginia boundary; thence southwestward along the Virginia-West Virginia boundary to a point 39°06′ N. latitude, 78°30′ W. longitude; thence to a point 38°19.5′ N. latitude, 77°25.2′ W. longitude; thence to a point 37°55′ N. latitude, 76°28.2′ W. longitude; thence to a point 37°55′ N. latitude, 76°16.8′ W. longitude; thence to a point 37°56.5′ N. latitude, 76°10.5′ W. longitude; thence to a point 37°57.2′ N. latitude, 76°03′ W. longitude on Chesapeake Bay; thence along the Maryland-Virginia boundary to the sea.

3. Section 3.25–20 is revised to read as follows:

**§ 3.25–20 Wilmington Marine Inspection Zone and Captain of the Port.**

(a) The Wilmington Marine Inspection Office and the Wilmington Captain of the Port Office are located in Wilmington, North Carolina.

(b) The boundary of the Wilmington Marine Inspection Zone, and of the Wilmington Captain of the Port Area, starts at the sea at 34°59.8′ N. latitude, 76°07.8′ W. longitude, and follows a line northwesterly to a point 35°01.5′ N. latitude, 76°10′ W. longitude; thence westerly to a point 35°01.5′ N. latitude, 76°20′ W. longitude; thence northeasterly to a point 35°37′ N. latitude, 76°00.5′ W. longitude; thence westerly to a point 35°37′ N. latitude, 76°32′ W. longitude; thence north and westerly along the border of Hyde, Beaufort, and Washington Counties to a point 36°00′ N. latitude, 76°41′ W. longitude; thence northerly along the west bank of the Chowan River to the North Carolina-Virginia boundary; thence westerly along the North Carolina-Virginia boundary to Kerr (Buggs Island) Lake; thence along the shoreline of Kerr Lake in North Carolina to the North Carolina-Virginia boundary; thence westerly along the North Carolina-Virginia boundary to the Tennessee boundary; thence southwesterly along the North Carolina-Tennessee boundary to the Georgia boundary; thence easterly along the North Carolina-Georgia boundary to the South Carolina boundary; thence easterly along the South Carolina-Georgia boundary to the sea.

**§§ 3.25–55, 3.25–60, 3.25–65 [Deleted]**

4. Sections 3.25–55, 3.25–60, and 3.25–65 are deleted.

(5 U.S.C. 552; 14 U.S.C. 633; Sec. 6, Pub. Law 89–670, 80 Stat. 937 (49 U.S.C. 1655(b)); 35 FR 4958–59, 49 CFR 1.45 and 1.46)

Effective date: March 6, 1974.

Dated: February 22, 1974.

C. R. BENDER,
*Admiral, U.S. Coast Guard,*
*Commandant.*

[FR Doc.74–5144 Filed 3–5–74;8:45 am]

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[CGD 74–24]

## PART 40—CADETS OF THE COAST GUARD

### Physical Requirements; Visual Acuity

The purpose of this amendment is to change the visual acuity standards for admission to the United States Coast Guard Academy.

The visual acuity requirements are being amended, first in response to changing national procurement conditions; second, to more closely parallel the visual acuity admission requirements of the other federal service academies; and thirdly, to more accurately reflect the actual needs of the service relative to the visual acuity of its commissioned officers.

Under existing regulations applicants for the U.S. Coast Guard Academy were permitted to have an uncorrected visual acuity no poorer than 20/40 in each eye, correctable to 20/20. The regulations permitted the Superintendent of the Academy to grant waivers up to 20/100 uncorrected visual acuity to no more than three percent of the applicants offered appointments. There was an additional provision that stated that no more than 40 percent of the applicants admitted each year could have poorer than 20/30 uncorrected visual acuity.

In an analysis of the Academy's selection process in 1973, it was noted that even as the total number of applications declined over previous years, the Coast Guard found physically disqualified on initial review a significantly higher percentage of applicants than any other federal service academy. This amendment brings the Coast Guard's visual acuity admission standards closer in line with the standards of the other service academies.

It establishes a maximum uncorrected visual acuity of 20/100 in each eye correctable to 20/20 in each eye as the new visual acuity standards for admission. Because with these more liberalized visual acuity standards the possibility of developmental myopia during late adolescence is increased, limits on the degree of refractive error, astigmatism and anisometropia are also established. These limits were adopted from the proposals of the Board convened in the Bureau of Naval Personnel December 13, 1967 to January 11, 1968 to consider the matter of revised visual acuity standards.

The amendment to visual acuity regulations also instructs the Superintendent of the Academy to insure that an adequate number of cadets with uncorrected vision of 20/20 are admitted each year in order that enough cadets are graduated who are qualified to enter flight training and from whom a sufficient number of officers can be expected to apply for that training to meet regular officer in-puts to Coast Guard aviation.

Because of the need for timely response to applicants seeking admission to the U.S. Coast Guard Academy in 1974 and because these amendments are intended to relax a restrictive rule, the notice, public rulemaking procedure and effective date requirements contained in 5 U.S.C. 553 are omitted.

In consideration of the foregoing Part 40 of Title 33 of the Code of Federal Regulations is amended as follows:

1. Section 40.4(a) is revised to read as follows:

**§ 40.4 Specific requirements for eligibility.**

(a) No waivers of educational or physical requirements are granted to applicants.

* * * * *

2. Section 40.8(f) (1) and (5) are revised to read as follows:

**§ 40.8 Physical standards and disqualifications.**

* * * * *

(f) *Eyes and vision.* (1) Uncorrected visual acuity shall be no poorer than

20/100 in either eye provided that vision is correctable to 20/20 (100% BVE) in each eye and that refractive error spherical equivalent does not exceed plus 3.50 diopters or minus 1.75 diopters in any meridian, astigmatism does not exceed 3.0 diopters and anisometropia does not exceed 3.50 diopters. Refraction is not required where the vision is 100% BVE uncorrected, unless medically indicated. The Superintendent shall see to it that such a number of cadets are yearly admitted whose uncorrected visual acuity is 100% BVE as to insure that the Coast Guard will be able to meet its required in-put of regular officers to flight training.

* * * * *

(5) Any cadet in the United States Coast Guard Academy whose vision has dropped below 20% BVE, correctable to 100% BVE for any significant period of time shall be reported on by a medical board.

* * * * *

(14 U.S.C. 182 and 633; Sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b))

*Effective date.* These amendments shall become effective on March 6, 1974.

C. R. BENDER,
*Admiral, U.S. Coast Guard,*
*Commandant.*

[FR Doc.74-5145 Filed 3-5-74;8:45 am]

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## Title 34—Government Management

## CHAPTER II—OFFICE OF FEDERAL MANAGEMENT POLICY, GENERAL SERVICES ADMINISTRATION

### SUBCHAPTER F—AUTOMATIC DATA PROCESSING MANAGEMENT

## PART 281—ADP MANAGEMENT INFORMATION SYSTEM (ADP/MIS)

This document converts Office of Management and Budget Circular A-83 into a General Services Administration Federal Management Circular (FMC 74-2) in accordance with Executive Order 11717 and Office of Management and Budget Bulletin 74-4 which transfer certain Office of Management and Budget responsibilities to the General Services Administration. FMC 74-2, dated February 25, 1974, prescribes the policy and criteria for the continuing development of a management information system (MIS) for automatic data processing ADP activities in the Federal Government.

Part 281, ADP management information system (ADP/MIS), is added to read as set forth below.

*Effective date.* This regulation is effective February 25, 1974.

Dated: February 25, 1974.

ARTHUR F. SAMPSON,
*Administrator of General Services.*

Sec.
281.1 Purpose.
281.2 Supersession.
281.3 Policy intent.
281.4 Applicability and scope.
281.5 Definitions.
281.6 Policies and procedures.
281.7 Responsibilities.
281.8 Reporting requirement.
281.9 Inquiries.

AUTHORITY: Executive Order 11717 (38 FR 12315, May 11, 1973)

### § 281.1 Purpose.

This part prescribes the policy and criteria for the continuing development of a management information system (MIS) for automatic data processing (ADP) activities in the Federal Government.

### § 281.2 Supersession.

This part supersedes Office of Management and Budget (OMB) Circular A-83, dated October 5, 1971.

### § 281.3 Policy intent.

This part continues the requirement for developing, operating, and maintaining an ADP/MIS to assist the General Services Administration (GSA) and other Federal agencies in carrying out their management responsibilities for the most effective and efficient utilization of ADP.

### § 281.4 Applicability and scope.

(a) *Applicability.* The provisions of this part are applicable to all Federal agencies (as defined in 34 CFR 200) having organizations (referred to herein as ADP units) that:

(1) Use or plan to use ADP equipment; or

(2) Acquire or plan to acquire ADP services offered from Government or other sources; or

(3) Perform ADP functions, such as coordinating ADP programs, and/or incur obligations in such activities as designing, developing, programing, and implementing ADP systems; reviewing, recommending, or selecting ADP equipment; approving the acquisition of ADP equipment or services; or providing ADP services on a consulting or project basis for agency ADP units; or

(4) Have Government contractors (including educational institutions and other not-for-profit contractors or organizations) who operate ADP equipment in the performance of work under reimbursement-type contracts or subcontracts when the equipment is:

(a) Leased, and full lease costs are paid by the Government under one or more contracts; or

(b) Furnished to the contractor by the Government or is purchased by the contractor for the account of the Government or title will pass to the Government; or

(c) Installed in Government-owned, contractor-operated facilities; or

(5) Have contracts involving any of the elements prescribed in this part.

Information required on ADP equipment that is contractor owned or leased will be reported by the agency having primary contract administration cognizance or, in the absence of an assignment of primary cognizance, by the agency having the preponderance of business with the contractor in terms of dollar value of contract sales.

(b) *Exemptions.* The following classes of ADP equipment are fully or partially exempt from the reporting requirements of this part.

(1) *Full exemptions.* (i) Analog computers even though a part of a hybrid system (The digital computer portion of the hybrid computer system is not exempt.); and

(ii) ADP equipment which is both integral to a combat weapon or space system and built or modified to special Government design.

(2) *Partial exemptions.* (i) Control systems equipment is exempt from system utilization reporting and from related summary ADP manpower and cost reporting but not from management/function/use and all other inventory information reporting;

(ii) Classified systems equipment is exempt from system utilization reporting and from related summary ADP manpower and cost reporting; and

(iii) Mobile systems equipment is exempt from system utilization reporting only.

### § 281.5 Definitions.

(a) "Analog computer" is a computer which operates on continuous data as distinguished from discrete data. It translates physical conditions such as flow, temperature, pressure, angular position, or voltage into related mechanical quantities and uses mechanical or electrical equivalent circuits as an analog for the physical phenomenon being investigated.

(b) "Automatic data processing (ADP) equipment" for the purpose of this part includes general purpose and special purpose (built to Government specifications) electronic data processing equipment and punch card accounting machines irrespective of use, application, or source of funding.

(c) "Classified system equipment" is ADP equipment, the physical location of which is classified.

(d) "Control systems equipment" is ADP equipment which is an integral part of a total facility or larger complex of equipment and has the primary purpose of controlling, monitoring, analyzing, or measuring a process or other equipment.

(e) "Hybrid computer" is a computer for data processing using both analog representation and discrete representation of data.

(f) "Digital computer" is a computer that operates on discrete data by performing arithmetic and logic processes on these data.

(g) "Hardware system" is an operational or managerial entity of component units (Central Processing Units [CPU's], input/output devices, storage units, terminals, communications devices, etc.).

(h) "Management/function/use classifications" are specific functional areas identified, defined, and coded by Federal agencies in a manner that best describes

each agency's mission and program objectives.

(i) "Mobile systems equipment" is ADP equipment installed on ships, planes, vans, or with military units which are deployed or subject to deployment in areas of active military operations against an enemy force.

**§ 281.6 Policies and procedures.**

(a) *Objective.* The ADP/MIS will provide an inventory and financial management information data base that will:

(1) Facilitate the management of ADP resources and data networks by Federal agencies;

(2) Assist OMB, GSA, the Civil Service Commission, and the Department of Commerce in carrying out their specific Government-wide responsibilities relating to ADP as delineated in OMB Circular A–71, Responsibilities for the administration and management of automatic data processing activities;

(3) Respond to the requirements of OMB Circular A–11, Preparation and submission of annual budget estimates;

(4) Provide for the identification and evaluation of ADP obligations according to the major management/function/use classifications which they support (e.g., the system will identify that portion of the total ADP expenditures of a department or agency directly attributable to major activities such as supply, agricultural production capacity, isotope development, military pay, etc.); and

(5) Provide for future development of additional subsystems which may become a part of the ADP/MIS or may be separate elements in the overall ADP/MIS. These future subsystems will be developed under Office of Federal Management Policy, GSA, direction with participation of involved agencies as the need arises.

(b) *ADP/MIS structure.* The ADP/MIS is composed of two major systems: First, inventory management data; and second, financial management data. Both of these major systems will be composed of a series of subsystems (as shown below) designed to meet specific information requirements.

(1) *ADP inventory management data system.* This system is based on a set of Federal agency reports which feed the computer-based ADP inventory management data bank maintained by the Automated Data and Telecommunications Service (ADTS), GSA, for the use of all Federal agencies. The essential subsystem of this data bank is a perpetual inventory of all Federal ADP equipment by ADP unit. Other subsystems include:

(i) Manpower;

(ii) Cost;

(iii) Hardware system utilization; and

(iv) Distribution of system use according to management/function/use classifications.

Overall policy direction for this system is in this part, but detailed ADP/MIS reporting procedures are issued separately by ADTS.

(2) *ADP financial management data system.* This system is based on a set of agency reports providing basic financial data. Subsystems are:

(i) Obligations for capital investments, in-house operations, contract services, and intra/inter-agency services;

(ii) Man-years; and

(iii) Summary totals of computers and systems.

Requirements for agency reporting are the responsibility of OMB and are being developed in cooperation with the Office of Federal Management Policy. These instructions will be issued at a later date and will be in the form of an addition to this part. Other ADP financial management data requirements of OBM will remain in effect unless they are specifically rescinded.

(3) *Dissemination and release of ADP data bank information.* Coordination by GSA with the agency concerned is required prior to the release of data relating to cost, manpower, hardware system utilization, and management/function/use of that particular agency, except that individual agencies may, if they so desire, delegate full or partial authority to ADTS to release such data without prior coordination.

**§ 281.7 Responsibilities.**

(a) The Office of Federal Management Policy, GSA, is responsible for:

(1) Approving the development and implementation of reporting subsystems and approving the reporting procedures for carrying out the provisions of this part related to the ADP inventory management data system; and

(2) Coordinating the implementation of ADP financial management data system reporting requirements developed by OMB.

(b) The Automated Data and Telecommunications Service, GSA, is responsible for:

(1) Developing and issuing the necessary reporting procedures for carrying out the provisions of this part relating to inventory management data which are part of the data bank, including inventory of hardware, manpower, cost, hardware system utilization, management/fuction/use, and such other subsystems as may be approved for implementation;

(2) Establishing the hardware inventory on a perpetual basis;

(3) Maintaining the subsystems designated as part of the data bank;

(4) Responding to requests from agencies and others for data from the data bank; and

(5) Developing and/or participating in the development of reporting subsystems.

(c) All agencies are responsible for:

(1) Developing internal implementing instructions to carry out the objectives of this part;

(2) Furnishing the necessary data on an accurate and timely basis to comply with this policy directive;

(3) Ensuring the use of these data to improve management practices; and

(4) Recommending such changes, additions, or deletions to the ADP/MIS as they deem necessary to improve the effectiveness of the system.

**§ 281.8 Reporting requirement.**

(a) *ADP inventory management data.* The base date for the reporting of inventory management data was June 30, 1971. Changes to these data will be submitted as they occur. Agency reports will be transmitted in accordance with the reporting schedule set forth in the ADP/MIS Reporting Procedures to:

General Services Administration (CPM)
Washington, DC 20405.

(b) *ADP financial management data.* Reporting requirements will be developed in cooperation with OMB and will be issued at a later date.

**§ 281.9 Inquiries.**

Further information concerning this part may be obtained by contacting:

General Services Administration (AMD)
Washington, DC 20405.
Telephone: IDS 193–43370, FTS (202) 254–3370.

[FR Doc.74–5154 Filed 3–5–74;8:45 am]

## Title 39—Postal Service

## CHAPTER I—UNITED STATES POSTAL SERVICE

## PART 132—SECOND CLASS

### Limitation of Size of Coupons or Application or Order Forms

*Introduction.* On October 2, 1973, the Postal Service published in the FEDERAL REGISTER, 38 FR 27304–5, a notice of proposed rulemaking on this subject. A number of comments were received in response to this publication. All comments submitted with respect to the proposed amendment were given due consideration. The Postal Service has revised its proposed regulations as follows to reflect points raised in the comments.

*Highlights of the revised regulations.* The original proposal declared the intention of the Postal Service to remove restrictions contained in § 132.4(g)(v) of 39 CFR Part 132 which limit the size of coupons or application or order forms contained in second-class publications to not more than one-half the page, and to allow the inclusion in second-class publications of pages, all or portions of which are coupons or application or order forms. In order to assure that pages prepared in this manner are an integral part of the publication, the original proposal contained the requirement that the pages contain the name and date of the publication.

In the revised regulation, the Postal Service promulgates new paragraphs (g)(3)(v) and (g)(3)(vi) of § 132.4 of 39 CFR Part 132 specifically permitting the inclusion in second-class publications of printed coupons or printed application or order forms prepared as regular pages, and pages, other than regular-sized pages, portions of which are printed coupons or printed application or order forms.

In response to comments objecting that the requirement that coupon-bearing pages bear the name and date of the publication was too burdensome, the regula-

tions have been revised to require that such pages bear either the name of the publication or of a part or section of the publication authorized pursuant to § 132.4(e)(4) of 39 CFR Part 132, which deals with parts or sections of publications produced by parties other than the publisher. In addition, the revised regulations require that printed coupons or printed application or order forms prepared as pages be numbered or allowed for in paginated publications. The Postal Service feels that these requirements are sufficient to assure that coupon-bearing pages are an integral part of the publication.

The original proposal also declared the intention of the Postal Service to codify, in a new § 132.4(g)(3)(vi) of 39 CFR Part 132, the existing administrative practice which permits coupons or application or order forms, called "tip-ons", to be permanently attached to the pages of a publication. In order to protect the integrity of second class and to prevent the insertion of unrelated tip-ons in a second-class publication, the original proposal required that a coupon or application or order form must directly relate to the advertising or editorial material printed on the page to which it is permanently attached, and bear the name and date of the publication.

In the revised regulation, the Postal Service codifies the use of tip-ons in a new § 132.4(g)(3)(vii) of 39 CFR Part 132. In response to comments objecting to the burden imposed by the requirement that tip-ons bear the name and the date of the publication, the regulation has been revised to require that tip-ons, like coupon-bearing pages, bear either the name of the publication or of a section authorized pursuant to § 132.4(e)(4) of 39 CFR Part 132.

The revised regulations, like the original proposal, declare the intention of the Postal Service, as a conforming change, to delete § 132.4(h)(2) of 39 CFR Part 132, which deals with the size of coupon-bearing pages.

Accordingly, the Postal Service amends Part 132 of Title 39 of the Code of Federal Regulations, effective June 3, 1974, as follows:

1. In 39 CFR Part 132, paragraph (g)(3)(v) of § 132.4 is revised, and new paragraphs (g)(3)(vi) and (g)(3)(vii) are added to read as follows:

**§ 132.4 What may be mailed at the second-class rates.**

* * * * *

(g) Enclosures, additions, and novelty pages * * *

(3) * * *

(v) Printed coupons or printed application or order forms prepared as pages. Such pages must bear the name of the publication or of an authorized part or section (paragraph (e)(4) of this section), and, if the publication is paginated, be numbered or allowed for, to preclude being considered enclosures prohibited by paragraph (g)(1) of this section.

(vi) Pages, other than regular size pages of a publication, portions of which are printed coupons or printed application or order forms. The name of the publication or of an authorized section (paragraph 4(e)(4) of this section), must appear on the front or back of the sheet (a single leaf) on which such pages are printed to preclude the pages being considered enclosures prohibited by paragraph 4(g)(1) of this section.

(vii) Pages having printed coupons, or printed application or order forms permanently attached. Such coupons or application or order forms must directly relate to advertising or editorial material printed on the page to which they are permanently attached, and must bear the name of the publication or of an authorized section (paragraph 4(e)(4) of this section).

* * * * *

2. In 39 CFR Part 132, paragraph (h)(2) of § 132.4 is revoked and paragraphs (h)(3) through (7) are renumbered accordingly.

(39 U.S.C. §§ 401, 3621)

ROGER P. CRAIG,
*Deputy General Counsel.*

[FR Doc.74-5142 Filed 3-5-74;8:45 am]

## Title 40—Protection of Environment

### CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

### SUBCHAPTER C—AIR PROGRAMS

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

### Review of Indirect Sources

*Correction*

In FR Doc. 74-4143 appearing at page 7270 in the issue of Monday, February 25, 1974, the following amendments to Subpart DDD should be added immediately after the amendments to Subpart CCC, at the very end of the document:

### Subpart DDD—American Samoa

87. Section 52.2822 is revised to read as follows:

**§ 52.2822 Approval status.**

With the exceptions set forth in this subpart, the Administrator approves American Samoa's plan for the attainment and maintenance of the national standards.

88. Subpart DDD is amended by adding a new § 52.2824, as follows:

**§ 52.2824 Review of new sources and modifications.**

(a) The requirements of § 51.18 of this chapter are not met since the Territory of American Samoa failed to submit a plan for review of new or modified indirect sources.

(b) Regulation for review of new or modified indirect sources: The provisions of § 52.22(b) are hereby incorporated by reference and made a part of the applicable implementation plan for the Territory of American Samoa.

## Title 47—Telecommunication

### CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 74-143]

### PART 1—PRACTICE AND PROCEDURE

### Radio Application Procedures

*Correction*

In FR Doc. 74-4451, page 7423, for the issue of Tuesday, February 26, 1974, change "FCC Form 155" in § 1.83(a)(1) to "FCC Form 755."

[Docket No. 19356; FCC 74-113]

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

### Report and Order on Equipment Authorization of RF Devices

*Correction*

In FR Doc. 74-3560, page 5919, for the issue of Friday, February 15, 1974, make the following changes:

1. In § 2.903 change the word "acceptance" in the first lines of paragraphs (a) and (b) to read "approval."

2. In § 2.905 change the word "approval" in the first lines of paragraphs (a) and (b) to read "acceptance."

# Proposed Rules

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

## DEPARTMENT OF THE INTERIOR

### Mining Enforcement and Safety Administration

### [ 30 CFR Part 75 ]

### ILLUMINATION IN UNDERGROUND COAL MINES

### Notice of Public Hearing

Pursuant to the authority vested in the Secretary of the Interior under section 101(a) of the Federal Coal Mine Health and Safety Act of 1969, as amended (83 Stat. 745; 30 U.S.C. 811(a)), and in accordance with section 317(e) thereof (83 Stat. 788; 30 U.S.C. 877(e)) which requires the Secretary to propose standards under which all working places in an underground coal mine shall be illuminated by permissible lighting while persons are working in such places, there was published, as proposed rulemaking, in the FEDERAL REGISTER for October 27, 1971 (36 FR 20607), §§ 75.1719 through 75.1719–4 of Part 75, Subchapter 0, Chapter I, Title 30, Code of Federal Regulations, entitled "Illumination in Underground Coal Mines."

Interested persons were afforded a period of 45 days following publication within which to submit to the Director, Bureau of Mines, written comments, suggestions, or objections to these proposed standards, stating the grounds therefor, and to request a public hearing on such objections.

Written objections were timely filed with the Director, Bureau of Mines, stating the grounds for objections and requesting a public hearing on proposed §§ 75.1719 through 75.1719–4 of 30 CFR Part 75. In accordance with section 101 (f) of the Act, a Notice of Objections Filed and Hearing Requested was published in the FEDERAL REGISTER for February 19, 1974 (39 FR 6118).

Pursuant to section 101(g) of the Act, notice is hereby given that a public hearing will be held on April 4, 1974, beginning at 9 a.m., in the Main Auditorium, United States Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240 for the purpose of receiving relevant evidence on the following issues:

(1) Whether promulgation of illumination standards should await completion of research projects and field tests to ensure that technology is available to implement such standards.

(2) Whether longwall working places should be excluded from the scope of illumination standards because of a potential diminution of safety due to the creation of unavoidable shadows and other variations in light intensity.

(3) Whether some tasks require merely a limited field of vision and can therefore be adequately illuminated by cap lamps.

(4) Whether proposed § 75.1719–4 is properly within the scope of illumination standards, since the section relates to minimum reflectance requirements for mining machinery and hard hats, the use of red flectors or reflecting tape on mining machinery and hard hats, and the mandatory wearing of approved personal cap lamps or an equivalent portable light.

The Acting Administrator — Mining Enforcement and Safety Administration, or his designee, will conduct the hearing.

The hearing shall be conducted in an informal manner and a verbatim transcript will be maintained. All written statements, charts and other data will be received in the record. Within 60 days after completion of the hearing, findings of fact concerning the issues presented at the hearing shall be made and such findings shall be made public.

Persons who desire to testify at the hearing should notify the Acting Administrator — Mining Enforcement and Safety Administration, Department of the Interior, Washington, D.C. 20240, not later than March 29, 1974. Copies of comments, suggestions, and objections filed may be examined at, or obtained from, the office of the Chief, Division of Safety, Coal Mine Health and Safety, Department of the Interior, Washington, D.C. 20240, telephone (202) 343–6384.

WILLIAM A. VOGELY,
*Acting Deputy Assistant Secretary of the Interior.*

MARCH 1, 1974.

[FR Doc.74–5190 Filed 3–5–74;8:45 am]

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### [ 30 CFR Part 77 ]

### ROLLOVER PROTECTIVE STRUCTURES (ROPS) AND FALLING OBJECT PROTECTIVE STRUCTURES (FOPS) FOR MOBILE EQUIPMENT

### Notice of Public Hearing

Pursuant to the authority contained in section 101(a) of the Federal Coal Mine Health and Safety Act of 1969, as amended (83 Stat. 745; 30 U.S.C. 811(a), there was published in the FEDERAL REGISTER for October 9, 1973 (38 FR 27841) a notice proposing to amend § 77.403 and to add a new § 77.403a to Part 77, Subchapter 0, Chapter I, Title 30, Code of Federal Regulations, pertaining to rollover protective structures (ROPS) and falling object protective structures (FOPS) for mobile equipment.

Interested persons were afforded a period in excess of 30 days following publication within which to submit to the Administrator, Mining Enforcement and Safety Administration (MESA), written comments, suggestions, or objections to these proposed standards stating the grounds therefor, and to request a public hearing on such objections.

Written objections were timely filed with MESA stating the grounds for objections and requesting a public hearing on proposed amendments to § 77.403 and new § 77.403a. In accordance with section 101(f) of the Act, a Notice of Objections Filed and Hearing Requested was published in the FEDERAL REGISTER for February 19, 1974 (39 FR 6118).

Pursuant to section 101(g) of the Act, notice is hereby given that public hearing will be held on April 5, 1974, beginning at 9 a.m. in the Main Auditorium, United States Department of Interior, 18th and C Streets, NW., Washington, D.C. 20240, for the purpose of receiving relevant evidence on the following issues:

(1) Whether forklift trucks should be required to be fitted with ROPS and FOPS.

(2) Whether mobile equipment manufactured before July 1, 1969 shall be required to be retrofitted with ROPS no later than 28 months after the effective date of § 77.403a.

(3) Whether the reference in § 77.403 to "substantial" FOPS should be clarified.

(4) Whether the reference in § 77.403a (a) to "haulage vehicles" should be clarified.

(5) Whether this Department's standards should deviate from those of the Occupational Safety and Health Administration (OSHA), Corps of Engineers, or State of California, or whether such standards should be uniform.

The Acting Administrator—Mining Enforcement and Safety Administration, or his designee, will conduct the hearing.

The hearing shall be conducted in an informal manner and a verbatim transcript will be maintained. All written statements, charts and other data will be received in the record. Within 60 days after completion of the hearing, findings of fact concerning the issues presented at the hearing shall be made and such findings shall be made public.

Persons who desire to testify at the hearing should notify the Acting Administrator—Mining Enforcement and Safety Administration, Department of the Interior, Washington, D.C. 20240, not later than March 29, 1974. Copies of comments, suggestions, and objections filed may be examined at, or obtained

from, the office of the Chief, Division of Safety, Coal Mine Health and Safety, Department of the Interior, Washington, D.C. 20240, telephone (202) 343-6384.

WILLIAM A. VOGELY,
*Acting Deputy Assistant Secretary of the Interior.*

MARCH 1, 1974.

[FR Doc.74-5191 Filed 3-5-74;8:45 am]

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### [ 9 CFR Part 94 ]

### MILK AND MILK PRODUCTS

### Proposed Restrictions on Importation

On September 6, 1973, there was published in the FEDERAL REGISTER (38 FR 24219-24220) a proposal to regulate the importation of certain milk and milk products. Based on a review of the many comments received and consideration of additional pertinent information, it appears that cheese, butter, butteroil and consumer size packages containing dry milk products or any formulations thereof should be exempt from import restrictions provided that such consumer size packages are identified thereon as articles prepared for retail sale as human food. The original proposal with changes is published as a new proposal for further comment.

The proposal would place certain restrictions on the importation of milk and milk products which originated in or have transited any country designated in § 94.1 as infected with foot-and-mouth disease or rinderpest. The proposal would permit the importation of such milk and milk products when the following specified conditions are met:

(1) Concentrated liquid milk products would be eligible for unrestricted entry when processed in a hermetically sealed metal container so that the products are shelf stable.

(2) Other liquid milk products would be eligible for unrestricted entry when processed in a specified manner, transported to the United States without refrigeration and accompanied by a certificate attesting that certain processing requirements have been met.

(3) Except for certain exempted items, dry milk products would be permitted restricted entry to go to an approved establishment under seal for further processing.

(4) Limited quantities of milk products for personal consumption would be permitted entry when the importer or his agent signs a statement certifying that such products would be used for personal consumption only.

(5) Provisions would be made for the Deputy Administrator, Veterinary Services, to permit the importation of restricted milk products not specifically provided for when he determines that such action will not endanger the livestock or poultry industry of the United States.

(6) Milk products that originate in a country free of foot-and-mouth disease and rinderpest but which transit any country infected with either of these diseases would be permitted entry when transported under official seal.

*Statement of considerations.* Existing regulations in 9 CFR Part 94 provide a general prohibition against the importation of fresh, chilled, or frozen milk, cream, or other milk products originating in any country considered to be infected with rinderpest or foot-and-mouth disease. There is no provision in the regulations with respect to the import eligibility status of milk and milk products, including those articles and items generally classed as dairy products, which have been subjected to one or more processing procedures, which remove them from the category of fresh, chilled, or frozen.

Research has shown that the virus of rinderpest and foot-and-mouth disease is present in the milk of infected ruminants. Pasteurization is a procedure commonly used in the processing of milk, cream, and most dairy products. While it is known that the application of heat is detrimental to virus survival, scientists of this Department have advised that modern methods of pasteurization cannot be relied upon to provide an acceptable degree of protection if the product reaches susceptible livestock.

Most foreign dairy products are subject to strict requirements to qualify for U.S. importation. The Food and Drug Administration (FDA), Department of Health, Education and Welfare, administers the Import Milk Act which sets standards and conditions applicable to fluid milk and cream, and condensed and evaporated milk. Also, under the Food, Drug and Cosmetic Act, FDA exercises jurisdiction over other types of milk products. The Foreign Agricultural Service, USDA, administers section 22 of the Agricultural Adjustment Act which regulates the importation of dairy products through a quota system. For many years, the annual quota for nonfat dry milk (NDM) has been 1,807,000 pounds, divided between Canada and Australia.

In recent months, production and market conditions, together with depletions of stocks previously held by the Commodity Credit Corporation has resulted in a severe domestic shortage of NDM. Subsequently, the President invoking his authority under the Agricultural Adjustment Act issued four proclamations authorizing the importation during specified periods of a total of 265 million pounds of NDM. Of this, over 100 million pounds originated in countries considered to be infected with foot-and-mouth disease.

Therefore, the proposed amendments appear to be necessary to further protect this country against the introduction of rinderpest or foot-and-mouth disease by importations of milk and milk products.

Evidence presently available to the Department indicates that the unrestricted importation of cheese, butter, butteroil, and consumer size packages containing dry milk products or any formulations thereof, provided such consumer size packages are identified thereon as articles prepared for retail sale as human food, would not constitute a threat to the livestock industry of this country.

Accordingly, notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to section 2 of the Act of February 2, 1903, as amended; and section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306; 21 U.S.C. 111), the Animal and Plant Health Inspection Service is considering amending 9 CFR 94 in the following respects:

1. Section 94.2 and the heading thereof would be amended to read as follows:

**§ 94.2 Fresh, chilled, or frozen products (other than meat), and milk and milk products of ruminants and swine.**

(a) The importation of fresh, chilled or frozen products (other than meat and milk and milk products) derived from ruminants or swine, originating in any country in which foot-and-mouth disease or rinderpest exists (see § 94.1(a)), is prohibited, except as provided in § 94.3 and Parts 95 and 96 of this chapter.

(b) The importation of milk and milk products of ruminants and swine originating in or transiting a country in which foot-and-mouth disease or rinderpest exists (see § 94.1(a)), is prohibited, except as provided in § 94.16.

2. Section 94.15 would be reserved and a new § 94.16 would be added to read:

**§ 94.16 Milk and milk products.**

(a) The following milk and milk products are exempt from the provisions of this section: Cheese, butter, butteroil, and consumer size packages which contain dry milk products, including dry whole milk, nonfat dry milk, dried whey, and dried buttermilk, or any formulations thereof provided such consumer size packages are identified thereon as articles prepared for retail sale as human food.

(b) Milk and milk products originating in a country in which foot-and-mouth disease or rinderpest exists (see § 94.1(a)) may be imported into the United States when the following specified requirements have been met, as applicable:

(1) The product is in a concentrated liquid form in a hermetically sealed metal container and was processed by heat after packing and sealing so that the product is shelf stable without refrigeration.

(2) The product is in liquid form in a hermetically sealed container and was heated after packing and sealing to a temperature of not less than 230°F. for a minimum of 20 minutes. Such product shall be transported to the United States without refrigeration. Each shipment shall be accompanied by a certificate signed by an authorized official of the National Government of the country of origin attesting to the specified packing and processing.

(3) Except as provided in paragraph (a) of this section, dry milk products, including dry whole milk, nonfat dry milk, dried whey, dried buttermilk and

formulations which contain any such dry milk products, shall be permitted entry into the United States only as restricted products and shall be consigned to an approved establishment,[5] except that, upon permission requested by the importer and approved by the Deputy Administrator, Veterinary Services, the product may be stored for a temporary period in an approved warehouse [5] under the supervision of an inspector. Such products shall be transported from the United States port of arrival to an approved establishment [5] or an approved warehouse [5] and from an approved warehouse [5] to an approved establishment [5] only under Department seals or seals of the U.S. Customs Service. Such seals shall be broken only by an inspector or other person authorized to do so by the Deputy Administrator, Veterinary Services. Such products shall not be removed from the approved warehouse [5] or approved establishment [5] except upon special permission by the Deputy Administrator, Veterinary Services, and upon compliance with all the conditions and requirements specified by him for such movement.

(4) Milk products not exempted under paragraph (a) and not included within the provisions of paragraphs (b) (1) through (3) of this section may be imported if the importer first applies to and receives written permission from the Deputy Administrator, Veterinary Services, authorizing such importation. Permission will be granted only when the Deputy Administrator determines that such action will not endanger the livestock or poultry of the United States Products subject to this provision include but are not limited to condensed milks, long-life whole milks, casein and caseinates, lactose, and lactalbumin.

(5) Notwithstanding the provisions of paragraph (b) (1) through (4) of this section, small amounts of milk products subject to the restrictions of this section may in specific cases be imported for purposes of examination, testing, or analysis, if the importer applies to and receives written approval for such importation from the Deputy Administrator, Veterinary Services. Approval will be granted only when the Deputy Administrator determines that such action will not endanger the livestock or poultry industry of the United States.

(6) Milk products imported in an amount not to exceed 10 pounds per person for personal consumption are exempt from the requirements of this section if accompanied by a notarized declaration signed by the importer under oath or affirmation or a statement signed by the owner and witnessed by a Department inspector, stating that the milk product will be used only for consumption by him or his household.

(c) Milk products originating in foot-and-mouth disease and rinderpest free countries listed in § 94.1(a)(2) but which have entered a port or otherwise transited any foot-and-mouth disease or rinderpest infected country designated in § 94.1(a)(1) shall not be imported into the United States unless in compliance with the following requirements:

(1) The product was transported under serially numbered official seals applied at origin by an authorized representative of the country of origin.

(2) The numbers of such seals are listed on or attached to the documents accompanying the shipment.

(3) The seals must be intact and correctly listed when inspection is made by an inspector upon arrival at the United States port.

Any person who wishes to submit written data, views or arguments concerning this proposal may do so by filing them with the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, Maryland 20782, before April 22, 1974.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, Room 870, Hyattsville, Maryland, during regular business hours in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

Done at Washington, D.C., this 28th day of February 1974.

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

[FR Doc.74-5109 Filed 3-5-74;8:45 am]

[5] Information as to the identity of approved establishments and approved warehouses may be obtained from, and request for approval of any such establishment or warehouse may be made to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, Md. 20782. Any establishment or warehouse will be approved for the purpose of this section only if the Deputy Administrator, Veterinary Services, determines that the establishment or warehouse has the equipment, facilities, and capability to store, handle and/or utilize the imported dry milk or dry milk product in a manner which will prevent the introduction or dissemination of livestock or poultry diseases into the United States. Approval of any establishment or warehouse may be refused or withdrawn only after the operator thereof has been given notice of the proposed action and has had an opportunity to present his views thereon.

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

### [ 21 CFR Part 1 ]

### NUTRITION LABELING

### Proposal To Amend Declaration of Amounts of Protein, Fat, and Carbohydrate

The nutrition labeling regulation, § 1.17 (21 CFR 1.17), requires the declaration of the amounts of protein, fat, and carbohydrate to the nearest gram. This has required that a food containing less than one gram of protein, fat, or carbohydrate state either one gram or zero gram, depending on whether there was more or less than one-half gram present.

Elsewhere in this issue of the FEDERAL REGISTER, page 8621, the Commissioner of Food and Drugs is proposing an amendment to § 1.17, to provide an alternative nutrition labeling format for foods which are not meaningful sources of nutrients, and has included a provision for declaring the amount of protein, fat, and carbohydrate as "less than one gram" when such is a true statement.

To maintain consistency in the nutrition labeling regulations, the Commissioner proposes to amend paragraphs (c)(4), (c)(5), and (c)(6) of § 1.17 to permit the use of the same statement when the protein, fat, or carbohydrate in a serving or portion is present in an amount less than one gram. When these components are not present, the manufacturer shall of course declare them as zero gram.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 403, 701(a), 52 Stat. 1040-1042 as amended, 1047, 1055; 21 U.S.C. 321, 343, 371(a)) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes to amend Part 1 in § 1.17 by revising paragraphs (c)(4), (c)(5), and (c)(6) to read as follows:

**§ 1.17 Food; nutrition labeling.**

* * * * *

(c) * * *

(4) "Protein content": A statement of the number of grams of protein in a serving expressed to the nearest gram or, if a serving contains less than one gram, by the statement "Contains less than one gram." Protein content may be calculated on the basis of the factor of 6.25 times the nitrogen content of the food as determined by the appropriate method of analysis of the Association of Official Analytical Chemists, 11th edition, 1970,[1] except when the official procedure for a specific food requires another factor.

(5) "Carbohydrate content" or "Carbohydrate": A statement of the number of grams of carbohydrate in a serving (portion) expressed to the nearest gram or, if a serving contains less than one gram, by the statement "Contains less than one gram."

(6) "Fat content" or "Fat": A statement of the number of grams of fat in a serving (portion) expressed to the nearest gram or, if a serving contains less than one gram, by the statement "Contains less than one gram." Fatty acid composition, cholesterol content, and sodium content may also be declared in compliance with §§ 1.18 and 125.9 of this chapter.

* * * * *

Interested persons may, on or before May 6, 1974, file with the Hearing Clerk, Food and Drug Administration, Room 6-86, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: February 27, 1974.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc. 74-5155 Filed 3-5-74;8:45 am]

## [ 21 CFR Part 1 ]

## NUTRITION LABELING FOR FOOD

### Proposed Nutrition Labeling for Foods Which Are Not Meaningful Sources of Nutrients

In the FEDERAL REGISTER of March 14, 1973 (38 FR 6951), the Commissioner of Food and Drugs promulgated a new regulation, 21 CFR 1.17, governing nutrition labeling for food. Section 1.17(a) provides that any reference in the labeling or advertising of a food to its caloric content requires that the food bear full nutrition labeling pursuant to this section.

Since publication of the March 14, 1973 order, the Commissioner has received five petitions from food manufacturers and trade associations requesting that § 1.17 be amended to permit declaration of the caloric content of certain food without the full nutrition labeling required by the regulation. These petitions are on public display in the office of the Hearing Clerk.

The concepts proposed in the petitions were discussed in the preamble to the initial nutrition labeling order published in the FEDERAL REGISTER of January 19, 1973 (38 FR 2125) and in the preamble to the modified order published in the FEDERAL REGISTER of March 14, 1973 (38 FR 6951). At that time the Commissioner determined that there was not sufficient reason to allow such exemptions from the complete labeling format. However, the petitioners have raised additional points for consideration and have proposed alternate labeling designed to provide consumer with complete information on nutritional value.

1. Borden, Inc. submitted a petition asking that "accessory foods"—those items used as condiments or garnishes, or those associated with other foods, e.g., crackers served with soup—be permitted to declare only caloric content. The petition requested the addition of a new § 1.17(h)(10) to read as follows:

(h) * * *

(10) Accessory foods not otherwise required to bear nutritional information under this section, which are used primarily as adjuncts to other foods (such as condiments, garnishments and the like), thereby being used for their functional rather than their nutritional attributes, may contain, on their labels or in their labeling, information regarding caloric content per serving or portion without complying with this section, provided that

(i) The usual serving or portion size provides not more than 60 calories,

(ii) The caloric content is expressed as provided in paragraph (c)(3) of this section,

(iii) The placement of the caloric information complies with § 1.8d of this chapter, and

(iv) No claims are made that the food is "low calorie" or has "fewer calories" than a counterpart food.

The reasons given in the petition for the proposed change are as follows:

1. Consumers have a high degree of interest in the caloric content of foods. It would be in the best interests of consumers to encourage the placing of this information on food product labels rather than require consumers to purchase and use separate booklets, such as *The Brand-Name Calorie Counter*, to obtain such information.

2. Accessory foods generally contribute nothing to the total diet other than a few calories. They are used for their functional rather than their nutritional contribution to the dietary intake. Many of these products are not devoid of vitamins and minerals, but are used in such small amounts (i.e. not more than 2% of adult daily calorie intake) that they do not and are not expected to contribute significant amounts (i.e. 2% or more of the U.S. RDA) of protein, vitamins, or minerals, to the diet.

3. Manufacturers and distributors of these accessory foods will be discouraged from providing calorie information on their product labels because of the lengthy and basically negative labeling statements required by this section. In many instances, the label space required for full nutritional labeling would displace traditional labeling that the food manufacturer may consider more important to his marketing efforts. In many instances the space is not available at all, or would require larger labels that would increase costs.

4. The requirement that full nutritional labeling appear in all instances where calorie information is given is not in the best interests of consumers, because, for the reasons given above, this requirement will reduce the amount of information provided to consumers on food product labels, particularly for accessory food products.

5. The amendment proposed in this petition specifically excludes foods promoted as "low-calorie." There are very few, if any, "between meal snacks" that would contain 60 calories or less per serving. Therefore, the "strong consumer positions" received by the Food and Drug Administration following the March 30, 1972 nutritional labeling proposal are not in conflict with this petition.

The Commissioner believes that the request to base the use of "caloric information only" on a caloric content of 60 calories, with no reference to other nutrients, ignores the fact that a number of fruits and vegetables would be included. These are not "accessory foods" but many would not differ significantly in composition from the "accessory foods." In addition, 60 calories is equivalent to as much as 15 grams of carbohydrate, the presence of which would not be declared under such proposal.

However, the Commissioner recognizes that there are "accessory foods" which provide solely calories and make no meaningful contribution to nutrient intake. The desire of the petitioner to provide a format for declaring caloric content is reasonable.

2. The General Foods Corporation submitted two petitions. The first petition asks that a paragraph be added to 21 CFR 1.17(h) providing for a modified label statement when a serving of a food contains less than 10 calories. The second petition proposes the addition of a paragraph to 21 CFR 1.17(h) providing for a statement of the caloric content of a serving of the food, and a statement that a serving does not provide meaningful amounts of nutrients when a serving contains more than 10 calories.

The additional paragraph requested in the first petition is as follows:

Food products which are not a meaningful source of protein, fat, carbohydrate, vitamins, or minerals, and which contain no added nutrients, make no nutritional claims, and contain not more than 10 calories per serving or portion; provided, however, that the label thereof may bear a statement such as, "Not a meaningful source of nutrients".

In support of their position, the petitioners provided the following justification:

There are many food products which contain very little in the way of nutrients and which are consumed essentially as meal adjuncts to primarily enhance the sensory or social attributes of the dietary. Examples of such products would be coffee, tea, spices, condiments, etc.

The present regulation offers only two alternatives to manufacturers of products not consumed for nutritional purposes. Either (1) include all the required nutritional information or (2) leave all nutrition information off the label. With products which would fall within this provision, the first alternative would result in a large tabulation with practically no information but a string of zeros. This might well result in consumer confusion. In many cases, it would result in a considerable expense and it is doubtful that the complex negative information would justify the added cost. On the other hand, the second alternative deprives the consumer of any nutrition information.

General Foods believes the proposed amendment would offer a practical and workable compromise. It would offer the manufacturer of foods which are not consumed for nuritional purposes a way of supplying the consumer with desired information. General Foods believes that the proposed amendment would encourage many manufacturers to adopt the abbreviated form of nutrition labeling and thereby supply consumers with information which would otherwise be prohibited by the present regulation. For this reason, General Foods urges the consideration and adoption of the proposed amendment.

This petition requests elimination of almost all of the information provided for in § 1.17 and replaces it with a simple statement. However, the Commissioner believes it is important, even where no vitamins, minerals or protein are present

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

in the product, that consumers have a statement of the actual caloric content. This matter was discussed in the preamble to the nutrition labeling regulation published in the FEDERAL REGISTER of January 19, 1973 (38 FR 2127), in the section on "Standardized Format." Comments on the usefulness of full nutrition labeling, to present both the positive and the negative nutritional profile, resulted in the Commissioner providing for a modified version of the basic nutrition labeling format, but one which does provide information on all aspects included in the basic format.

The second petition by the General Foods Corporation is very similar to the first, but is directed toward products providing over 10 calories per serving. The additional paragraph requested in the second petition is as follows:

Food products which are not a meaningful source of protein, vitamins or minerals, and which contain no added nutrients, make no nutritional claims, and contain more than 10 calories per serving or portion; provided, however, that if such product contains not more than 50 calories per serving or portion, the label thereof may bear a statement such as, "Not a meaningful source of nutrients" together with a statement of the number of calories per stated serving or portion; and provided further, that if such product contains more than 50 calories per serving or portion, the label thereof may bear a statement such as, "Not a meaningful source of nutrition other than calories"—together with a statement of the number of calories per stated serving or portion and the source of such calories; e.g., "one half cup contains 80 calories from carbohydrate".

The reasons given in support of the petition are as follows:

There are many food products which are not consumed for nutritional purposes and which contain very little in the way of nutrients. However, such products do contain calories varying from insignificant to sizeable amounts, depending upon the caloric density of the product and the quantity normally consumed as a serving. Examples of such products would be whipped toppings, soft drinks, syrups, ingredients, etc. General Foods' experience in dealing with consumers has shown that the prime interest in nutrition has been the calorie information. As a result, General Foods has included calorie information on most of its products for more than two years.

The present regulation offers only two alternatives to manufacturers of products not consumed for nutritional purposes. Either, (1) include all the nutritional information, or (2) take all nutrition information off the label. With products which would fall within these provisions, the first alternative would result in little meaningful information except a statement of calories and the source of the calories. This could create consumer confusion and result in unwarranted expense. The second alternative would deprive the consumer of the calorie information.

General Foods believes the proposed amendment would offer a practical and workable compromise. It would offer the manufacturer of foods which are not consumed for nutritional purposes a way of supplying the consumer with the desired calorie information while advising him with a brief statement that the product is not a meaningful source of nutrition.

General Foods believes that the proposed amendment would encourage many manufacturers to adopt the abbreviated form of nutrition labeling and thereby supply consumers with information which would otherwise be prohibited by the present regulation. For this reason, General Foods urges the consideration and adoption of the proposed amendment.

The second General Foods petition is an extension of the first and differs only in that it provides for a statement of calories when a serving of the food contains more than 10 calories but less than 50 calories, and a statement of calories plus the source of such calories when a serving contains more than 50 calories.

The suggestion offered by the petitioner that when a food contains more than 50 calories in a portion, a statement of the calories, the source of calories, and a statement that the product is not a meaningful source of nutrition other than calories, does provide a reasonable alternative for consideration. However, there does not appear to the Commissioner to be any reason why this latter proposal should not apply equally to foods containing 50 or less calories in a portion. In evaluating this proposal the Commissioner has considered its merits in relation to foods which are sources solely of calories and do not contain meaningful amounts of nutrients, without restricting it to a caloric limit.

3. The National Coffee Association of the U.S.A., Inc. requested that declaration of the caloric content of coffee be permitted with an abbreviated statement saying that coffee is not a meaningful source of nutrients, since caloric information has been provided for many years both in labeling and in advertising.

The petitioner requests that 21 CFR 1.17(h) be amended by adding the following subparagraph:

Food products which are not a meaningful source of protein, fat, carbohydrate, vitamins, or mineral, and which contain no added nutrients, make no nutritional claims, and contain not more than 10 calories per serving or portion; provided, however, that the label, labeling or advertising thereof may contain the statement, "Not a meaningful source of nutrients".

In support of its petition the National Coffee Association provided the following comments:

Coffee is not consumed for nutritional purposes. Under the existing provisions of § 1.17, if a coffee manufacturer wishes to inform consumers that they cannot expect any nutritional value from coffee, the manufacturer must bear the burden and expense of full compliance with existing nutritional labeling requirements, which compliance will impart no meaningful information whatsoever to the coffee consumer (and will result, more likely, in a confusing, garbled label). For example, if a two-ounce jar of instant coffee were labeled in conformity with existing requirements of § 1.17, the label would read as follows:

| | |
|---|---|
| Serving Size | 1 tsp, 2.2 g. |
| Serving per Container | 26. |
| Calorie Content | 4 per serving. |
| Protein | 0 g per serving. |
| Fat | Do. |

PERCENTAGE OF U.S. RECOMMENDED DAILY ALLOWANCE OF PROTEIN, VITAMINS AND MINERALS

| | |
|---|---|
| Protein | 0 percent per serving. |
| Niacin | 6 percent per serving. |

CONTAINS LESS THAN 2 PERCENT OF THE U.S. RDA OF VITAMIN A, VITAMIN C, THIAMINE, RIBOFLAVIN, CALCIUM AND IRON

We submit that the consumer would be better served by the allowance of the following statement, which will adequately represent nutritional facts to the consumer:

"Not a meaningful source of nutrients".

The alternative to listing of meaningless information under existing provisions of § 1.17 is for the manufacturer to make no statement at all. This, however, would deprive the consumer of information concerning the lack of meaningful nutritional qualities. This proposed amendment would solve this dilemma.

The amendment would have the additional beneficial effect of encouraging voluntary compliance with the regulations and promoting uniformity of labeling. Voluntary compliance on the part of manufacturers of nonnutritive foods would be greatly encouraged by the ease and simplicity with which compliance could be achieved.

This voluntary compliance would have the further effect of promoting and expanding uniformity of labeling, a goal which the Food and Drug Administration has also recognized: "Once established, it is important that the guides for nutrition labeling be followed by the food industry. A proliferation of different approaches would lead to consumer confusion and would necessitate state regulatory action or statutory authority to control such labeling." 36 FR 22079, Nov. 19, 1971.

To the same effect see statement of March 30, 1972, at 37 FR 6496.

The need for uniformity of labeling has also been recognized by the President's National Commission on Productivity when it found that "reduction or elimination of impediment to productivity due to federal, state and local government regulations" would constitute a major opportunity for productivity gain in the food industry. The Commission reported:

"State and local governments, in responding to local conditions, have instituted many regulations which may differ at times from corresponding Federal regulations. While the intent is to inform the consumer, protect him from unhealthy food and promote nutrition, it must also be recognized that the variation among federal, state and local regulations tends to impede efficiency and reduce compensation. This argues not for less vigilance on behalf of the consumer but for a greater uniformity of standards." Productivity in the Food Industry, Staff Report, National Commission on Productivity, p. 10.

The need for Federal action to promote uniformity of labeling is becoming particularly acute due to the increasing likelihood of state regulation of labeling. For example, Massachusetts promulgated on June 5, 1973, a comprehensive Labeling Regulation that would require mandatory nutritional labeling for virtually all foods, regardless of nutritional claims, in clear conflict with Federal regulations. Action by the Food and Drug Administration to encourage uniformity of labeling will greatly lessen the threat of the issuance of state regulations that could act as impediments on productivity and commerce.

The granting of this exemption would in no way interfere with the goal of the Food

and Drug Administration regulations, i.e., the regulation of "nutrition claims."

In the March 14, 1973 issue of the FEDERAL REGISTER (38 FR 6951) the term "nutrition claim" was defined as: "* * * any claim designed to state or give the impression that a food is a good source of nutrition generally, or of a particular nutrient * * *"

This language makes it clear that the purpose of the regulations is to protect the public from being confused or deceived by claims that a particular product is a good source of nutrition. The regulations would preclude such confusion or deception by requiring specific information as to nutritional content if a manufacturer chooses to make such claims. Obviously, there is no possibility of any such confusion or deception if a manufacturer specifically disclaims any nutritional value for his product, and therefore the amendment NCA proposes is totally consistent with the purpose of the regulations.

This petition would eliminate caloric information on some products which currently do provide such information and replace it with a general statement that the product contains no meaningful amount of nutrients.

4. The National Soft Drink Association filed a petition similar to that of the other parties asking that "low" or "no" calorie carbonated beverages be permitted to state only the caloric content and amount of fat, carbohydrate and protein on the label or in labeling. They propose that a new subparagraph be added to § 1.17(h) as follows:

Artificially sweetened foods which are of a type not normally associated with nutrient properties other than low calorie content (e.g., carbonated beverages, tea and coffee) shall be labeled in accordance with Part 125 of this chapter and shall bear the additional label declaration, "Contains No Vitamins, Proteins, or Minerals" in lieu of the labeling established in paragraph (c) of this section.

The grounds given by the Association for the proposed exemption are:

Carbonated beverages are, and always have been sold as refreshment beverages. They are not sold or marketed as a source of vitamins, minerals or protein, and as a matter of fact the Food and Drug Administration, in establishing the definition and standard of identity for soda water (21 CFR 31.1), deleted a provision which would have permitted the optional addition of Vitamins C and $B_1$ to such beverages. The deletion was based upon a recommendation of the Food Nutrition Board of the National Academy of Sciences which stated, among other things, that the nutrients are not the kinds associated with the foods involved. It would have been and is equally accurate to say that no vitamins, minerals or protein are associated with soda water products.

A possible exception to the description set forth above might be made for artificially sweetened soft drinks which are sold for their low calorie value. However, such an argument would overlook the fundamental fact that a low calorie claim count has never been held to trigger any consideration of vitamin, protein or mineral content in the minds of consumers. Quite the contrary.

The plain fact of the matter is that consumers do not think of soda water products as sources of vitamins, protein or minerals. They are purchased for what they are represented to be, simply refreshment items. Indeed, typically they are consumed in times and places not normally associated with dietary considerations, that is, at parties or with snacks. It is also significant to note, for example, that soft drinks are purchased almost as often for on-premise consumption as for take-home purposes.

Consequently, your petitioner submits that soft drinks generally are not a category of products associated with nutritional values in the mind of the consumer. The consumer simply does not expect vitamins, protein and minerals in soft drinks; thus, they are not purchased for nutritional purposes, neither are they advertised for such purposes.

In the grocery store setting, soft drinks are frequently an impulse item in the consumer's shopping pattern. They are certainly discretionary purchase foods and not identifiable with any view towards planning a balanced menu or diet.

More specifically, artifically sweetened soft drinks are sold simply as a low calorie alternative to their sugar-sweetened counterparts; thus, as the consumer expects no vitamin, protein or mineral benefit from a sugar-sweetened beverage, we submit there is no expectation created by the substitution of a non-nutritive sweetener in whole or in part. Additionally, we have seen no evidence to show that a low calorie representation triggers any sort of nutrient expectation in the minds of consumers. We submit that no such evidence exists.

We urge that it is evident that no real consumer benefit will flow from a labeling regulation requiring a soft drink manufacturer to tell the consumer what the consumer already knows and have the consumer pay for unnecessary facts. This is especially true when the labeling of the product already conveys the pertinent information about the product. In the case of a low calorie soft drink, this would be the statement of the caloric content and the fat, carbohydrate and protein contents as required by other regulations (Part 125). We submit it is unwise and unnecessary to require a detailed tabular listing of the nutrients prescribed in paragraph (c) of § 1.17. We feel that our proposed amendment will meet the goal of the regulation, which can be adequately accomplished by the simple declaration, "Contains No Vitamins, Proteins, or Minerals".

The Commissioner realizes that consumers who use "low" or "no" calorie beverages are primarily concerned with the caloric content, and that most would not expect the products to be sources of nutrients. A labeling format with less information appears to be reasonable, provided it offers sufficient information for consumers readily to identify the nutritional value, or lack of nutrition, of the product.

5. After carefully reviewing the five petitions, and reconsidering the position taken in the proposal and the final orders, the Commissioner concludes that a modified statement for use in a limited number of situations should be published for comment. Since the petitions are all quite similar, referring to products which either have a very low caloric content or are composed of one component which provides calories and no vitamins or minerals, it is proposed that new paragraphs (h)(11) and (h)(12) be added to § 1.17.

One new subparagraph would exempt from the full nutrition labeling format foods which provide per serving less than two percent of the U.S. RDA for protein, vitamins, and minerals, and less than 25 calories. The second would similarly exempt foods which provide calories from only a single component—i.e., from protein, carbohydrate, fat, or any other safe and suitable compound not classified as one of these, such as alcohol—and provide less than two percent of the U.S. RDA per serving of vitamins and minerals. These proposed exemptions would allow for a shortened listing of those nutrients which are not present or are present at less than two percent of the U.S. RDA. However, they require exactly the same nutrition information that would otherwise be required by § 1.17, and thus the consumer will not be deprived of any information which would be available from the full nutrition labeling format.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 403, 701(a), 52 Stat. 1040–1042 as amended, 1047, 1055; 21 U.S.C. 321, 343, 371(a)) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes to amend Part 1 in § 1.17 by adding thereto new paragraph (h)(11) and (12) to read as follows:

**§ 1.17 Food; nutrition labeling.**

* * * * * * *

(h) * * *

(11) A food providing less than 25 calories and two percent of the U.S. RDA of protein and of each vitamin and mineral listed in paragraph (c)(7)(iv) of this section per serving:

(i) May make the following statement in lieu of the "Protein content", "Carbohydrate content", and "Fat content" required by paragraphs (c) (4), (5), and (6) of this section:

(*a*) If protein, carbohydrate, and fat are each present at less than 1 gram: "Contains less than 1 gram each of protein, fat, and carbohydrate".

(*b*) If the product contains no calories: "Contain no protein, fat, or carbohydrate".

(ii) May make the following statement in lieu of the "Percentage of U.S. Recommended Daily Allowances (U.S. RDA)" required by paragraph (c)(7) of this section:

(*a*) If the food contains any vitamin or mineral listed in paragraph (c)(7)(iv) of this section: "Contains less than two percent of the U.S. RDA of any vitamins or minerals".

(*b*) If the food contains no vitamin or mineral listed in paragraph (c)(7)(iv) of this section: "Contains no vitamins or minerals".

(12) A food providing calories derived from only a single component, i.e., protein, carbohydrate, fat, or any other safe and suitable compound not classified as one of these (such as alcohol), and less than two percent of the U.S. RDA of each vitamin and mineral listed in paragraph (c)(7)(iv) of this section:

(i) May make the following statement in lieu of the "Protein content", "Carbohydrate content", and "Fat content", required by paragraphs (c) (4), (5), and (6) of this section: "Contains no _____", the blank to be filled in with calorie sources not present, i.e., protein, carbohydrate, or fat.

(ii) May make the following statement in lieu of the "Percentage of U.S.

Recommended Daily Allowances (U.S. RDA)" required by paragraph (c)(7) of this section if the food contains any vitamin or mineral listed in paragraph (c)(7)(iv) of this section: "Contains less than two percent of the U.S. RDA of any vitamin or mineral".

(iii) May include the following statement in lieu of the "Percentage of U.S. Recommended Daily Allowances (U.S. RDA)" required by paragraph (c)(7) of this section if the food contains no vitamins or minerals listed in paragraph (c)(7)(iv) of this section, as part of the statement permitted in paragraph (h)(12)(i) of this section: "and no vitamins or minerals".

* * * * *

Interested persons may, on or before May 6, 1974, file with the Hearing Clerk, Food and Drug Administration, Room 6–86, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: February 27, 1974.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.74–5156 Filed 3–5–74;8:45 am]

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## Office of Education

## [ 45 CFR Part 176 ]

## SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS PROGRAM

### Notice of Proposed Rule Making

Pursuant to the authority contained in Subpart 2 of Part A of Title IV of the Higher Education Act of 1965 as amended (20 U.S.C. 1070b), notice is hereby given that the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to issue the following regulation under Part 176 of Title 45 of the Code of Federal Regulations governing the operation of the Supplemental Educational Opportunity Grants Program. This program was authorized by the Education Amendments of 1972 (Pub. L. 92–318).

The Supplemental Educational Opportunity Grants Program is an institution-based program which provides grant assistance to students in institutions of higher education who are determined to be in exceptional financial need and who would not for financial reasons but for this grant be able to attend the institution in which they are enrolled. An institution may award grants of up to $1500 for an academic year under this program except that such a grant cannot exceed one-half of the sum of the total amount of student financial aid provided to such student by the institution for that academic year.

Regulations concerning the apportionment of appropriations among the States and the allocation of funds to institutions within each State have previously been published as §§ 176.3 and 176.4 on June 19, 1973 (38 FR 15960–15961). The regulations contained in this notice govern the rest of the program.

Interested persons are invited to submit written comments, suggestions, or objections to the Office of Student Assistance, Bureau of Postsecondary Education, Office of Education, Seventh and D Streets, SW., Washington, D.C. 20202. Such responses to this notice will be available for public inspection at the above address on Mondays through Fridays between 8:30 a.m. and 4:30 p.m. All relevant materials received on or before April 5, 1974, will be considered.

(Catalog of Federal Domestic Assistance No. 13.418, Supplemental Educational Opportunity Grants Program)

Dated: January 14, 1974.

JOHN OTTINA,
*U.S. Commissioner of Education.*

Approved: February 26, 1974.

CASPER W. WEINBERGER,
*Secretary of Health, Education, and Welfare.*

Part 176 of Title 45 of the Code of Federal Regulations is amended by adding §§ 176.1–176.2 and 176.5–176.24 as follows:

Sec.

176.1 Purpose.
176.2 Definitions.
176.5 Institutional applications.
176.6 Approval of requests for funds—criteria.
176.7 Reconsideration of request.
176.8 Institutional agreement.
176.9 Coordination of student financial aid programs.
176.10 Cost of education.
176.11 Student eligibility.
176.12 Expected family contribution for dependent students.
176.13 Expected family contribution for self-supporting or independent students.
176.14 Need analysis systems.
176.15 Duration of student eligibility.
176.16 Amount of grant.
176.17 Payment of grant.
176.18 Summer sessions.
176.19 Affidavit of educational purpose.
176.20 Maintenance of effort.
176.21 Transfer of funds.
176.22 Use of funds.
176.23 Fiscal procedures and records.
176.24 Federal interest in allocated funds.


AUTHORITY.: Sec. 131(b)(1) of Title I of Pub. L. 92–318, 86 Stat. 251–255, (20 U.S.C. 1070b), unless otherwise noted.

### § 176.1 Purpose.

(a) It is the purpose of this part to provide, through institutions of higher education, Supplemental Educational Opportunity Grants to assist in making available the benefits of postsecondary education to qualified students, who for lack of financial means of their own or of their families, would be unable to obtain such benefits without such a grant.

(20 U.S.C. 1070b)

### § 176.2 Definitions.

For the purposes of this part:

(a) "Academic year" means a period of time usually 8 or 9 months, in which a full-time student would normally be expected to complete the equivalent of two semesters, two trimesters, three quarters, 28 semester hours, 42 quarter hours or 900 clock hours of instruction.

(b) "Act" means Title IV–Part A Subpart 2 of the Higher Education Act of 1965, as amended.

(c) "Clock hour" means a period of time which is the equivalent of either (1) a 50 to 60 minute class, lecture or recitation, (2) two hours of laboratory, shop training, or internship requiring outside preparation, (3) 2 hours of outside preparation related to paragraph (c) (1) and (2) of this section, or (4) 3 hours of laboratory shop training, or internship not requiring outside preparation.

(d) "College Work-Study Program" is a federally-supported program of part-time employment authorized by Title IV, Part C, of the Higher Education Act of 1965.

(42 U.S.C. 2751–2756)

(e) "Continuing grant" means an award of a Supplemental Educational Opportunity Grant to a student that does not qualify as an "initial grant" as defined in § 176.2.

(f) "Dependent student" is one who does not qualify as a "self-supporting or independent student" as defined in § 176.2.

(g) "Expected family contribution of a dependent student" means the sum of the amounts which reasonably may be expected from the student and his spouse to meet the student's cost of education as described in § 176.10 and the amount which reasonably may be expected to be made available to him by his parents for such purpose.

(h) "Expected family contribution of an independent or self-supporting student" means the amount which reasonably may be expected from the student and his spouse to meet the student's cost of education as described in § 176.10.

(i) "Full-time student" means a student who is carrying a full-time academic work load, other than by correspondence, measured in terms of (1) course work or other required activities as determined by the institution in which the student is enrolled, including any combination of courses, work experience, research or special studies which the institution requires of the student to consider him as being engaged in full-time study, and which amounts to the equivalent of a minimum of 12 semester hours or 12 quarter hours per academic term for institutions utilizing trimesters, semesters, or quarter hour systems, or which consists of a program requiring a minimum of 25 clock hours per week for those institutions that do not utilize such systems, and (2) the tuition and fees customarily charged for full-time study by the institution.

(20 U.S.C. 1088(c)(2))

(j) "Good standing" means the eligibility of a student to continue in attendance in accordance with the standards and practices of the institution in which he is enrolled.

(k) "Half-time student" means a student who is carrying a half-time academic work load measured in terms of (1) course work or other required activities as determined by the institution in which the student is enrolled, including any combination of courses, work experience, research or special studies which the institution requires of the student to consider him as being engaged in part-time study, and which amounts to a minimum of 6 semester hours or 6 quarter hours for institutions utilizing trimesters, semesters or quarters, or which consists of a program requiring a minimum of 13 clock hours per week for those institutions which do not utilize such systems, and (2) the tuition and fees customarily charged for half-time study by the institution. All students engaged in a program of study by correspondence which is offered as requiring at least 12 hours of preparation a week shall be considered half-time students for purposes of this part.

(l) "Initial grant" means the first Supplemental Educational Opportunity Grant (Supplemental Grant) awarded to a student. Payment for the first year of a Supplemental Grant shall not be considered to be an initial grant payment if the grant was awarded for the continuing education of a student who (1) had been previously awarded a Supplemental Grant (whether or not by another institution), and (2) had received any payment of that Supplemental Grant.

(m) "Institution of higher education" means an educational institution in any State which (1) 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) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association or, if not so accredited, (i) 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 acreditation standards of such an agency or association within a reasonable time, or (ii) 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. Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provision of paragraph (m) (1), (2), (4), and (5) of this section unless the school is a public institution in which case it may also be accredited by the State agency in that State which has been listed by the Commissioner as a reliable authority as to the quality of public postsecondary vocational education in that State, and any proprietary institution of higher education, as defined in § 176.2, which has an agreement with the Commissioner containing such terms and conditions as the Commissioner determines to be necessary to insure that the availability of assistance to students at the school under this title has not resulted, and will not result, in an increase in the tuition, fees, or other charges to such students.

(20 U.S.C. 1087–1(b), 1141(a))

(n) "National Direct Student Loan Program" is the student loan program authorized by Title IV, Part E of the Higher Education Act of 1965.

(20 U.S.C. (1087 aa–ff))

(o) "National of the United States" means (1) a citizen of the United States, or (2) a person who though not a citizen of the United States owes permanent allegiance to the United States.

(8 U.S.C.A. 1101(a)(22))

(p) "Parent" means the mother or father of the student, unless any other person, except the student's spouse, provides more than one-half of the student's support and claims or is eligible to claim the student as an exemption for Federal income tax purposes, in which case such person shall be considered the parent.

(q) "Proprietary institution of higher education" means a school (1) which provides not less than a six-month program of training to prepare students for gainful employment in a recognized occupation, (2) which 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, (3) which is legally authorized by the State in which it is located to provide a program of education beyond secondary education, (4) which is accredited by a nationally recognized accrediting agency or association approved by the Commissioner for this purpose, (5) which is not a public or other nonprofit institution, and (6) which has been in existence for at least two years.

(20 U.S.C. 1088(b)(3))

(r) "Self-supporting or Independent Student" means a student who:

(1) Has not and will not be claimed as an exemption for Federal income tax purposes by any person except his or her spouse for the calendar year(s) in which aid is received and the calendar year prior to the academic year for which aid is requested,

(2) Has not received and will not receive financial assistance of more than $600 from his or her parent(s) in the calendar year(s) in which aid is received and the calendar year prior to the academic year for which aid is requested, and

(3) Has not lived or will not live for more than 2 consecutive weeks in the home of a parent during the calendar year in which aid is received and the calendar year prior to the academic year for which aid is requested.

Notwithstanding the foregoing, a student will not be considered to have been claimed as an exemption by a parent, or to have received $600 from a parent, or to have lived with a parent, who has died prior to the student's submission of an application for a grant.

(s) "State" means, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(20 U.S.C. 1141 (b); 20 U.S.C. 1088(a))

(t) "Undergraduate course of study" means a regularly prescribed curriculum for an undergraduate student at an institution of higher education.

(u) "Undergraduate student" means a student who (1) is in attendance at an institution of higher education, (2) has not earned his first baccalaureate or professional degree, and (3) is not enrolled in a program that leads to (i) a first professional degree when at least three years of study at the postsecondary level are required for entrance into the program leading to such a degree, or (ii) a degree beyond the bachelor's degree or a first professional degree. Such term does not include any student who is enrolled in that portion of a program that involves study beyond the fourth year of study at the postsecondary level unless such program is designed to extend for a period of five years.

(20 U.S.C. 1070b unless otherwise noted)

### § 176.5 Institutional applications.

(a) An institution that wishes to participate in the Supplemental Educational Opportunity Grants Program shall timely file an application with the Commissioner which shall be in such form and contain the following information and such other information as the Commissioner may from time to time prescribe:

(1) The institution's total request for Federal student financial aid funds under this part, the College Work-Study Program and the National Direct Student Loan Program;

(2) The institution's anticipated enrollment for the forthcoming academic year;

(3) The anticipated number of percentage of enrolled students eligible for initial and continuing grants;

(4) The institution's average cost of attendance;

(5) An estimate of the expected family contribution for those students expected to be eligible for such grants;

(6) The anticipated average grant; and

(7) The amount of financial assistance awarded by the institution from its own scholarship and student aid programs for the most recent academic year for which information is available.

(b) The Commissioner will from time to time establish cutoff dates for the filing of applications.

(20 U.S.C. 1070b-3(b))

**§ 176.6 Approval of requests for funds; criteria.**

(a) The Commissioner will convene panels of qualified persons in each of the ten regions served by regional offices of the Office of Education, to review applications submitted under this part by institutions situated in those regions.

(b) The review panel described in paragraph (a) of this section shall recommend that the Commissioner designate an amount which it has determined to be reasonably required by each institution on the basis of a review of the institution's application in accordance with the following criteria:

(1) The reasonableness of the institution's total request for Federal student financial aid funds under this part in light of its requests under the College Work-Study Program and the National Direct Student Loan Program and in relation to the institution's anticipated enrollment, the average cost of education, and the ability of those students eligible under those programs and their families to pay for the cost of education;

(2) the reasonableness of the anticipated number of students eligible for initial and continuing grants in view of the institution's anticipated enrollment;

(3) the reasonableness of the amount of the average grant anticipated in relation to the average need per student at the institution and after taking into account other available student financial aid resources;

(4) the extent to which the institution has effectively utilized Federal financial aid funds allocated in previous years;

(5) the nature of the institution's demonstrated commitment to enroll students with exceptional financial need; and

(6) the extent to which the institution has administered or made provision for the effective administration of the program, including effective coordination with institutional and other programs of student financial aid.

(20 U.S.C. 1070b-3)

**§ 176.7 Reconsideration of request.**

(a) Institutions which file applications for funding under this part will be notified of the amounts determined by the panel to be a reasonable request. If that amount is less than the institution's request, an explanation will be forwarded to the institution. The institution shall notify the regional office of the Office of Education serving the area in which the institution is located of any arithmetic or other technical errors with regard to the panel determination. The regional office will adjust the determination to correct such errors. In the event no appeal is made pursuant to paragraph (b) of this section the Commissioner will adopt the panel recommendation or the adjusted panel recommendation, as the case may be, made pursuant to this paragraph.

(b) If an institution wishes to request a review of the panel determination on the merits it shall submit a written request for such review to the regional office of the Office of Education serving the area in which the institution is located within such time as may be specified by the Commissioner. The request for review may include additional information relevant to the recommendation of a reduction. The regional office will review such requests and will notify the institution in writing of its decision and the reasons therefor.

(c)(1) An institution may appeal the decision reached in paragraph (b) of this section to the Office of Student Assistance, Bureau of Postsecondary Education of the Office of Education. The Office of Student Assistance will submit the appeal to a national appeals panel. Such a panel shall consist of institutional student financial aid officers from each of the regions served by the Office of Education and personnel of the Office of Education.

(2) Such appeal shall be submitted in writing by the institution to the regional office of the Office of Education serving the area in which the institution is located within 10 days of the date of the notification of the regional office's decision described in paragraph (b) of this section. The regional office will forward the appeal and all relevant documents to the Office of Student Assistance. However, no additional information beyond that which was available to the regional office for its review will be considered.

(d) The Commissioner will allocate funds to applicant institutions within each State on the basis of the appropriate panel or regional office recommendation.

(20 U.S.C. 1070b-3)

**§ 176.8 Institutional agreement.**

An institution of higher education which desires to participate in the Supplemental Educational Opportunity Grants Program shall enter into an agreement with the Commissioner. Such agreement shall:

(a) Provide that funds received by the institution under this part will be used solely for the purposes specified in, and in accordance with, the provisions of this part;

(b) Provide that in determining whether an individual meets the requirements of exceptional financial need the institution will consider the source of such individual's income and that of any individual or individuals upon whom the student relies primarily for support, and make an appropriate review of the assets of the student and of such individuals;

(c) Provide that the institution, in cooperation with other institutions of higher education where appropriate, will make vigorous efforts to identify qualified youths of exceptional financial need and to encourage them to continue their education beyond secondary school through programs and activities such as (1) establishing or strengthening close working relationships with secondary school principals and guidance and counseling personnel with a view toward motivating such students to complete secondary school and pursue post-secondary school educational opportunities, and (2) making, to the extent feasible, conditional commitments for student financial aid to qualified secondary school students who, but for such grants would be unable to obtain the benefits of higher education, with special emphasis on students enrolled in grade 11 or lower grades who show evidence of academic or creative promise;

(d) Include provisions which specify that the institution must make Supplemental Educational Opportunity Grants under this part reasonably available (to the extent of funds available) to all eligible students at the institution;

(e) Include provisions which specify that the institution will comply with the provisions of § 176.20 relating to maintenance of effort and § 176.22 relating to costs of administration; and

(f) Include such other provisions as may be necessary to protect the financial interest of the United States and promote the purposes of this part.

(20 U.S.C. 1070b-2)

**§ 176.9 Coordination of student financial aid programs.**

(a) The institution shall appoint an official who shall have the responsibility or coordinating the program covered by this part with the institution's Federal and non-Federal programs of student financial aid.

(b) The institution shall not award a Supplemental Educational Opportunity Grant to a student in an amount which, when combined with the other resources available to such student, would exceed such student's need, i.e., the difference between the amount required to enable the student to pursue his education at the institution and his expected family contribution. Resources as used in this section include any waiver of tuition and fees, any scholarship or grant-in-aid including athletic scholarship, any fellowship or assistantship, any long term loan made by the institution, except where paragraph (c) of this section applies, and any expected net earnings from employment during the periods for which the student received a grant.

(c) A loan made under the Guaranteed/Insured Student Loan Program (Title IV-B, Higher Education Act of 1965) shall be treated in the following manner:

(1) Loans for which interest benefits are not payable under section 428 of Title IV-B of the Higher Education Act of 1965 shall not be considered a student resource if the amount of such a loan does not exceed the borrower's expected family contribution. If the amount of such a loan exceeds the borrower's expected family contribution only such

excess shall be considered a student resource.

(2) Loans for which interest benefits are payable under section 428 of Title IV-B of the Higher Education Act of 1965 shall be considered a student resource except that if the expected family contribution determined by the lender is less than the expected family contribution determined by the institution the portion of the loan representing that difference need not be considered a student resource.

(d) The institution's responsibility under paragraph (b) of this section shall extend to only those resources which the institution itself makes available to the student, or about which it knows or has reason to know or can reasonably anticipate at the time that Supplemental Educational Opportunity Grant funds are disbursed to the student. In any event an institution will not be deemed to have violated the requirement contained in paragraph (b) of this section if the sum of all resources made available to the student including a grant under this part exceeded that student's need by not more than $100.

(20 U.S.C. 1070b)

**§ 176.10 Cost of education.**

The amount required to enable a student to pursue his education at an institution of higher education includes amounts charged for tuition and fees, the amounts charged by the institution or the expenses reasonably incurred for room and board, books, supplies, transportation, miscellaneous personal expenses, and expenses related to maintenance of a student's dependents. In the case of students engaged in a program of study by correspondence only the costs of tuition and fees shall be recognized as a cost of pursuing an education for the purpose of this part.

(20 U.S.C. 1070b)

**§ 176.11 Student eligibility.**

(a) A student is eligible for a grant under this part if such student:

(1) is a national of the United States, is in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territories of the Pacific Islands;

(2) has been accepted for enrollment as at least a half-time undergraduate student at an institution of high education or, in the case of an undergraduate student already attending such institution, is in good standing and is enrolled on at least a half-time basis at such institution;

(3) shows evidence of academic or creative promise and capability of maintaining good standing in his course of study;

(4) is of exceptional financial need as determined in accordance with paragraph (b) of this section; and

(5) would not, but for a Supplemental Educational Opportunity Grant, be financially able to pursue a course of study at such institution.

(b) For purposes of paragraph (a) (4) of this section a student shall be considered in exceptional financial need if his expected family contribution does not exceed 50 percent of his cost of education at the institution in which he is enrolled or accepted for enrollment.

(c) A member of a religious community, society, or order who by direction of his or her order is pursuing a course of study in an institution of higher education or who receives support and maintenance from the community, society, or order shall be deemed not to have financial need.

(20 U.S.C. 1070b–2)

**§ 176.12 Expected family contribution for dependent students.**

(a) When calculating the expected family contribution of a dependent student, the student financial aid officer shall take into account such student resources as the student's earnings, earnings of the student's spouse, income of the student or his spouse from trusts, estates, gifts or securities, funds paid the student under the Veteran's Educational Assistance Program (38 U.S.C. 1651 *et seq.*) and the War Orphans' and Widows' Educational Assistance Program (38 U.S.C. 1700 *et seq.*) and the net assets of the student and his spouse.

(b) In determining the amount which reasonably may be expected to be made available to a dependent student by his parents to meet the student's costs of pursuing his education, the student financial aid officer of the institution shall take into consideration:

(1) parental income and net assets which should be reasonably available for this purpose;

(2) any serious illness in the family (family members include the student, the student's parents, and persons for whom the parent may claim an exemption under section 151 of the Internal Revenue Code);

(3) the number of dependent children of the student's parents;

(4) the number of such dependent children attending institutions of higher education;

(5) tuition incurred by such dependent children who are attending elementary and secondary schools; and

(6) such other circumstances as may affect the ability of the student's parents to contribute toward the cost of his education.

(20 U.S.C. 1070b–2)

**§ 176.13 Expected family contribution for self-supporting or independent students.**

(a) In determining a self-supporting or independent student's expected family contribution the student financial aid officer shall take into account such resources as the student's earnings, earnings of the student's spouse, income of the student or his spouse from trusts, estates, gifts, or securities, funds paid the student under the Veteran's Educational Assistance Program (38 U.S.C. 1651 *et seq.*) and the War Orphans' and Widows' Educational Assistance Program (38 U.S.C. 1700 *et seq.*), and the net assets of the student and his spouse.

(b) In determining the amount which reasonably may be expected to be made available by a self-supporting or independent student to meet his cost of education, the student financial aid officer of the institution shall take into consideration:

(1) that portion of the income and net assets of the student and the student's spouse which should reasonably be available for this purpose;

(2) any serious illness in the family (family members include the student, the student's spouse, and persons for whom the student or spouse may claim an exemption under § 151 of the Internal Revenue Code);

(3) the number of dependent children of the student;

(4) the number of such dependent children attending institutions of higher education;

(5) tuition incurred by such dependent children who are attending elementary and secondary schools; and

(6) such other circumstances as may affect the ability of the student or spouse to contribute toward the cost of the student's education.

(20 U.S.C. 1070b–2)

**§ 176.14 Need analysis systems.**

(a) In determining the amount of a student's expected family contribution, the institution shall use a need analysis system (or method of calculation) approved for that purpose by the Commissioner. The method of calculating an expected family contribution used in the Basic Educational Opportunity Grants Program (45 CFR 190.30–190.39, and 190.41–190.48), the systems of need analysis published by the American College Testing Service and the College Scholarship Service, and the Income Tax System are approved by the Commissioner for this purpose, except that the Income Tax System is not approved for use in calculating the expected family contribution of a self-supporting or independent student.

(b) For purposes of this part, the expected family contribution calculated according to the Income Tax System shall be an amount equal to, in the case of a dependent student, the amount of income tax paid by the parents of such student, 5 percent of such parents' net assets in excess of $7,500 and any amount the student is reasonably able to contribute.

(c) The Commissioner will approve a need analysis sytem or a method of calculating an expected family contribution if it produces expected family contributions comparable to those that would be determined under one or more of the systems specified in paragraph (a) of this section.

(d) An institution utilizing a need analysis system approved by the Commissioner shall adjust the expected family contribution obtained from that system to reflect tuition costs incurred by dependent children of the student's parents (or, in the case of a self-supporting

or independent student, the dependent children of the student) who are in elementary and secondary schools, if that system does not already take that cost into account.

(e) The institution may in an individual case further adjust the expected family contribution calculated according to one of the approved need analysis systems or methods of calculation where the student financial aid officer of the institution has reason to believe that such expected family contribution does not realistically reflect the ability of the student and his parents to contribute toward the student's cost of education. Such adjustments with an accompanying explanation shall be reduced to writing and made part of the institution's records.

(20 U.S.C. 1070b–2)

**§ 176.15 Duration of student eligibility.**

(a) The period during which a student may receive a Supplemental Educational Opportunity Grant shall be the period required for the completion of the undergraduate course of study being pursued by the student except that such period may not exceed a total of four academic years unless (1) the student is pursuing a course of study leading to a first degree in a program of study which is designed by the institution offering it to extend over five academic years, or (2) because of his particular circumstances, the student is determined by the institution to need an additional year to complete a course of study normally requiring four academic years, in which case such a period may be extended for not more than one additional academic year.

(b) For purposes of paragraph (a) of this section an academic year means the period of time necessary for a student to complete the equivalent of 28 semester hours, 42 quarter hours, or 900 clock hours of instruction.

(20 U.S.C. 1070b–1)

**§ 176.16 Amount of grant.**

(a) The amount of a grant awarded to a student for any academic year shall be equal to the amount determined by the institution to be needed by that student enable him to pursue a course of study at the institution for an academic year except that such amount shall not exceed $1,500 or one-half the sum of the total amount of student financial aid made available through the institution to such student, whichever is the lesser. However, no grant shall be awarded to any student for any academic year if the amount of such award for such period would be less than $200.

(b) For purposes of paragraph (a) of this section, payments to students under the Basic Educational Opportunity Grants Program, the College Work-Study Program, and the National Direct Student Loan Program, this part, and any assistance provided to a student under any scholarship program established by a State or a private institution or organization shall be deemed to be student financial aid made available through the institution.

(c) No student shall be awarded in the aggregate more than $4,000 under this part, except that a student who is pursuing a course of study leading to a first degree in a program of study which is designed by the institution offering it to extend over five academic years or who is, because of his particular circumstances, determined by the institution to need an additional year to complete a course of study normally requiring four academic years, may receive an amount which in the aggregate is not in excess of $5,000.

(20 U.S.C. 1070b–1)

**§ 176.17 Payment of grant.**

(a) For those institutions which utilize such academic units, an institution shall disburse to a student his Supplemental Educational Opportunity Grant in equal amounts at least once a semester, or trimester, or quarter of the academic year during which he is in attendance. For institutions not utilizing such academic periods, payments shall be made not less than twice during an academic year, but in any event one payment shall be made at the beginning of the academic year and another at the midpoint of such academic year. During each such academic period, the institution may pay the student at such times and in such amounts as the institution determines will best meet his need for such funds.

(b) In order to qualify as financial aid for the purpose of satisfying the limitation contained in paragraph (a) of § 176.16, i.e., that grant assistance under the Supplemental Educational Opportunity Grants Program be limited to one-half of the amount of financial aid made available to the student through the institution, such aid must be disbursed by the institution to the student prior to the end of the academic year for which the student received an award under this part. If such financial aid is in the form of compensation for work performed for the institution, such compensation must be earned by and paid to the student prior to the end of such academic year. However, this requirement is not applicable to the extent that such aid is in the form of scholarships from outside sources where disbursements are not within the control of the institution.

(c) A Supplemental Educational Opportunity Grant awarded under this part shall entitle the recipient to receive payments only if he continues to be in exceptional financial need and (1) is maintaining satisfactory progress in the course of study he is pursuing according to the regularly prescribed standards and practices of the institution from which he received the grant, and (2) is carrying an academic workload sufficient to qualify him as at least a half-time student during the academic year.

(d) Before making the initial payment of a Supplemental Educational Opportunity Grant the institution shall obtain from the student a signed statement indicating (1) that he has received notice of the amount of his Supplemental Educational Opportunity Grant, the conditions to which that grant is subject, the nature and source of other student financial aid awarded to him by the institution and (2) his acceptance of the Grant and such other aid.

(e) An institution shall maintain records indicating the amount of need determined for each student and the way that need has been met and shall identify the institutional officer who made the determination of such need.

(20 U.S.C. 1070b)

**§ 176.18 Summer sessions.**

(a) A student enrolled in one or more classes during a period of non-regular enrollment, such as a summer vacation period or other equivalent period, may be eligible for a Supplemental Educational Opportunity Grant if he is registered as at least a half-time student at that institution during such session. That student, however, must have been in attendance as at least a half-time student at that institution during the regular term immediately preceding such session or show evidence of intent to enroll as at least a half-time student during the subsequent regular term at the institution awarding him the grant.

(b) A student receiving a grant while in attendance during such a period of non-regular enrollment will be considered to have expended at least one-half of a semester, trimester, or quarter, as the case may be, of grant eligibility.

(20 U.S.C. 1070b–1)

**§ 176.19 Affidavit of educational purpose.**

(a) No grant may be made under this part unless the student to whom it is made has filed with the institution of higher education which he intends to attend, or is attending, an affidavit on a form approved by the Commissioner stating that the money attributable to such grant will be used solely for expenses related to attendance or continued attendance at such institution.

(b) The student must sign the affidavit in the presence of a notary or other person who is legally authorized to administer oaths or affirmations and who does not take part in the recruiting of students for enrollment at such institution. The notary or other person must enter his signature and, as applicable, his seal or stamp on the affidavit form.

(20 U.S.C. 1088g)

**§ 176.20 Maintenance of effort.**

(a) For each fiscal year for which it receives an allocation of funds under this part, the institution shall continue to expend, in its own scholarship and student aid programs an amount which is not less than the average expenditure per year made for that purpose during the three fiscal years preceding (1) the effective date of any agreement required by section 443 of the College Work-Study Program (42 U.S.C. 2753) or section 407 of the Educational Opportunity Grants

Program (20 U.S.C. 1067) which was in effect on June 30, 1973, (2) the fiscal year for which the institution receives or received its first allocation of funds under the College Work-Study Program, (3) the fiscal year for which the institution received its first allocation of funds under the Educational Opportunity Grants Program (20 U.S.C. 1061–1067, 1069), or (4) the fiscal year for which the institution receives or received its first allocation of funds under this part if the institution has not participated in the Educational Opportunity Grants Program in the fiscal year immediately preceding that fiscal year, whichever is the latest.

(b) The Commissioner may waive the requirements set forth in paragraph (a) of this section for a fiscal year under special and unusual circumstances, such as, where the institution's inability to expend the amount required thereunder is attributable to (1) a withdrawal of funds from outside sources (for public institutions, public appropriations are not considered outside sources), or (2) a decline in enrollment where the institution continued to expend in its own scholarship and student aid program on a per enrolled student basis an amount at least equal to the average amount expended per enrolled student during the three year base period.

(c) In order to obtain a waiver of the maintenance of effort requirement set forth in paragraph (a) of this section for a particular fiscal year, an institution shall submit to the Commissioner, a request for such a waiver and a description of the circumstances justifying such a waiver.

(d)(1) An institution's "own scholarship and student financial aid program" includes any expenditure of institutional funds for scholarships, grants, loans, tuition and fee waivers or remissions, and employment given to students enrolled at the institution at both the graduate and undergraduate level, whether or not such students are eligible to participate in the Supplemental Educational Opportunity Grants or College Work-Study Programs. Funds given to the institution from an outside source to be used for scholarships or other forms of student financial aid, but which are controlled and administered by the institution, that is, the institution has the authority to choose the recipients of such assistance and the amount such recipients will receive, shall be deemed to be institutional funds; however, funds received from Federal sources to be used for student financial aid may not in any event be considered as part of an institution's own scholarship and student financial aid program of the institution for purposes of paragraph (a) of this section.

(e)(1) An institution may in accordance with its stated practice consider scholarships and other student financial assistance given to students who are dependents of faculty members or other employees of the institution as either student financial aid or employee benefits.

(2) An institution shall include fellowships and assistantships as part of its program of student financial assistance unless it is the stated practice of the institution to consider such holders of fellowships and assistantships as members of the institutions' faculty. In such a case payments under such fellowships and assistantships need not be considered financial aid.

(3) An election of treatment under paragraphs (e) (1) and (2) of this section shall apply to both the base year period and current year expenditures. A change of treatment will be permitted only with the express written approval of the Commissioner.

(20 U.S.C. 1088c)

**§ 176.21 Transfer of funds.**

(a) An institution may transfer up to 10 percent of its allocation for a fiscal year under the Supplemental Educational Opportunity Grants Program to its allocation of funds for that fiscal year under the College Work-Study Program to be used in accordance with the provisions of that latter program. Similarly, an institution may transfer up to 10 percent of its allocation for a fiscal year under the College Work-Study Program to its allocation of funds for that fiscal year under the Supplemental Educational Opportunity Grants Program to be used in accordance with the provisions of this part. The transfer of funds from the Supplemental Educational Opportunity Grants Program may be made without regard to whether such funds were allocated for initial or continuing grants and funds transferred to the Supplemental Educational Opportunity Grants Program may be allocated by the institution between its allocation for initial or continuing grants as the institution sees fit.

(b) Any amount transferred pursuant to paragraph (a) of this section shall be reported on the annual fiscal operations report.

(20 U.S.C. 1088e)

**§ 176.22 Use of funds.**

(a) Federal funds allocated to an institution may be used by the institution (1) to make grants to eligible students, (2) as payments in lieu of reimbursement for its expenses in administering the program during the fiscal year, and (3) to transfer to the College Work-Study Program pursuant to § 176.21.

(b) An institution of higher education shall be entitled to use as payment in lieu of reimbursement for its administrative expenses for each fiscal year for which it receives an allocation under § 176.4 an amount equal to not more than three percent of the institution's payments to its students from its allocation for that fiscal year. However the aggregate amount paid to an institution in lieu of expenses for administration under this part and the College Work-Study Program plus the amount withdrawn for such purposes from the institution's National Direct Student Loan fund may not in the aggregate exceed $125,000 for any fiscal year.

(20 U.S.C. 1070b; 1088b)

**§ 176.23 Fiscal procedures and records.**

(a) *Fiscal procedures.* The institution shall administer the Supplemental Educational Opportunity Grants Program in such a manner as to provide for an adequate system of internal controls. The various administrative procedures shall be divided so as to provide for a system of checks and balances under which no person will handle all aspects of the program. The functions of authorizing payment, disbursement of funds, and financial record keeping shall be divided in such a fashion that no office has responsibility for more than one such function with respect to any particular student aided under the program.

(b) *Records and reporting.* (1) Each institution shall establish and maintain on a current basis such general ledger control accounts and related subsidiary accounts as are necessary to identify all transactions involving Federal Funds available under this part and to separate records of such transactions from all other institutional assets and activities. Such records shall afford read identification of each student's account and the status thereof, including separation of initial and continuing grant amounts.

(2) An institution shall submit an Institutional Fiscal Operations Report and such other reports and information in such form and at such times as the Commissioner may require in connection with the administration of this part and shall comply with such requirements as the Commissioner may find necessary to insure the correctness of such reports.

(20 U.S.C. 1070b)

**§ 176.24 Federal interest in allocated funds.**

Funds received by an institution pursuant to this part except for funds authorized for administrative expenses are to be held in trust for the intended student beneficiary. Such funds may be used only for the purposes for which they were allocated and may not be pledged or hypothecated for any other purpose.

(20 U.S.C. 1070b)

[FR Doc.74-4986 Filed 3-5-74;8:45 am]

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Government National Mortgage Association

### [ 24 CFR Part 390 ]

[Docket No. R-74-255]

### ELIGIBLE ISSUERS OF SECURITIES

### Minimum Issuance of Mortgage-Backed Securities

Pursuant to Title III of the National Housing Act, as amended (12 U.S.C. 1716,

et seq.), the Department proposes to amend Title 24, Part 390 of the Code of Federal Regulations to incorporate revisions in the guidelines for eligible issuers of securities and to change the minimum issuance of mortgage-backed securities.

The proposed revisions of Part 390 are summarized as follows:

Section 390.3 would be revised by renumbering the present section as paragraph (a) and by adding proposed paragraphs (b) and (c) to the printed regulations. Paragraph (b) adopts a provision that is part of the Government National Mortgage Association documentation used in the mortgage-backed security program whereby an issuer is prohibited from participating in the mortgage-backed securities program if at the time of application for commitment the Issuer's lending policies permit any discrimination based on race, religion, color, sex, national origin, or age, or the Issuer is not in compliance with the Department rules, regulations, or orders issued under Title VI of the Civil Rights Act of 1964, the Fair Housing Law of 1968, and Executive Order 11063, Equal Opportunity in Housing. The proposed revision follows Departmental policy against nondiscriminatory practices in housing and housing connected programs.

The Association's eligibility regulations require Issuers to have adequate experience and facilities to issue mortgage-backed securities. Among the factors considered in determining an applicant's adequacy of experience is the manner in which its business operations are conducted. Proposed paragraph (c) would reflect the Association's unwritten policy of adherence by mortgage bankers to accepted business practices, ethics, and standards in their community and profession.

Section 390.5 is amended by reducing from $2 million to $1 million the minimum face amount of each issue of securities based on and backed by single family mortgages. Additionally, the minimum face amount of each issue of securities based on and backed by project mortgages (the construction and project loan types) is reduced from $2 million to $500,000. The reduction in the minimum face amount of an issue is intended to provide greater access to the program and a greater liquidity for reinvestment in single family and project construction.

Interested persons are invited to participate in the making of the proposed rules by submitting written data, views, or statements. Communications should identify the proposed rule by above docket number and title, and should be filed in triplicate with the Rules Docket Clerk, Office of General Counsel, Room 10256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. All relevant material received on or before April 5, 1974, will be considered before adoption of final rules. Copies of comments submitted will be available for examination during business hours at the above address.

Accordingly it is proposed to amend Subpart A of Part 390 of Title 24 by adding to § 390.3, now designated § 390.3(a), paragraphs (b) and (c), to read as follows:

**§ 390.3 Eligible issuers of securities.**

(a) Any mortgagee, including a State or local governmental instrumentality, which has been approved by the Federal Housing Administration and which has adequate experience and facilities to issue mortgage-backed securities may be approved for a guaranty by the Association, except that no guaranty shall be made of any security which is tax exempt under the Internal Revenue Code of 1954. No issue of securities will be approved for guaranty unless the Issuer has net worth, in assets acceptable to the Association, in the following amounts:

(1) For straight pass-through securities, $100,000.

(2) For modified pass-through securities based on and backed by mortgages upon one- to four-family residences, (i) not less than 2 percent of the first $5 million of modified pass-through securities outstanding after such issue, and (ii) not less than 1 percent on all such securities outstanding over $5 million, but in no case need such net worth exceed $250,000.

(3) For modified pass-through securities other than those described in paragraph (2) of this section, (i) not less than 3 percent of the first $5 million of modified pass-through securities outstanding after such issue, and (ii) not less than 2 percent on the succeeding $5 million of such securities, and (iii) not less than 1 percent on all over $10 million, provided that the minimum net worth shall be at least $100,000, but in no case need net worth exceed $500,000.

(b) No Issuer will be approved if, at the time of application for commitment, its lending policies permit any discrimination based on race, religion, color, sex, national origin, or age, or the Issuer is not in compliance with any rules, regulations, or orders issued under Title VI of the Civil Rights Act of 1964, with Executive Order 11063, Equal Opportunity in Housing, issued by the President of the United States on November 20, 1962, and with the Fair Housing Law of 1968, in accordance with FHA and VA rules and regulations; any failure to be in compliance therewith will be considered as basis for rejecting an application. Subsequent thereto, an eligible Issuer shall continue to comply with the above rules, regulations, or orders; failure so to comply for a period of 60 days after the date on which written notice of such failure has been delivered via registered mail by GNMA to the Issuer, may be considered the basis for default.

(c) All Issuers must conduct their business operations in accordance with accepted mortgage banking practices, ethics, and standards. In the event that an Issuer does not comply with such practices, ethics, and standards, the Association may reject further applications received from an Issuer until such time as the Association is satisfied that the Issuer has resumed business operations in accordance with accepted mortgage banking practices, ethics, and standards.

Paragraph (b) of § 390.5 is amended to read as follows:

**§ 390.5 Securities.**

* * * * *

(b) *Issue amount.* Each issue of guaranteed securities must be in a minimum face amount of $1 million provided that in the case of modified pass-through securities based on and backed by mortgages on mobile homes or projects said minimum face amount is $500,000. The total face amount of any issue of securities cannot exceed the aggregate unpaid principal balances of the mortgages in the pool.

* * * * *

(Sec. 306(g), 82 Stat. 540, 12 U.S.C. 1721; Bylaws of the Association, 35 FR 2606, Feb. 5, 1970, 36 FR 11229, June 9, 1971)

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

WOODWARD KINGMAN,
*President, Government National Mortgage Association.*

[FR Doc.74-5134 Filed 3-5-74;8:45 am]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### [ 14 CFR Part 71 ]

[Airspace Docket No. 74-CE-5]

### TRANSITION AREA

### Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Thedford, Nebraska.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received on or before April 5, 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 Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the

Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

A new public-use instrument approach procedure is being established for the Thedford, Nebraska, Municipal Airport, utilizing a State-owned VOR located west of the airport. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Thedford, Nebraska.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (39 FR 440), the following transition area is added:

THEDFORD, NEBRASKA

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of the Thedford Municipal Airport (latitude 41°58'47" N., longitude 100°32'01" W.); within 2.5 miles each side of the Thedford VOR 090° radial extending from the 5.5 mile radius to 7.5 miles west of the airport; and that airspace extending upward from 1200 feet above the surface within 4.5 miles north and 9.5 miles south of the Thedford VOR 270/090° radial extending from the airport to 18.5 miles west of the VOR.

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

Issued in Kansas City, Missouri, on February 16, 1974.

A. L. COULTER,
*Director, Central Region.*

[FR Doc.74-5101 Filed 3-5-74;8:45 am]

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## [ 14 CFR Part 71 ]

[Airspace Docket No. 74-NE-3]

## TRANSITION AREA

### Proposed Alteration

The Federal Aviation Administration is considering amending Section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Rockland, Maine, 700-foot Transition Area (39 FR 579).

Due to the adjustment of the NDB approach and the addition of a localizer to the ILS for Runway 03, the standard instrument approach procedure for Knox County Airport, Rockland, Maine, has been revised in accordance with the United States Standard for Terminal Instrument Procedures. This revised procedure will require alteration of the Rockland, Maine, 700-foot Transition Area to provide controlled airspace for aircraft executing this revised procedure.

Interested persons may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, New England Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received on or before April 5, 1974, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Operations, Procedures and Airspace Branch, New England Region.

Any data or views 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 Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Rockland, Maine, proposes the airspace action hereinafter set forth:

1. Amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Rockland, Maine 700-foot Transition Area and insert the following in lieu thereof:

§ 71.181 [Amended]

Issued in Burlington, Massachusetts, on February 19, 1974.

"That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Knox County Regional Airport, Rockland, Maine, (lat. 44°03'40"N., long. 69°06'05"W.) and within 3.5 miles each side of the 194° bearing from the Sprucehead NDB (lat. 43°59'54"N., long. 69°07'17"W.), extending from the 7.5-mile radius area to 11.5 miles south of the NDB."

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

FERRIS J. HOWLAND,
*Director, New England Region.*

[FR Doc.74-5103 Filed 3-5-74;8:45 am]

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## [ 14 CFR Parts 71, 73 ]

[Airspace Docket No. 74-SW-3]

## TEMPORARY RESTRICTED AREAS

### Proposed Designation

The Federal Aviation Administration (FAA) is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations that would designate temporary restricted areas adjacent to Fort Polk, La. The restricted areas would be used to contain a joint military exercise "BRAVE SHIELD IX" which is scheduled from 0600 CDT, August 2, 1974, to 1400 CDT, August 5, 1974. Those areas with airspace at or above 14,500 feet MSL would also be included in the continental control area for the duration of their time of designation.

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, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received before April 5, 1974, be considered before action is taken on the proposed amendments. The proposals 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 amendments would designate the following temporary restricted areas:

1. R-3805A Brave Shield IX, La.

BOUNDARIES

Beginning at Lat. 31°11'45" N., Long. 92°30'15" W.; to Lat. 31°05'15" N., Long. 92°34'50" W.; to Lat. 30°52'00" N., Long. 92°49'00" W.; to Lat. 30°50'00" N., Long. 93°00'00" W.; to Lat. 30°50'00" N., Long. 93°15'00" W.; to Lat. 31°40'00" N., Long. 93°27'00" W.; to Lat. 31°27'30" N., Long. 93°03'00" W.; to Lat. 31°15'15" N., Long. 92°41'45" W.; to Lat. 31°17'10" N., Long. 92° 40' 10" W.; to point of beginning, excluding that airspace from 100 feet AGL to and including 800 feet AGL within a 3-mile radius of the Leesville Airport (Lat. 31°10'02" N., Long. 93°20'32" W.).

Designated altitudes. 100 feet AGL to and including FL 180.

Time of designation. Continuous, 0600 CDT, August 2, 1974, to 1400 CDT, August 5, 1974.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. United States Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va.

2. R-3805B Brave Shield IX, La.

BOUNDARIES

Beginning at Lat. 31°05'15" N., Long. 92°34'50" W.; to Lat. 30°40'00" N., Long. 92°48'50" W.; to Lat. 30°40'00" N., Long. 93°30'00" W.; to Lat. 31°45'25" N., Long. 93°37'15" W.; to Lat. 31°40'00" N., Long. 93°27'00" W.; to Lat. 30°50'00" N., Long. 93°15'00" W.; to Lat. 30°50'00" N., Long. 93°00'00" W.; to Lat. 30°52'00" N., Long. 92°49'00" W.; to point of beginning, excluding that airspace from 100 feet AGL to and including 800 feet AGL within a 3-mile radius of the following airports:

Beauregard Parish Airport (Lat. 30°50'00" N., Long. 93°20'30" W.);
Leesville Airport (Lat. 31°10'02" N., Long. 93°20'32" W.);
Hart Airport (Lat. 31°32'45" N., Long. 93°29'30" W.).

Designated altitudes. 100 feet AGL to and including FL 180.

Time of designation. Continuous, 0600 CDT, August 2, 1974, to 1400 CDT, August 5, 1974.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. United States Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va.

3. R–3805C Brave Shield IX, La.

BOUNDARIES

Beginning at Lat. 30°40'00" N., Long. 92°48'50" W.; to Lat. 30°24'00" N., Long. 92°58'00" W.; to Lat. 30°20'00" N., Long. 94°00'00" W.; to Lat. 31°10'00" N., Long. 94°30'00" W.; to Lat. 31°18'30" N., Long. 94°27'00" W.; to Lat. 31°51'30" N., Long. 93°55'00" W.; to Lat. 31°45'25" N., Long. 93°37'15" W.; to Lat. 30°40'00" N., Long. 93°30'00" W.; to point of beginning, excluding that airspace 2,500 feet MSL and below within a radius of 20-nautical miles from the Lake Charles VORTAC (Lat. 30°08'29" N., Long. 93°06'20" W.), and excluding that airspace from 400 feet AGL to and including 800 feet AGL within a 3-mile radius of the following airports:

DeQuincy Industrial Airport (Lat. 30°26'17" N., Long. 93°28'21" W.);
Hemphill Airport (Lat. 31°21'00" N., Long. 93°53'33" W.);
Jasper County Airport (Lat. 30°53'30" N., Long. 94°02'00" W.);
Kirbyville Airport (Lat. 30°38'45" N., Long. 93°55'00" W.);
Newton Airport (Lat. 30°53'03" N., Long. 93°44'30" W.);
Pineland Airport (Lat. 31°14'00" N., Long. 93°58'54" W.);
San Augustine County Airport (Lat. 31°32'22" N., Long. 94°10'13" W.).

Designated altitudes. 400 feet AGL to and including FL 180.

Time of designation. Continuous, 0600 CDT, August 2, 1974, to 1400 CDT, August 5, 1974.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. United States Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va.

4. R–3805D Brave Shield IX, La.

BOUNDARIES

Beginning at Lat. 31°10'00" N., Long. 92°30'00" W.; to Lat. 30°24'00" N., Long. 92°58'00" W.; to Lat. 30°20'00" N., Long. 94°00'00" W.; to Lat. 31°10'00" N., Long. 94°30'00" W.; to Lat. 31°18'30" N., Long. 94°27'00" W.; to Lat. 31°41'30" N., Long. 94°03'30" W.; to Lat. 31°33'45" N., Long. 93°36'00" W.; to point of beginning.

Designated altitudes. From FL 180 to and including FL 350.

Time of designation. Continuous, 0600 CDT, August 2, 1974, to 1400 CDT, August 5, 1974.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. United States Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va.

The proposed restricted areas would be used to contain a joint military training exercise, "BRAVE SHIELD 74" involving airmobile forces and tactical air units in joint operations including air defense and counter air operations.

The exercise would involve ground operations of an airmobile brigade maneuvering against an airborne battalion. Multiple airmobile assaults would occur on each employment day and at least one airborne assault per day is anticipated including aerial resupply. Approximately 72 high-performance aircraft and 200 rotary wing and special purpose aircraft would participate. Air Force activity would include counter-air, air superiority, simulated interdication, close air support, low level/high speed reconnaissance, and airborne command and control missions. Air-to-air refueling may also be included.

Supersonic flight would not be authorized. Except for approved departure and arrival to existing employment operating bases, overflight of inhabited areas would be avoided to minimize noise levels. All close air support training and air-to-ground training would be conducted in uninhabited maneuver areas with the great majority occurring in the Fort Polk and Camp Claiborne, La., restricted areas (R–3801, R–3803 and R–3804).

A Tactical Air Control System (TACS) would be established for use in providing air traffic control. Leased lines of communications would be installed with appropriate FAA facilities in order to accomplish the orderly and safe ingress/egress of exercise air traffic and the coordinated movement of nonexercise air traffic within or proceeding into and out of the exercise areas. A wide area telecommunications service would be provided for the accommodation of nonexercise air traffic. This number would be published in Part 3 of the Airman's Information Manual (AIM) effective during the exercise period.

(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 28, 1974.

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

[FR Doc.74–5104 Filed 3–5–74;8:45 am]

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## [ 14 CFR Part 71 ]

[Airspace Docket No. 74–SO–21]

## TRANSITION AREA

### Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Hattiesburg, Miss., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before March 16, 1974, will be considered before action is taken on the proposed amendment. No 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 light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 645, 3400 Whipple Street, East Point, Ga.

The Hattiesburg transition area described in § 71.181 (39 FR 440) would be amended as follows:

§ 71.181 [Amended]

"* * * 8.5-miles northwest of the RBN * * *" would be deleted and "* * * 8.5 miles northwest of the RBN; within an 8.5-mile radius of Pine Belt Regional Airport (latitude 31°28'03" N, longitude 89°20'11.6" W); within 3 miles each side of Hattiesburg VORTAC 182° radial, extending from the 8.5-mile radius area to 8.5 miles south of the VORTAC. * * *" would be substituted therefor.

The proposed alteration is required to provide controlled airspace protection for IFR operations at Pine Belt Regional Airport. An ILS approach to Runway 18 and a VOR approach to Runway 36 are proposed in conjunction with the alteration of this transition area.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on February 26, 1974.

PHILLIP M. SWATEK,
*Director, Southern Region.*

[FR Doc.74–5102 Filed 3–5–74;8:45 am]

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## [ 14 CFR Part 105 ]

[Docket No. 12336; Notice No. 72–29]

## PARACHUTE JUMPING

### Withdrawal of Notice of Proposed Rule Making

The purpose of this notice is to withdraw Notice No. 72–29 (37 FR 23458) in which the Federal Aviation Administration solicited comments on proposed amendments to Part 105 of the Federal Aviation Regulations which would require prior notice to be given to ATC and require prior authorization from ATC for any intentional parachute jumping in controlled airspace, and change the time during which lights are required for a parachute jump.

A great many comments were received in response to the notice, including many letters based on a form letter prepared by the United States Parachute Association (USPA). The overwhelming responses of the commentators were opposed to the issuance of the proposed amendment. The objections generally were that present experience does not justify the need for more restrictive rules and that the 15-day prejump lead time for applications to ATC is excessive and would inhibit parachute jumping especially exhibition jumping.

The United State Parachute Association, which represents more than 95 percent of all active sport parachute jumpers, has pledged a continuing program, in close cooperation with the FAA, to increase safety for both jumpers and aircraft in the airspace used by parachutists. The program provides, among other things, that the FAA General Aviation District Offices (GADOs) be supplied with a current roster of USPA safety officers, a portfolio of USPA rules, regulations, and instructional material and any future changes thereto; that all current information regarding drop zones be provided to parachutists prior to a jump; that procedures for the establishment of new drop zones be set up with the FAA on the basis of noninterference use of airspace; and that current and accurate dissemination of all safety information to affected parachutists and pilots be provided on a continuing basis.

The proposed amendments were intended to provide greater safety in the use of airspace by both aircraft and parachute jumpers. Since the USPA program is aimed at effecting the same result as the proposed amendments, and there have not been any recent reports of serious conflicts between parachute jumpers and aircraft in the use of airspace, the FAA believes that time should be allowed to evaluate the effects of the USPA program.

Upon further consideration of the proposal in the light of comments received, the FAA has determined that adoption of the proposed amendment is inappropriate at the present time and that Notice 72-29 should be withdrawn for further study. The withdrawal of this notice, however, does not preclude the FAA from issuing similar notices in the future or commit the FAA to any course of action.

In consideration of the foregoing, the notice of proposed rule making published in the FEDERAL REGISTER (37 FR 23458) on November 3, 1972, and circulated as Notice 72-29 entitled "Parachute Jumping" is hereby withdrawn.

(Sec. 313(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1354); and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on February 26, 1974.

C. R. MELUGIN, Jr.,
*Acting Director,*
*Flight Standards Service.*

[FR Doc.74-5100 Filed 3-5-74;8:45 am]

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### [ 29 CFR Part 1928 ]

[S-74-2]

### AGRICULTURAL TRACTORS

### Roll-Over Protective Structures; Extension of Comment Period

On February 4, 1974, pursuant to section 6(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 12-71 (36 FR 8754), a proposal concerning the use of roll over protective structures for agricultural tractors was published in the FEDERAL REGISTER (39 FR 4336). Notice was given that all written data, arguments, and views with respect to the proposal would be considered if received before March 6, 1974. On the basis of requests for additional time to submit such material, I hereby extend the period during which such comments will be received until April 5, 1974. Such written comments should be submitted by mail to the following address: Office of Standards Development, Occupational Safety and Health Administration, U.S. Department of Labor, 1726 M Street, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of March, 1974.

JOHN STENDER,
*Assistant Secretary of Labor.*

[FR Doc.74-5173 Filed 3-5-74;8:45 am]

### [ 29 CFR Part 1928 ]

[S-74-3]

### OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

### Guarding of Agricultural Equipment; Correction

The FEDERAL REGISTER Document 74-3276, published at page 4925 in the issue of Friday, February 8, 1974, is corrected by changing "but not limited to," to "but are not limited to," and "3/2" to "3/8" in the fourth line and the eighth line, respectively, of proposed § 1928.57(a)(8)(ii).

Signed at Washington, D.C. this 27th day of February, 1974.

JOHN STENDER,
*Assistant Secretary of Labor.*

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## FEDERAL ENERGY OFFICE

### [ 10 CFR Part 211 ]

### CRUDE OIL ALLOCATION PROGRAM

### Crude Oil and Refinery Yield Control

Notice is hereby given that, pursuant to the authority of the Emergency Petroleum Allocation Act of 1973 and Executive Order 11748, the Federal Energy Office as part of its continuing review of the operation of the mandatory allocation rules for the petroleum industry is considering the revision of Subpart C of Part 211. This proposed amendment is designed to remove disincentives to the increased production and importation of crude oil which exist under the current crude oil allocation program.

FEO has determined that revision of the existing crude allocation program is necessary because various features of the current program penalize companies which obtain additional quantities of crude oil. At this time of shortage, the United States needs to import from abroad and to produce domestically as much crude oil as possible. A program which discourages—or which fails to stimulate—acquisition of additional crude oil must be altered.

Accordingly the Federal Energy Office has adopted four principles, set forth below, which form the foundation for a revised crude oil allocation program.

1. New definitions of small refiner and independent refiner would be established.

2. Small refiners would be eligible to receive allocations of crude oil in an amount to bring their supplies to a level equal to their 1972 crude oil supplies subject to adjustment under certain circumstances. No small refiner would have an obligation to allocate crude oil to another refiner.

3. Independent refiners would not be required to allocate crude oil to another refiner. They would be eligible to receive allocated crude oil only on the basis of increased crude oil acquisitions from outside the allocation system. This incentive allocation would be awarded on a matching barrel-for-barrel basis up to a specified limit.

4. Refiner-sellers (refiners other than small refiners and independent refiners) would have a fixed allocation obligation. Their obligation to allocate would not increase with increased imports (as in the current program) and they would not be permitted to receive an allocation.

The precise manner by which these principles are to be implemented is a matter on which FEO seeks advice and comments. The proposed rule represents one form of implementation; but FEO is prepared to consider other alternative proposals as well as suggestions for improving its proposed plan.

The current regulations also provide for 84 cents per barrel passthrough on the costs of products sold by a refiner-seller to allow recoupment of an approximation of the profit which would have been made by refining each barrel of crude oil required to be sold under the allocation program. Three possible changes have been suggested to this provision and FEO is inviting comment on all three: first, that it and the rest of § 212.93 used to determine selling prices; second, that the 84 cents be charged to the refiner-seller; and third, that the 84 cents be replaced by a more accurate refiner-by-refiner approximation of the profit actually earned from refining a barrel of crude which must be foregone by having it allocated away.

The Federal Energy Office is strongly committed to supporting new refinery construction and to insuring adequate availability of crude oil supplies to new refineries. This notice of proposed rulemaking, therefore, also seeks comment on appropriate treatment for new refineries under a revised crude oil allocation program.

During the comment period on the proposed rule, FEO wishes to stimulate additional supplies of crude oil in every way possible. Accordingly, FEO announced on February 28, 1974, an immediate change in its current crude oil allocation rules. This amendment provides that all crude oil supplies obtained by any refiner during the balance of this

allocation quarter (February 1–April 30, 1974) in excess of estimated supplies reported on FEO Form 1000 will not be subject to allocation to another refiner. These additional supplies will be added to the refiners' total available supplies in the next quarter, but they will not increase any refiner's allocation obligation during that quarter. Thus, they will be effectively immune from allocation and can be run by the refinery acquiring them. This immediate incentive should stimulate companies to bring in additional needed quantities of crude oil.

BACKGROUND

To provide a background for consideration and comment upon the proposed allocation regulations, it is useful to review the current crude oil allocation program and the general areas of difficulties with that program as perceived by FEO.

THE CURRENT CRUDE ALLOCATION PROGRAM

On December 11, 1973, the Federal Energy Office issued a notice of proposed rulemaking which included the essential components of the crude allocation program that is now in effect. All refiners were required to provide the Federal Energy Office with two types of information: refinery capacity and crude oil supplies. Crude oil supplies were to be estimated based on the refiner's current stocks and his expected deliveries of crude oil over the first allocation period. On the basis of the reports received from refiners, the Federal Energy Office would calculate a national refinery supply-to-capacity ratio. Refiners with supply-to-capacity ratios greater than the national average would be required to sell crude oil in amounts necessary to bring them down to the national average. Refiners below the national average could purchase crude oil from the refiner sellers in order to bring their supply-to-capacity ratio up to the national average. The price of allocation sales was to be calculated by taking the weighted average price of all crude oil delivered to a seller in Districts I–IV or in District V and adding to that value a six percent handling fee plus certain adjustments for transportation and gravity.

The Federal Energy Office issued mandatory allocation regulations on December 27, 1973, which were to be immediately effective but not implemented until January 15, 1974. The only significant change in the regulations was the addition of a provision of an 84 cents per barrel pass-through (for each barrel of crude oil sold pursuant to an allocation sale) on products refined by a refiner-seller to allow him to recoup an approximation of the profit he would have made by refining each barrel of crude oil required to be sold under the allocation program.

The regulations required the Federal Energy Office to publish a notification showing required sales volumes and purchase opportunities for each refiner. This "buy-sell" list would be the basis for allocation sales for the first quarter. At the beginning of each subsequent quarter, the Federal Energy Office would publish a new buy-sell list that would incorporate new projections made for capacity and supply availability in that quarter. In addition, any differences between the estimated available supply of crude for a refiner in the first quarter and that refiner's actual deliveries of crude (as shown in monthly and quarterly reports to the Federal Energy Office) would appear as an adjustment to the buy-sell list for a succeeding quarter. In this way, the crude allocation program was designed to be self-correcting for unexpected shortfalls or excess supplies of crude realized in a particular quarter and also for any calculation errors in the information used to compute the buy-sell list for that quarter.

The commencement date for starting deliveries under allocation sales agreements was set at twelve days after publication of the first list. Within 15 days of publication of the list, each transaction made to comply with the program was to be reported to the Federal Energy Office. Refiner-sellers who had not negotiated sales of their required sales volume of crude oil by the 15th day after publication of the list were to notify the Federal Energy Office which could then order such sales.

On January 14, 1974, FEO issued the Mandatory Petroleum Allocation and Price Regulations. Although the provisions governing the crude oil allocation program had been substantially reorganized and clarified, the substance of the program remained fundamentally unchanged. On January 8, 1974, the Federal Energy Office issued the first buy-sell list for the crude oil allocation program, which included the national refinery supply-to-capacity ratio and the volumes of crude that each refiner above that ratio must sell and the volumes that each refiner below that ratio might buy. The final buy-sell list provided for the transfer of 56 million barrels of crude during the first allocation quarter. The national supply-to-capacity ratio was fixed at .7665. Pursuant to the allocation rules, those companies with crude oil supplies in excess of the national ratio were required to sell their excess to the deficit companies beginning on February 14, 1974.

On February 14, 1974 Gulf Oil Corporation brought suit against FEO in the U.S. District Court for the District of Columbia seeking, *inter alia*, a court order enjoining operation of the crude oil allocation program on the grounds that it was allegedly confiscatory and discriminatory. FEO is defending the case vigorously and the matter has not been decided by the Court. Since the crude oil allocation program is at the heart of the Gulf litigation, FEO wishes to make it plain that the shortcomings and disincentives in the current program which are described in this notice represent judgments on the wisdom of particular crude oil allocation policies and not on their legality. An agency may well determine to alter a particular policy—as is being done here—not on the basis that the former policy is unlawful but rather with the view that both policies—old and new—are lawful, and that the new decision is more desirable as a matter of policy. Consequently, this notice should not be construed to admit any of the allegations by Gulf in its complaint.

DISINCENTIVES IN CURRENT PROGRAM

1. *Sales to 'majors'.* The current design of the crude allocation program squarely meets the statutory objective of ensuring "equitable distribution of crude oil * * *" by applying a uniform national supply-to-capacity ratio to all refiners regardless of size or markup. Those refiners above the ratio were required automatically to sell to those falling below the ratio. But among those refiners falling below the national ratio were some of the nation's largest and best known oil companies which are best able to fend for themselves and to enter markets here and abroad for additional quantities of crude oil to augment available supplies.

The current crude oil allocation program is the only product allocation program requiring competitors to share scarce resources with one another. It is one thing to require large companies to share resources with those having less; times of crisis often require the strong to shelter and assist the weak. But it is an entirely different matter to require the majors to subsidize one another. Such a program achieves the statutory objective of equitable distribution—but at the price of eroding the incentive for the majors—those most able to obtain additional supplies—since once having incurred the trouble and expense of doing so, they are confronted with the requirement that such supplies must be provided to a competitor who has been unable or unwilling to augment his own supplies.

The system thus contains wrong incentives: those who are capable of doing the most are rewarded for inaction, thereby ensuring that all will have less. Moreover, it flies in the face of institutional resistance of major oil companies to helping another major.

2. *Price disincentives.* It is axiomatic that allocation at controlled prices involves some price disincentives; consequently the smaller the volume, the less the disincentive. The current program requires sales of 56 million barrels in the first allocation quarter, or about 5% of the total crude supply for that period. While a small percentage, it tends to discourage—rather than encourage—acquisition of marginal supplies. Thus the incentive again points in the wrong direction. Reducing the volume of crude oil subject to allocation at least reduces the magnitude of the disincentive.

The current pricing rules allow crude oil allocation sales to be priced at the refiner-seller's weighted average cost plus a 6 percent handling fee, a transportation adjustment and a gravity adjustment. In addition, the refiner-seller is entitled to pass through to his own customers—on sales of his refined products—the incremental costs incurred in obtaining the crude oil which was allocated away plus an additional 84 cents per barrel of allocated crude oil—representing an approximation of the average industry profit earned from refining a barrel of crude oil. Taken together, these factors are sufficient to ensure that the selling refiner is made financially whole and is not out of pocket as a result of the crude allocation. However, it is the refiner-seller's own customers who make up a share of that recovery. His customers are helping to pay for the high cost of imported crude oil which the refiner-seller must turn around and sell, under allocation, at a weighted average price to a competing refiner-buyer.

This arrangement may be acceptable in the case of sales to small refiners. If sellers were permitted to charge the incurred costs for allocated crude directly to the buyer to whom it is allocated, there would be a tendency to allocate only the highest priced crude. This would rapidly increase the costs to the small buying refiners and place them at a severe competitive disadvantage. But refiner-buyers who are major companies obtain something of a windfall in being enabled to purchase at a weighted average price—a windfall subsidized by the refiner-seller and his customers.

3. *Product dislocations.* The crude allocation program has also redirected crude away from refineries capable of producing in addition to gasoline some of the more highly refined products such as kero-based jet fuel and, in the petrochemical field, aromatics (benzene, toluene and xylenes) olefins (ethylene, propylene, butylene and butadiene) and carbon black feedstocks and has had the effect of further reducing the production of these products. For example, the original buy-sell list allocated 42 million barrels of crude oil away from refiners who traditionally produce a commercial jet fuel and allocated only 9 million barrels to traditional commercial jet fuel producers. This has contributed significantly to tight commercial jet fuel markets and has interfered with FEO's ability to achieve the mandated objective of maintaining air transportation facilities.

Similarly the crude oil allocation program has contributed to the recent gasoline shortages along the East Coast. Refiners customarily distributing and selling gasoline along the Eastern seaboard are allocated 35 million barrels of crude for purchase. But other refiners normally distributing gasoline on the East Coast must sell 50 million barrels, leaving a net shortfall in this quarter of 15 million barrels of crude oil, which translates into a net loss of gasoline for those suppliers who supply to the East Coast of slightly less than one-hundred million gallons for each of the months of February, March and April.

These factors emphasize the importance of reducing the volume of crude oil being allocated.

### The Proposed Crude Oil Allocation Program

#### PURCHASES LIMITED TO SMALLEST REFINERS

Small refiners entitled to receive allocations under the proposed program would be those refineries with less than 75,000 barrels per day capacity. This is a class of smaller refiners within the larger class of "small refiners", defined in the statute as including all refiners with 175,000 barrels per day capacity. The selection of a capacity level of 75,000 barrels per day reflects several factors. First, most refineries above that level have coastal locations and are able to seek out and handle imported crude. Many of those below that level are inland refineries less well situated and not as experienced in importing crude oil. FEO is aware that both the Small Business Administration and the Oil Import Program have used 30,000 barrels a day as a benchmark for determining small refiners. But the legislative admonition to protect a larger class of smaller refiners and the fact that a Congressional Committee declined to set a 30,000 barrel capacity limit in the Act warrants establishing a higher figure. At the same time an important objective of the proposed modification is to diminish substantially the volume of crude subject to allocation in any quarter, and this requires setting a level considerably below the 175,000 barrels per day capacity used by Congress in defining a "small refiner." FEO estimates that the volume of crude subject to allocation under the proposed program would be 12 to 15 million barrels per quarter, or about 25 percent of the 56 million barrels allocated in the first allocation quarter under the current program. FEO recognizes that choosing any cut-off level involves some exercise of judgment. FEO therefore will be particularly receptive to comments on the desirability of the proposed 75,000 barrel limit.

#### NEUTRAL ZONE AND INCENTIVE FOR INDEPENDENTS

The statute defines an "independent refiner" as one with less than 30 percent "controlled" throughput. The FEO proposal would create within that definition a class of refiners with capacity greater than 75,000 up to 175,000 barrels per day. Refiners within this classification would not be required to sell crude under the proposed allocation program. However, they would be allocated crude from the larger refiners on an incentive basis with a matching barrel of allocated crude oil permitted for each barrel of crude oil acquired outside the allocation system.

The total would not exceed reported 1972 supply levels, less first quarter 1974 supply levels. Thus, if first quarter 1972 supplies were one million barrels and first quarter 1974 supplies were 800,000 barrels, the incentive program would authorize allocation of one barrel for every barrel otherwise acquired over 800,000 barrels up to a level of one million barrels (i.e. 100,000 barrels of allocated crude oil plus 100,000 barrels of crude oil acquired outside the allocation system). Mechanically, the system would operate on a 1 quarter lag, with the 1-for-1 matching allocation in the current quarter being determined on the basis of the supply performance of the independent refiner in the previous quarter. FEO currently estimates that the maximum amount of additional crude subject to allocation under this incentive program would be 4.6 million barrels per quarter. This would be in addition to the 12 to 15 million barrels per quarter that FEO estimates would be allocated to small refiners making the total estimated allocation of crude oil under the proposed program a maximum of 16.6 to 19.6 million barrels per quarter. To reach the maximum 4.6 million figure, though, independents would have to import a similar quantity over and above first quarter 1974 levels. This would be a highly desirable result.

#### FIXED SHARE FOR ALLOCATING REFINERS

The only refiners required to make allocations of crude oil under the proposed program would be refiners with a capacity in excess of 175,000 barrels per day and those refiners with a capacity in excess of 75,000 barrels per day up to 175,000 barrels per day which are not independents. A refiner-seller's allocation obligation would be a fixed percentage share of the total amount to be allocated. Each refiner-seller's percentage would be its proportional share of the first quarter 1974 refinery capacity of all refiner-sellers. It is important to note that a refiner-seller's relative share of the total allocation obligation would not increase as the refiner-seller acquires additional crude since the percentage share is fixed by reference to an event in the past. For example, if refiner-seller A's capacity as reported to FEO in January 1974, is 7% of the total reported capacity of all of the refiner-sellers, A's allocation obligation is fixed at 7% of the total. The number of barrels of crue oil which A must sell under the allocation program will always be 7% of the total allocation obligation and will not vary based on any increase in A's crude oil acquisitions. This removes an important disincentive to import since, under the current program, until the exemption level is reached, each incremental barrel imported increases the firm's obligation to allocate (or reduces its allocation entitlement). Under

the proposed program, however, each firm's individual allocation obligation will be a known percentage of the total allocation requirement.

ALLOCATION AMOUNTS

For each sales period, each small refiner would report to the FEO the quantity of crude oil available to it for that sales period and the quantity of crude oil available to it in the corresponding 1972 period. FEO would then compute the quantity of crude oil which each small refiner will be eligible to purchase during the sales period. A small refiner would qualify as a refiner-buyer only to the extent that its estimate of its available supplies for a sales period does not equal its supplies for the corresponding period of 1972. The quantity of crude oil which a small refiner would be eligible to purchase would be reduced on a pro-rata basis to the extent that the estimated aggregate amount of crude oil to be produced in and imported into the United States in any sales period by all refiners is less than the aggregate amount of crude oil produced in and imported into the United States in the corresponding period of 1972. FEO will be particularly receptive to comments on the appropriate level below 1972 supplies to which small refiners should be reduced under the proposed program when total available crude oil supplies are below 1972 levels. The quantity of crude oil that a small refiner would otherwise be eligible to purchase in an allocation quarter will also be adjusted to compensate on a self-correcting basis for any differences between the estimated available supply of crude oil as reported and actual crude runs during the preceding allocation quarter.

For each allocation quarter, each independent refiner would be eligible to purchase an allocation of crude oil under an incentive plan authorizing one barrel of allocated crude for every barrel of crude acquired outside the allocation program above reported first quarter 1974 crude supply levels. The allocated crude plus the acquired crude, when added to first quarter 1974 supplies may not exceed first quarter 1972 supplies.

The sum of the quantities of crude oil during each allocation quarter which each small refiner and which each independent refiner is eligible to purchase would be the total allocation obligation for all refiner-sellers.

FEO would publish for each allocation quarter the quantity of crude oil each refiner-buyer is eligible to purchase, the total allocation obligation for all refiner-sellers, the percentage share for each refiner-seller and the allocation quarter quantity for each refiner-seller.

The proposed regulations provide that the commencement date for starting deliveries under sales agreements will be the fifteenth day of the allocation quarter.

The requirements pertaining to the reporting of transactions pursuant to the new regulation, the requirements relating to the quality of crude oil to be allocated and the procedures applicable when refiner-buyers are unable to negotiate a contract to purchase crude oil within the allotted time periods would be substantially the same as to those under the current crude oil allocation program. The proposed reporting requirements have been modified to reflect the need for additional information under the proposed regulations.

The first allocation quarter under the proposed regulations would be for the three-month period May 1, 1974 through July 1, 1974. Subsequent sales periods would each be for three months beginning August 1, 1974.

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 Crude Allocation Program." 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 regulation.

(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 Part 21 of Chapter II, Title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., March 5, 1974.

WILLIAM N. WALKER,
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## Subpart C—Crude Oil and Refinery Yield Control

### § 211.61 Scope.

(a) This subpart is applicable to all producers, refiners and others who purchase or obtain crude oil for resale, transfer or use.

(b) This subpart provides for the mandatory allocation of crude oil produced in or imported into the United States other than first sale of crude oil exempted pursuant to the provisions of § 210.32 of this chapter.

(c) This subpart also provides a program for refinery yield control.

### § 211.63 Definitions.

For purposes of this subpart—

"Independent refiner" means a refiner which has a refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) that exceeds 75,000 barrels per day but is not greater than 175,000 barrels per day and which (a) obtained, directly or indirectly, in the calendar quarter which ended immediately prior to November 27, 1973, more than 70 percent of its refinery input of domestic crude oil (or more than 70 percent of its refinery input of domestic and imported crude oil) from producers which do not control, are not controlled by, and are not under common control with such refiner, and (b) marketed or distributed in such quarter and continues to market and distribute a substantial volume of gasoline refined by it through branded independent marketers or nonbranded independent marketers.

"New crude petroleum" means new crude petroleum as defined in § 212.72 of this chapter.

"Processing agreement" means any agreement pursuant to which an owner of crude oil agrees to have that crude oil processed or refined by another person and retains ownership in some or all of the petroleum products so processed or refined from the crude oil.

"Refiner" means a refiner as defined in Subpart B of this part, and includes any person who owns or purchases crude oil for processing.

"Refiner-buyer" means any small refiner or independent refiner which qualifies to purchase crude oil from refiner-seller pursuant to this subpart.

"Refinery capacity" means for each refiner, the sum of the refining capacity of its refineries.

"Refiner-seller" means a refiner which is not a small refiner or an independent refiner as defined in this section.

"Refining capacity" means, for each refinery, the greater of that capacity reported to the Bureau of Mines as of January 1, 1973, or the actual crude oil runs (on a calendar day average basis) as reported monthly to the Bureau of Mines for January through October 1973. A refiner which has received a starter allocation under section 25 of the Oil Import Regulations (32A CFR OI Reg. 1–25) or which has requested and received certification from the FEO of the new or incremental capacity pertaining to a new refinery, expansion or reactivation subsequent to the January 1, 1973, capacity report to the Bureau of Mines, but prior to January 31, 1974, may elect to have its net new capacity added to the capacity as reported to the Bureau of Mines on January 1, 1973. Any capacity of a refinery which has become inoperable between the January 1973 report to the Bureau of Mines and January 31, 1974, shall be deducted from refining capacity.

"Allocation quarter" means a consecutive three-month calendar period which commences one month after the start of each calendar quarter. The first allocation quarter shall be the three-month period from May 1, 1974 through July 31, 1974.

"Small refiner" means a refiner which has a total refinery capacity (including

the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) that does not exceed 75,000 barrels per day.

"Total allocation obligation" means the sum of the qualities of crude oil that all refiner-buyers are eligible to purchase for delivery during an allocation quarter.

§ 211.63 Supplier/purchaser relationships.

(a) All supplier/purchaser relationships in effect under contracts for sales, purchases, and exchanges of domestic crude oil on December 1, 1973, shall remain in effect for the duration of this program except purchases and sales made to comply with this program: *Provided, however,* That (1) any contract or agreement for the sale, purchase, or exchange of domestic crude oil may be terminated by the mutual consent of both parties; (2) the provisions of this paragraph do not apply to the first sale of crude oil pursuant to § 210.32 of this chapter; and (3) the provisions of this paragraph shall not apply to the seller of any crude oil if the present purchaser of such crude oil refuses after written notice by the seller, to meet any bona-fide written offer made by another purchaser to buy such crude oil at a lawful price above the price paid by the present purchaser.

(b) New crude petroleum may be sold to any person. Once the sale is made, the seller of such new crude petroleum shall continue to sell to that purchaser subject to the provisions of paragraph (a) (1), (2), and (3) of this section.

§ 211.64 Transactions under prior program.

Any agreement for the sale or purchase of crude oil entered into as a result of the provisions of this subpart as in effect immediately prior to March 31, 1974, shall be fully performed notwithstanding any provision of this subpart as in effect on March 31, 1974.

§ 211.65 Method of allocation.

(a) *Refiner-buyers purchase opportunities.* (1) Each small refiner is eligible to purchase the amount of crude oil necessary, when added to its estimate of crude oil to be available to it in a particular allocation quarter, to equal the volume of crude oil processed by such small refiner in the corresponding period of 1972. If the estimated aggregate amount of crude oil to be produced in and imported into the United States in any allocation quarter by all small refiners, independent refiners and refiner-sellers is less than the aggregate amount of crude oil produced in and imported into the United States in the corresponding period of 1972, small refiners which qualify as refiner-buyers for that allocation quarter shall have the amount of crude oil that they would otherwise be entitled to purchase reduced on a pro rata basis.

(2) (i) Each independent refiner is eligible to purchase the amount of crude oil in an allocation quarter necessary to equal the amount by which its crude oil runs in the calendar quarter preceding the forthcoming allocation quarter exceeded the amount of crude oil runs which such independent refiner estimated for the period February through April 1974 up to an amount equal to such independent refiner's crude oil runs for the first calendar quarter of 1972. (ii) The amount of crude oil runs in the calendar quarter preceding the forthcoming allocation quarter shall be reduced by the amount of crude oil runs authorized pursuant to an allocation of crude oil under this subpart. (iii) No independent refiner shall be eligible to purchase crude oil pursuant to this subpart for any allocation quarter in which the amount of crude oil calculated pursuant to paragraph (a) (2) (ii) of this section equals or exceeds such independent refiner's crude oil runs for the first calendar quarter of 1972.

(3) A small refiner's estimate of crude oil to be available to it in a particular allocation quarter shall (i) include the volume of crude oil processed by another refiner for that small refiner pursuant to a processing agreement and crude oil processed by that small refiner for a person other than a refiner pursuant to a processing agreement and (ii) exclude the volume of crude oil which that small refiner processes for another refiner pursuant to a processing agreement.

(4) For purposes of the calculations referenced in paragraph (a) (2) of this section the total amount of crude oil run by an independent refiner shall include (i) the volume of crude oil processed by another refiner for that refiner pursuant to a processing agreement, and exclude (ii) the volume of crude which that independent refiner processes for another refiner pursuant to a processing agreement.

(b) *Computation of total allocation obligation.* (1) For each sales period, each small refiner shall report to FEO as provided in § 211.66 the quantities of crude oil estimated to be available to it for that allocation quarter and the quantity of crude oil available to it in the corresponding 1972 period. FEO will then compute the quantity of crude oil which each small refiner will be eligible to purchase during the forthcoming allocation quarter. The quantity of crude oil that a small refiner is eligible to purchase in an allocation quarter shall be adjusted by the amount necessary to compensate for the actual volumes of crude oil run by the small refiner in the calendar quarter preceding the forthcoming allocation quarter which exceeded or fell short of the volume estimated to be available during the preceding quarter.

(2) For each allocation quarter, each independent refiner shall report to FEO as provided in § 211.66 the quantity of crude oil which it acquired in the calendar quarter preceding the forthcoming allocation quarter in excess of the supply of crude oil which it reported to FEO to be available in the first calendar quarter of 1974. FEO will then compute the quantity of crude oil which each independent refiner will be eligible to purchase during the forthcoming allocation quarter. No allocation shall be made which when added to reported supplies, will be result in supplying more than 100 percent of refinery capacity.

(3) The sum of the quantities of crude oil during each allocation quarter which each small refiner and which each independent refiner is eligible to purchase will be the total allocation obligation for all refiner-sellers.

(c) *Refiner-sellers sales obligations.* (1) Each refiner-seller must offer for sale crude oil, directly or through exchange, to refiner-buyers. The quantity of crude oil that each refiner-seller shall be required to sell to refiner-buyers during an allocation quarter shall be equal to that refiner-seller's fixed percentage share multiplied by the total allocation obligation for a particular allocation quarter.

(2) A refiner-seller's fixed percentage share is its proportionate share of the total refiner capacity of all refiner-sellers as reported on those refiners' initial reports filed with FEO pursuant to § 211.66 of the Mandatory Petroleum Allocation Regulations in effect on January 15, 1974.

(d) *Buy-Sell List.* On the first day of each allocation quarter, the FEO shall publish a notice for that allocation quarter listing the quantity of crude oil each refiner-buyer is eligible to purchase, the total allocation obligation for all refiner-sellers, the fixed percentage share for each refiner-seller and the allocation quarter quantity for each refiner-seller. The commencement date for starting deliveries under sales agreements shall be the fifteenth day of the allocation quarter. Any agreements for the sale or purchase of crude oil after the commencement date shall be retroactive to the starting delivery date. All deliveries must be completed before the end of the allocation quarter.

(e) *Sale/Purchase Transaction Report.* Within fifteen days of the publication of the notice under paragraph (d) of this section, each transaction made to comply with this program shall be reported by the buyer and seller to the FEO. This report shall indicate the selling and purchasing refiner and identify the volumes of the crude oil sold.

(f) *Conditions of sale.* (1) The terms and conditions of each sale of crude oil, other than the prices, shall be consistent with normal business practices. The crude oil offered must be suitable for processing in and practical for delivery to the refiner-buyer.

(2) All crude oil transferred pursuant to this section shall be priced in accordance with the provisions of Part 212 of this chapter.

(3) Exchanges of crude oil may be utilized to comply with the purchase and sell provisions of this section, provided these are on a barrel-for-barrel basis.

(g) *Failure to negotiate transactions.* (1) Refiner-buyers who are unable to negotiate a contract to purchase crude oil within 15 days of the publication of the buy-sell list specified in paragraph (d) of this section may request that the FEO compel a refiner-seller to sell an acceptable type of crude oil to the refiner-buyer. Such a request must be made within 30 days of the publication of the buy-sell list. Upon such request, the FEO may direct a refiner-seller which has not sold its required allocation quarter quantity to sell crude oil to the refiner-buyer. If the refiner-buyer declines to purchase the crude oil specified by the FEO, that refiner-buyer's rights to purchase that volume of crude oil are forfeited during that allocation quarter, provided that the refiner-seller has fully complied with all the provisions of this section.

(2) Refiner-sellers which have not negotiated sales with refiner-buyers of the required volume of crude oil within fifteen days of the publication of the buy-sell list specified in paragraph (d) of this section shall notify the FEO. The FEO may then direct that refiner-seller to sell that volume to a refiner-buyer which has not obtained its total amount permitted under paragraph (a) of this section.

**§ 211.66 Reporting requirements.**

(a) All matters pertaining to the allocation of crude oil and the refinery yield control program shall be addressed to the Administrator, Federal Energy Office, P.O. Box 2885, Washington, D.C. 20036.

(b) A monthly report shall be required from refiners on forms and instructions issued by FEO on crude oil runs and products produced.

(c) By the fifteenth day preceding each allocation quarter each refiner shall file with the FEO a report showing the following:

(1) Estimated runs of all domestic and imported crude oil for the forthcoming allocation quarter including (i) the volume of crude oil processed by another refiner for that refiner pursuant to a processing agreement and crude oil processed by that refiner for a person other than a refiner pursuant to a processing agreement, and excluding (ii) the volume of crude oil which that refiner processes for another refiner pursuant to a processing agreement.

(2) Actual runs of all domestic and imported crude oil for the calendar quarter preceding the forthcoming allocation quarter including (i) the volume of crude oil processed by another refiner for that refiner pursuant to a processing agreement and crude oil processed by that refiner for a person other than a refiner pursuant to a processing agreement, and excluding (ii) the volume of crude oil which that refiner processes for another refiner pursuant to a processing agreement.

(3) Any change in refinery capacity since the previous report.

(4) An independent refiner shall also include the quantity of crude oil it imported in the calendar quarter preceding the forthcoming allocation quarter and the quantity of crude oil which it imported in the corresponding calendar quarter of 1972.

(5) All information required by this paragraph shall identify domestic and imported crude oil and state the average daily volume run or estimated to be run by each refiner. Such reports shall also identify amounts of crude oil produced from a stripper well lease as defined in § 210.32 of this chapter.

(d) Each person who claims to be a small refiner shall submit to FEO fifteen days prior to the first allocation quarter an affidavit setting forth the factual basis for its claim.

(e) Each person who claims to be an independent refiner shall submit to FEO fifteen days prior to the first allocation quarter an affidavit setting forth the factual basis for its claim.

(f) Any refiner who does not report as provided in paragraph (d) or (e) of this section will be deemed a refiner-seller.

**§ 211.71 Mandatory refinery yield control program.**

(a) *Purpose.* The refinery yield control program is designed to require each refiner to utilize available supplies of crude oil in a manner best suited to ensure adequate production levels of refined petroleum products and residual fuel oil which are or may be in short supply, consistent with the objectives of this chapter.

(b) *Scope.* This section applies as specified to the production of refined petroleum products and residual fuel oil from crude oil by each refiner in the United States.

(c) *Product yield controls.*—(1) *Definitions.* As used in this section—

"Adjustment factor" means the percentage established by the FEO by which the base percentage yield of a particular refined petroleum product or residual fuel oil is multiplied to obtain the adjusted percentage yield of that particular product or residual fuel oil.

"Adjusted percentage yield" means the product of the base percentage yield of a particular refined petroleum product or residual fuel oil multiplied by the adjustment factor for that product or residual fuel oil.

"Base percentage yield" means the ratio which the total number of barrels of a particular refined petroleum product or residual fuel oil produced by a refiner during a specified base period bears to the refiner's total crude runs to stills in that base period and expressed as a percentage.

"Crude runs to stills" means the total barrels of refinery input to crude oil distillation units processed by the refiner and measured in accordance with Bureau of Mines form 6–1300–M.

(2) *Adjustment of base percentage yield.* Whenever a refined petroleum product or residual fuel oil is or will be in short supply, the FEO may require refiners to adjust their base percentage yield of that product or residual fuel oil in order to increase the relative output of that product or residual fuel oil in short supply. If the FEO determines that an adjustment to the base percentage yield of a particular refined petroleum product or residual fuel oil is necessary, the FEO shall publish an adjustment factor by which each refiner must multiply its base percentage yield of that product or residual fuel oil to obtain the adjusted percentage yield of that product or residual fuel oil.

(3) *Joint compliance.* Upon approval by the FEO, two or more refiners may adjust their base percentage yield of a particular refined petroleum product or residual fuel oil on a pooled basis, such that the combined production of that product or residual fuel oil by the two or more refiners would equal the combined production of those refiners if each refiner had separately equalled or exceeded its adjusted percentage yield of that product or residual fuel oil.

(d) *Allocation of crude oil.* The FEO may adjust the quantities of crude oil allocated among refiners under section 211.65 in a manner designed to ensure desired production levels of refined petroleum products or residual fuel oil in short supply for which an adjustment factor has been established. Such adjustments shall be designed to meet the objectives of this chapter and of the Act, such that refiners which increase prodution in excess of their adjusted percentage yield of that product or residual fuel oil, or less than the adjusted percentage yield of that product or residual fuel oil may be allocated greater or lesser quantities of crude oil during the next allocation quarter, respectively.

[FR Doc.74–5396 Filed 3–5–74;12:27 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

[Public Notice CM-116]

### INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE

#### Notice of Meeting

The Department of State announces a scheduled meeting of U.S. CCITT Study Group 5 (Data Transmission) concerned with preparation for Working Group meetings of Study Groups VII and Special A of the International Telecommunication Union to be held in Geneva, Switzerland, November 25–December 4, 1974 and December 5–13, 1974, respectively. The meeting will take place on Thursday, March 28, 1974 at 10:00 a.m. in Room 847 of the Federal Communications Commission, 1919 M Street NW., Washington, D.C.

Study Group 5 deals with matters in telecommunications relating to the development of the international digital data transmission service. The agenda for the March 28 meeting will include consideration of the following:

1. Review of January 1974 meetings of Study Groups VII and Special A.
2. Preparation for meetings of Working Groups of Study Group VII (November 25–December 4) and meetings of Working Groups of Special A (December 5–13).
3. Other business.

Members of the general public who desire to attend the meeting on March 28 will be admitted up to the limit of the meeting room.

Dated: February 27, 1974.

ARTHUR L. FREEMAN,
*Vice Chairman,*
*U.S. National Committee.*

[FR Doc.74-5125 Filed 3-5-74;8:45 am]

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[Public Notice CM-117]

### SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW

#### Notice of Meeting

A meeting of the Study Group on International Sale of Goods, a subgroup of the Secretary of State's Advisory Committee on Private International Law, will take place on Friday, April 5, 1974, at the United States Mission to the United Nations, 799 United Nations Plaza, New York. The meeting, which will begin at 10:00 a.m., will be open to the public.

The purpose of the meeting is to discuss the draft convention on prescription that will be considered at a diplomatic conference in New York from May 20 to June 14, 1974.

Members of the public who desire to attend the meeting will be admitted up to the limits of the capacity of the meeting room. Entrance to the United States Mission building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to April 5, 1974, members of the general public who plan to attend the meeting inform their name and affiliation and address to Mr. Robert E. Dalton, Office of the Legal Adviser, Department of State; the telephone number is area code 202, 632-2107.

Dated: February 26, 1974.

ROBERT E. DALTON,
*Executive Director.*

[FR Doc.74-5126 Filed 3-5-74;8:45 am]

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## DEPARTMENT OF THE TREASURY

### Fiscal Service

[Dept. Circ. 570, 1973 Rev., Supp. No. 10]

### CENTRAL NATIONAL INSURANCE CO.

#### Surety Companies Acceptable on Federal Bonds

A Certificate of Authority as an acceptable surety on Federal bonds has been issued by the Secretary of the Treasury to the following company under sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $1,421,000.00 has been established for the company.

*Name of company, location of principal executive office, and State in which incorporated:*

The Central National Insurance Company of Omaha

Omaha, Nebraska

Nebraska

Certificates of Authority expire on June 30 each year, unless sooner revoked, and new Certificates are issued on July 1 so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact fidelity and surety business and other information. Copies of the Circular, when issued, may be obtained from the Treasury Department, Bureau of Government Financial Operations, Audit Staff, Washington, D.C. 20226.

Dated: February 28, 1974.

JOHN K. CARLOCK,
*Fiscal Assistant Secretary.*

[FR Doc.74-5152 Filed 3-5-74;8:45 am]

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### Internal Revenue Service

[Order No. 102 (Rev. 4)]

### DIRECTOR, PERSONNEL DIVISION

#### Delegation of Authority in Labor-Management Relations Matters

1. The authority delegated to the Commissioner of Internal Revenue in Chapter 711, Treasury Personnel Manual, to administer the Labor-Management Relations Program is hereby delegated as follows:

(a) The Director, Personnel Division, is authorized:

(1) To act as the Service's representative in dealing with the national headquarters of unions;

(2) To negotiate multi-unit agreements, and agreements covering National Office employees;

(3) To act as final approving official on all local agreements, subject to existing statements of Service policy;

(4) To establish and represent the Service's position on the appropriateness of units, unfair labor practice complaints, standards of conduct cases and other formal proceedings before the Department of Labor, the Federal Labor Relations Council, and the Federal Services Impasses Panel;

(5) To consult, as appropriate, with recognized unions holding national consultation rights with the Service and to consult with the national headquarters of properly recognized unions on Service-wide issues;

(6) To determine whether a dispute arising out of a collective bargaining agreement shall be submitted to binding arbitration; and

(7) To issue interpretations of multi-unit agreements.

(b) Regional Commissioners (regarding Regional Office employees); District Directors; Service Center Directors; the Director, IRS Data Center; and the Director, National Computer Center, are authorized:

(1) To negotiate basic agreements after prior consultation with the Director, Personnel Division, or his designee;

(2) To negotiate local supplemental agreements subject to the terms of any controlling master agreement; and

(3) To consult, as appropriate, regarding local issues.

2. The authority delegated in 1(a) may be redelegated by the Director, Personnel Division, as follows, but may not be further redelegated:

(a) To the Chief, Union Relations Branch, any or all of the authorities contained in subparagraphs 1.(a)(1) through 1.(a)(7),

(b) To the Chief, National Office Branch, the authority to negotiate agreements covering National Office employees with the same authorities and responsibilities enumerated in subparagraphs 1.(b)(1) through 1.(b)(3).

3. The authority delegated in 1(b) may be redelegated by the officials listed therein to their Chief, Personnel Branch, but may not be further redelegated.

4. Delegation Order No. 102 (Rev. 3), issued November 24, 1972, is hereby superseded.

Issued: February 27, 1974.

Effective: March 13, 1974.

[SEAL] DONALD C. ALEXANDER,
*Commissioner.*

[FR Doc.74-5153 Filed 3-5-74;8:45 am]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[A7950]

### ARIZONA

### Proposed Withdrawal and Reservation of Lands

The Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, has filed an application, serial No. A 7950, for the withdrawal of the following described lands from appropriation under the public land laws including the mining laws (30 U.S.C., Ch. 2), and the mineral leasing laws, for the establishment of the Kofa National Wildlife Refuge. This withdrawal would be subject to valid, existing rights.

This application covers a 747,200 acre area which would be used for the conservation, protection, development, enhancement and maintenance of wildlife and wildlife resources under such laws, rules and regulations as are applicable to the National Wildlife Refuge system.

This withdrawal application embraces all of the existing Kofa Game Range established by Executive Order 8039 of January 25, 1939, and an additional 87,200 acres of public land along the northern and western borders of the Game Range.

Executive Order 8039 which established the Kofa Game Range provided for the joint administration of the range by the Bureau of Sport Fisheries and Wildlife and the Bureau of Land Management, and provided for the continued operation of the mining and mineral leasing laws, and domestic livestock grazing.

The purpose of this application is to change the name to the Kofa National Wildlife Refuge; to add 87,200 acres to the Kofa National Wildlife Refuge; to close the entire 747,200 acre area to the operation of the mining and mineral leasing laws; and to vest sole jurisdiction of the area with the Bureau of Sport Fisheries and Wildlife. Recreational uses (including hunting), domestic livestock grazing, and other special uses will be regulated in accordance with the laws, rules and regulations applicable to the National Wildlife Refuge System. Grazing would be removed from the provisions of the Taylor Grazing Act.

The following described lands now in the Kofa Game Range are included in this application:

GILA AND SALT RIVER MERIDIAN, ARIZONA

Tps. 1 and 2 N., Rs. 15, 16, 17, and 18 W.
Tps. 1, 2, 3, and 4 S., Rs. 15, 16, 17, and 18 W.
T. 2 S., R. 19 W.,
  Secs. 1 to 3, inclusive, secs. 10 to 15, inclusive;
  Secs. 22 to 28, inclusive, and secs. 32 to 36, inclusive.
T. 3 S., R. 19 W.,
  Secs. 1 to 5, inclusive, secs. 8 to 17, inclusive, secs. 20 to 28, inclusive, and secs. 33 to 36, inclusive.
T. 4 S., R. 19 W.,
  Secs. 1 to 4, inclusive, secs. 9 to 16, inclusive, secs. 21 to 28, inclusive and secs. 33 to 36, inclusive.
T. 5 S., Rs. 17 and 18 W.
T. 5 S., R. 19 W.,
  Secs. 1 to 4, inclusive, secs. 9 to 16, inclusive, secs. 21 to 28, inclusive, and secs. 33 to 36, inclusive.

This area includes approximately 660,000 acres of public and nonpublic lands in Yuma County.

In addition, it is proposed to add the following lands to the Refuge:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 3 N., R. 15 W.,
  Secs. 29 to 32, inclusive.
T. 3 N., R. 16 W.,
  Secs. 3 to 10, inclusive, secs. 13 to 36, inclusive.
T. 3 N., Rs. 17 and 18 W.
T. 4 N., R. 16 W.,
  Sec. 31, S½;
  Sec. 32, S½.
T. 4 N., R. 17 W.,
  Sec. 29, S½.
T Sec 30, S½;
  Secs. 31 to 35, inclusive;
  Sec. 36, S½.
T. 4 N., R. 18 W.,
  Sec. 22, SE¼;
  Sec. 23, S½;
  Sec. 24, SW¼;
  Sec. 25, W½ and SE¼;
  Secs. 26 to 28, inclusive, secs. 32 to 36, inclusive.
T. 1 S., R. 19 W.,
  Secs. 12, 13, 24, 25, 35, and 36;
  Sec. 26, S½;
  Sec. 27, SE¼;
  Sec. 34, E½.
T. 2 S., R. 19 W.,
  Secs. 1 to 3, inclusive, secs. 10 to 15, inclusive;
  Sec. 21;
  Sec. 20, E½;
  Sec. 29, E½.

These additional lands aggregate 87,700 acres of public and nonpublic lands in Yuma County.

On or before April 5, 1974, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, U.S. Department of the Interior, Room 3022, Federal Building, 230 North First Avenue, Phoenix, Arizona 85025.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The authorized officer of the Bureau of Land Management will prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

Dated: February 26, 1974.

JOE T. FALLINI,
*State Director.*

[FR Doc.74-5090 Filed 3-5-74;8:45 am]

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[A 7951]

### ARIZONA

### Proposed Withdrawal and Reservation of Lands

The Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, has filed an application, Serial No. A 7951, for the withdrawal of the following described lands from appropriation under the public land laws including the mining laws (30 U.S.C., Ch. 2), and the mineral leasing laws, for the establishment of the Cabeza Prieta National Wildlife Refuge. The withdrawal would be subject to valid existing rights.

This application covers a 940,000 acre area which would be used for the conservation, protection, development, enhancement and maintenance of wildlife and wildlife resources under such laws, rules and regulations as are applicable to the National Wildlife Refuge system.

This withdrawal application embraces all of the existing Cabeza Prieta Game Range established by Executive Order 8038 of January 25, 1939, and an additional 79,000 acres of public land at the western border of the game range.

Executive Order 8038 which established the Cabeza Prieta Game Range provided for the joint administration of the range of the Bureau of Sports Fisheries and Wildlife and the Bureau of Land Management, and provided for the continued operation of the mining and mineral leasing laws, and domestic livestock grazing.

Executive Order 8892 of September 5, 1941; Public Land Order No. 56 of November 6, 1943; Public Land Order No. 97 of March 16, 1943; and Public Law 87-597 of August 24, 1962, subsequently established the Luke Williams Air Force Range which overlapped and closed most of the Cabeza Prieta Game Range to the operation of the mining and mineral leasing laws.

The purpose of this application is to change the name to the Cabeza Prieta National Wildlife Refuge; to add 79,000 acres to that Refuge; to close the entire area to the operation of the mining and mineral leasing laws; and to vest sole jurisdiction in the Bureau of Sport Fisheries and Wildlife subject to the Memorandum of Understanding between the Bureau of Sport Fisheries and Wildlife and Department of Defense.

All but 34,560 acres in the proposed withdrawal have previously been closed to operation of the mining laws by other existing withdrawals.

The following described lands now in in the Cabeza Prieta Game Range are included in this application:

GILA AND SALT RIVER MERIDIAN, ARIZONA

Tps. 11, 12, and 13 S., R. 7 W.
T. 14 S., R. 7 W.,
Secs. 1 to 18, inclusive;
Tps. 11, 12, and 13 S., R. 8. W.
T. 14 S., R. 8 W.,
Secs. 1 to 21, inclusive;
Secs. 28 to 33, inclusive.
T. 15 S., R. 8 W.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.
T. 16 S., R. 8 W.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.
T. 17 S., R. 8 W.,
Secs. 4, 5, 6, 8, and 9.
Tps. 12, 13, 14, 15, 16, and 17 S., R. 9 W.;
Tps. 12, 13, 14, 15, and 16 S., R. 10 W.;
Tps. 12, 13, 14, 15, and 16 S., R. 11 W.;
Tps. 12, 13, 14, and 15 S., R. 12 W.;
Tps. 12, 13, 14, and 15 S., R. 13 W.;
Tps. 12, 13, 14, and 15 S., R. 14 W.;
Tps. 12, 13, and 14 S., R. 15 W.;
Tps. 12, 13, and 14 S., R. 16 W.

The areas described, including both public and nonpublic lands, aggregate approximately 861,000 acres in Pima and Yuma Counties.

Of the lands described above, the following have not previously been closed to the operation of the mining and mineral leasing laws: All of T. 13 S., R. 7 W.; secs. 1, 12, and 13, T. 13 S., R. 8 W.; secs. 1 to 5, inclusive, and secs. 8 to 17, inclusive, T. 14 S., R. 7 W., GSR Mer., Arizona. This area comprising 34,560 acres, upon withdrawal, will be administered by the Bureau of Sport Fisheries and Wildlife for wildlife purposes and for recreational uses (including hunting), domestic livestock grazing and other special uses, in accordance with the laws, rules and regulations applicable to the National Wildlife Refuge System. Grazing would be removed from the provisions of the Taylor Grazing Act.

In addition to the above lands it is proposed to add the following described lands now included within the Luke Williams Air Force Range to the Cabeza Prieta National Wildlife Refuge:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 12 S., 17 and 18 W.
T. 13 S., Rs. 17 and 18 W.
T. 14 S., R. 17 W.

This area includes approximately 79,000 acres in Yuma County.

On or before April 5, 1974, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, U.S. Department of the Interior, Room 3022 Federal Building, 230 North First Avenue, Phoenix, Arizona 85025.

If circumstances warrant, a public hearing will be held at a convenient time and place which will be announced.

The authorized officer of the Bureau of Land Management will prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

Dated: February 26, 1974.

JOE T. FALLINI,
*State Director.*

[FR Doc.74-5091 Filed 3-5-74;8:45 am]

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[Montana 27716]

## MONTANA

### Proposed Withdrawal and Reservation of Lands

FEBRUARY 27, 1974.

The Forest Service, United States Department of Agriculture, has filed application, M 27716, for the withdrawal of national forest lands described below from mineral location and entry under the mining laws but not from leasing under the mineral leasing laws, subject to existing valid claims.

The applicant desires the land for protection and preservation of a unique area of geologic significance and the historical landmark known as Capitol Rock.

For a period until April 5, 1974, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 316 North 26th Street, Billings, Montana 59101.

The Department's regulation (43 CFR 2351.4(c)) provides that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for the purpose other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

PRINCIPAL MERIDIAN, MONTANA

CUSTER NATIONAL FOREST

T. 3 S., R. 62 E.,
Sec. 16, SW¼SW¼NW¼ and W½SW¼;
Sec. 17, SE¼SE¼NE¼ and E½E½SE¼;
Sec. 20, E½NE¼NE¼; and
Sec. 21, N½NW¼.

The area described contains 240 acres in Carter County, Montana.

ROLAND F. LEE,
*Chief, Branch of Lands and Minerals Operations.*

[FR Doc.74-5129 Filed 3-5-74;8:45 am]

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## Office of the Secretary

[INT DES 74-20]

### PROPOSED NOXUBEE WILDERNESS AREA, MISSISSIPPI

### Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the Department of the Interior has prepared a draft environmental statement for the Proposed Noxubee Wilderness Area, Mississippi, and invites written comments on or before April 22, 1974.

The proposal recommends that 1,200 acres of the Noxubee National Wildlife Refuge, located in Oktibbeha County, Mississippi, be designated as wilderness within the National Wilderness Preservation System.

Copies of the draft statement are available for inspection at the following locations:

Bureau of Sport Fisheries and Wildlife
17 Executive Park Drive, NE.,
Atlanta, Georgia 30329

Headquarters
Noxubee National Wildlife Refuge
Route 1
Brooksville, Mississippi 39739

Bureau of Sport Fisheries and Wildlife
Office of Environmental Coordination
Department of the Interior
Room 2246
18th and "C" Streets, NW.
Washington, D.C. 20240

Single copies may be obtained by writing the Chief, Office of Environmental Coordination, Bureau of Sport Fisheries and Wildlife, Department of the Interior, Washington, D.C. 20240. Comments concerning the proposed action should also be addressed to the Chief, Office of Environmental Coordination. Please refer to the statement number above.

Dated: February 28, 1974.

WILLIAM A. VOGELY,
*Acting Deputy, Assistant Secretary.*

[FR Doc.74-5092 Filed 3-5-74;8:45 am]

## OIL SHALE ENVIRONMENTAL ADVISORY PANEL

### Establishment and Functions

This notice is issued in accordance with the provisions of 5 U.S.C. 552(a)(1), and section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463). The Secretary of the Interior has established an Oil Shale Environmental Advisory Panel, and issued a Departmental directive related to the prototype oil shale leasing program being conducted in the States of Colorado, Utah, and Wyoming. The Oil Shale Environmental Advisory Panel was established after consultation with the Office of Management and Budget, in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92–463). The Departmental directive, Chapter 3 of Part 615 of the Departmental Manual, prescribes the responsibilities of Departmental officials regarding relationships with the Panel. Both the Panel charter and the Departmental directive are published in their entirety below. Further information regarding the documents may be obtained from Mr. Frederick N. Ferguson, Assistant Solicitor—Minerals, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202–343–4325.

Dated: March 1, 1974.

RICHARD R. HITE,
*Deputy Assistant Secretary of the Interior.*

CHARTER

OIL SHALE ENVIRONMENTAL ADVISORY PANEL

1. There is hereby established, pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. 1970 ed., Supp. II, App. I), an Oil Shale Environmental Advisory Panel. This Panel will assist the Department of the Interior in the performance of functions in connection with the supervision of oil shale leases issued pursuant to section 21 of the Mineral Leasing Act, as amended (30 U.S.C. 241), and pursuant to the policies enunciated in the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347).

2. The objective of the Panel is to advise responsible officials of the Department of the Interior, particularly the Mining Supervisor of the Geological Survey and the appropriate District Managers of the Bureau of Land Management, in the enforcement of the provisions of the prototype oil shale leases for the protection of the environment with particular emphasis on the enforcement of the oil shale lease environmental stipulations. The objective of the prototype oil shale leasing program is to provide a new source of energy for the nation by encouraging the development of oil shale technology on a commercial scale by private enterprise in a manner that will ensure adequate protection of the environment of the areas in which leases are issued and of other areas affected by activities on those leases, and will ensure the maximum feasible restoration of all disturbed areas upon the termination of operations. The Oil Shale Environmental Advisory Panel shall assist the officials of the Department in attaining these objectives, and ensure the maximum feasible public participation in the program. In order to achieve these objectives the Panel will continue until December 31, 1975, and will be renewed, as necessary, for additional two year periods. It is expected that the Panel will be required for at least ten years, and may continue until the termination of all leases issued under the prototype oil shale leasing program and the suitable restoration of the land subject to those leases.

3. The Panel shall report directly to the Assistant Secretary—Land and Water Resources. (a) The Assistant Secretary—Land and Water Resources shall, after consultation with the Assistant Secretary—Energy and Minerals, appoint an employee of the Department of the Interior as chairman for the Panel. The Assistant Secretary—Land and Water Resources shall be responsible for assuring that the Panel operates within statutory and Departmental requirements for the management of advisory committees and shall supply the Panel with all necessary staff and facilities; this shall include providing any necessary expertise. (b) Each of the following Departmental bureaus and offices shall appoint one member to the Panel: the Bureau of Land Management, the Geological Survey, the Bureau of Mines, the Bureau of Outdoor Recreation, the Bureau of Sport Fisheries and Wildlife, the National Park Service, the Bureau of Reclamation, the Bureau of Indian Affairs, and the Office of the Solicitor. The head of each of the Executive Departments and the Administrator of the Environmental Protection Agency will each be authorized to appoint one member. (c) The Panel will also contain members who are not federal employees. The Governor of each State in which an oil shale lease is issued may nominate for appointment by the Secretary of the Interior three members, two of whom shall be employed by the State and represent state agencies and one of whom shall be chosen from among persons active in environmental matters. Each oil shale regional planning commission having jurisdiction in an area in which lands subject to a prototype oil shale lease are situated or, where there is no regional planning commission, the board of supervisors or similar governing body of each county within the boundaries of which a lease is issued may nominate for appointment by the Secretary of the Interior one member who may be an employee of the commission or the county. Three more public members will be appointed by the Secretary from among persons active in environmental matters. (d) All Federal members shall serve until their resignation, the termination of the Panel, or their removal by the officer appointing them. If the officer appointing a member removes a member, he shall appoint another in his place. All nonfederal members shall be appointed to serve one-year terms, but they may be reappointed for additional one-year periods.

4. (a) The function of the Panel shall be to advise the district manager of the Bureau of Land Management and the mining supervisor of the Geological Survey and any other officers or employees of the Department promptly with respect to environmental matters involved in the exercise of their respective responsibilities under the prototype oil shale leasing program. The Panel shall assist the mining supervisor or the district manager in conducting public hearings. (b) Subject to the limitations imposed by this Charter the Panel may adopt rules for the conduct of business. In particular, to facilitate the performance of its functions, the Panel may provide for the division of its members into subpanels; the membership of the subpanels shall be determined by the Chairman who shall assure that the expertise of the Panel is properly distributed. (c) The Panel will respond promptly to any request by the mining supervisor of the Geological Survey or the district manager of the Bureau of Land Management for advice. The supervisor or the manager will ordinarily not take any action with respect to environmental matters prior to receiving advice from the Panel, but, when the supervisor or the manager finds it impracticable to seek prior consultation, he may take the necessary action and thereafter inform the members of the Panel of his action and give them an opportunity to comment on it. (d) The Panel shall prepare an annual report to the Secretary on the environmental aspects of the prototype oil shale leasing program and on the status of exploration and development activities. This report will be made available to the public. All reports and other documents, including maps, submitted by an oil shale lessee to the mining supervisor or the district manager shall be made available to members of the Panel, except for (i) that information which is proprietary data within the terms of section 33 of the prototype oil shale lease, (ii) that information relating to investment and operating costs required to be submitted under section 16 of the prototype oil shale lease, and (iii) information and other material not subject to public inspection without the consent of the lessee under 30 CFR 231.5. If the chairman of the Panel shall request that any material excepted from disclosure to members pursuant to the foregoing sentence be made available to a member or members of the Panel because it is needed in connection with environmental evaluation, and the mining supervisor or the district manager, whichever has responsibility for the material, shall consent, that material shall be made available to the member or members; however, any member who shall be permitted to inspect that material shall treat that material as confidential and shall not make copies of it or reveal its contents to any persons not authorized to inspect it. Any other information made available to the Panel shall, at the request of any member of the Panel, be made available to the general public.

5. If any member of the Panel is dissatisfied with a decision of the mining supervisor or the district manager concerning environmental matters, he may bring the matter to the attention of the Panel. The Panel shall attempt to resolve all problems. If the Panel is unable to resolve the issue, a dissatisfied member representing a Department of the Interior office or bureau may bring his objection to the attention of his own supervisor, and any matter may thus be brought to the attenion of the Secretary of the Interior through the normal channels of authority as prescribed in 110 DM 1.11 of the Department of the Interior Manual. Any other dissatisfied member may bring his objection to the attention of the Liaison Officer referred to in paragraph 6 below, who, in turn, shall bring it to the attention of the Assistant Secretary—Land and Water Resources, at which point the matter may be brought to the attention of the Secretary through normal channels of authority mentioned above. However, such an appeal by a dissatisfied member shall not, in the absence of an order from the mining supervisor's or the district manager's superior, preclude the mining supervisor or the district manager from taking such action as he may deem desirable.

6. A Departmental employee stationed in Washington, D.C., will be appointed by the Assistant Secretary—Land and Water Resources after consultation with the Assistant Secretary—Energy and Minerals, to serve as Oil Shale Liaison Officer between the Panel and the Secretariat.

7. The Panel will meet at the call of the chairman who shall, when possible, give two

weeks notice in writing. Meetings will be conducted in accordance with statutory and Departmental requirements for advisory committees as prescribed in 308 DM 2 of the Department of the Interior Manual. The Panel is expected to meet at least quarterly and meetings may, if necessary, be extended over several days. The Department of the Interior will assume any expenses in connection with any members who are employees of the Department of the Interior and any other members who are not employed by the Federal, State, or local governments. Public members appointed by the Secretary may be paid travel expenses including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703. The estimated total annual operating costs of the Panel are estimated to be $10,000.00 and 1.20 man-years.

8. The formation of this committee is determined to be in the public interest in connection with the performance of duties imposed on this Department as stated in paragraph one above. This charter shall become effective April 5, 1974.

Dated: February 27, 1974.

ROGERS C. B. MORTON,
*Secretary of the Interior.*

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL

PUBLIC LANDS—PART 615 LEASING

Chapter 3—Prototype Oil Shale Leasing Program

.1 *Purpose.* This Chapter prescribes responsibilities and procedures for functions associated with the prototype oil shale leasing program being conducted in the States of Colorado, Utah, and Wyoming.

.2 *Authority.* The oil shale leasing program is being conducted pursuant to the authority contained in section 21 of the Mineral Leasing Act, as amended (30 U.S.C. 241), and the policies enunciated in the National Environment Policy Act of 1969 (42 U.S.C. 4321, et seq.).

.3 *Objective.* The objective of the prototype oil shale leasing program is to provide a new source of energy for the nation by encouraging the development of oil shale technology on a commercial scale by private enterprise in a manner that will ensure adequate protection of the environment of the areas in which leases are issued and of other areas affected by activities on those leases, and will ensure the maximum feasible restoration of all disturbed areas upon the termination of operations.

.4 *Oil Shale Environmental Advisory Panel.* An Oil Shale Environmental Advisory Panel has been established to advise Departmental officials in the enforcement of the provisions of the prototype oil shale leases for the protection of the environment. The Panel is composed of Departmental, other Federal, State, and public members. The following paragraphs prescribe the relationships with and coordination required between specific Departmental officials and the Panel. The functions of the Panel shall be to advise the district manager of the Bureau of Land Management and the mining supervisor of the Geological Survey and any other officers or employees of the Department with respect to environmental matters involved in the exercise of their respective responsibilities under the prototype oil shale leasing program.

.5 *Responsibilities.* The Assistant Secretary—Land and Water Resources is assigned primary responsibility for the management of the prototype oil shale leasing program. Appropriate officials of the Bureau of Land Management and the Geological Survey are responsible for related activities associated with leasing and permits as specified in Departmental regulations and directives; the provisions of the prototype leases; and consultation regarding environmental considerations as provided below.

A. *Chairman of Oil Shale Environmental Advisory Panel.* As prescribed in the Panel's charter, a Chairman of the Panel shall be appointed by the Assistant Secretary—Land and Water Resources after consultation with the Assistant Secretary—Energy and Minerals. The Chairman or his designee shall:

(1) convene the Panel and preside at all meetings;

(2) propose rules for the conduct of the Panel;

(3) designate the membership of subpanels;

(4) disseminate to members all information relevant to the Panel's activities and responsibilities;

(5) inform the mining supervisor, the district manager, the Oil Shale Liaison Officer, and other appropriate officers of Panel recommendations;

(6) forward questions to the Secretariat and the heads of departmental bureaus and offices through the Oil Shale Liaison Officer;

(7) direct the preparation of the annual report to the Secretary on the environmental aspects of the prototype oil shale leasing program and on the status of exploration and development activities;

(8) direct such staff of the Panel as the Assistant Secretary—Land and Water Resources may provide; and

(9) exercise such other authority as may be necessary to ensure that the Panel can perform efficiently the functions given to it by the charter establishing it and by this chapter.

B. *Oil Shale Liaison Officer.* An Oil Shale Liaison Officer shall be appointed by the Assistant Secretary—Land and Water Resources after consultation with the Assistance Secretary—Energy and Minerals. The duties of the Liaison Officer shall be strictly of a liaison and informational nature. He shall be responsible for making certain that any communications received from members of the Panel (other than members who are employed by the Department of the Interior) are referred to the appropriate officers and that communications addressed to the Panel or to other parts of the Department, but falling within the proper responsibilities of the Panel, are appropriately transmitted. The Liaison Officer shall assist in the dissemination of reports and other material prepared by or for the Panel. He may answer inquiries from other Federal agencies or the public about the activities of the Panel.

.6 *Consultation on Decisions.* The mining supervisor of the Geological Survey shall consult the Panel with respect to all decisions involving enforcement of the environmental provisions of each oil shale lease and, in particular, the oil shale lease environmental stipulations. The district manager of the Bureau of Land Management shall consult the Panel with respect to all decisions involving enforcement of the environmental stipulations included in any permit or other authorization to use lands outside the leased lands in connection with the program. Where particable, the mining supervisor and the district manager shall consult the Panel prior to making any decision. Where it is not practicable for the mining supervisor or the district manager to consult the Panel prior to making a decision, he may make and implement the decisions without prior consultation, but in such cases he shall inform the Panel as soon as possible of his decision and give members an opportunity to comment on it.

.7 *Approval of Plans and Issuance of Permits.* The mining supervisor shall not approve exploratory or development plans under section 10 of a prototype lease, or significant amendments or revisions of, or supplements to, such plans, until he has submitted those plans, or amendments, revisions, or supplements, and all relevant related information, to the Panel and has given each panel member a reasonable opportunity to comment thereon. The district manager shall issue no special land use permit or other authorization for the use of lands outside the leased lands in connection with the prototype oil shale leasing program until he has submitted the application for the authorization and all relevant related information to the Panel and has given each panel member a reasonable opportunity to comment thereon.

.8 *Public Hearings.* The mining supervisor shall hold a public hearing on the environmental aspects of the detailed development plan submitted under section 10 of a prototype lease prior to approval of that plan. The mining supervisor and the district manager may hold such other hearings in connection with the prototype oil shale program as they deem desirable. The Panel shall assist the mining supervisor or the district manager in conducting public hearings.

.9 *Reports and Records.* All reports and other documents, including maps, submitted by an oil shale lessee to the mining supervisor or the district manager shall be made available to members of the Panel, except for (i) that information which is proprietary data within the terms of section 33 of the prototype oil shale lease, (ii) that information relating to investment and operating costs required to be submitted under section 16(a) of the prototype oil shale lease, and (iii) information and other material not subject to public inspection without the consent of the lessee under 30 CFR 231.5. If the chairman of the Panel shall request that any material excepted from disclosure to members pursuant to the foregoing sentence be made available to a member or members of the Panel because it is needed in connection with environmental evaluation, and the mining supervisor or the district manager, whichever has responsibility for the material, shall consent, that material shall be made available to the member or members; however, any member who shall be permitted to inspect that material shall treat that material as confidential and shall not make copies of it or reveal its contents to any persons not authorized to inspect it. Any other information made available to the Panel shall, at the request of any member of the Panel, be made available to the general public.

.10 *Appeals on Decisions.* If any Departmental member of the Panel is dissatisfied with a decision of the mining supervisor or the district manager concerning environmental matters, he may bring the matter to the attention of the Panel. The Panel shall attempt to resolve all problems. If the Panel is unable to resolve the issue, a dissatisfied member representing a Department of the Interior office or bureau may bring his objection to the attention of his own supervisor, and any matter may thus be brought to the attention of the Secretary of the Interior through the normal channels of authority as prescribed in 110 DM 1.11. However, such an appeal by a dissatisfied Departmental member shall not, in the absence of an order from the mining supervisor's or the district manager's superior, preclude the mining supervisor or the district manager from taking such action as he may deem desirable.

[FR Doc.74-5143 Filed 3-5-74; 8:45 am]

## DEPARTMENT OF AGRICULTURE

### Forest Service

### CRADLE OF FORESTRY IN AMERICA ADVISORY COMMITTEE

#### Notice of Meeting

The Cradle of Forestry in America Advisory Committee will meet at 9 AM, April 23, 1974 at the Pisgah Ranger District Office, Brevard, North Carolina. The purpose of this meeting is to report on accomplishments in project development since last meeting and to review the Cradle of Forestry Interpretive Area Plan.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, National Forests in North Carolina, 50 S. French Broad Street, Asheville, North Carolina 28802, telephone 704–254–0961. Written statements may be filed with the committee before or after the meeting.

R. MAX PETERSON,
*Acting Regional Forester.*

FEBRUARY 27, 1974.

[FR Doc.74–5093 Filed 3–3–74;8:45 am]

### MULTIPLE USE PLAN FOR ELK SUMMIT PLANNING 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 Multiple Use Plan for the Elk Summit Planning Unit, Forest Service Report Number USDA–FS–DES (Adm) R1–74–7.

Proposed action is the implementation of a revised land use plan for 82,627 acres of National Forest land on the Powell Ranger District of the Clearwater National Forest in Idaho County, State of Idaho. The planning unit is subdivided into eleven management units. Management emphasis is defined and management direction and prescriptions are provided for each unit.

This draft 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 Street & Independence Avenue SW.
Washington, D.C. 20250

USDA, Forest Service
Northern Region
Federal Bldg., Room 3077
Missoula, Montana 59801

USDA, Forest Service
Clearwater National Forest
Route 3
Orofino, Idaho 83544

USDA, Forest Service
Powell Ranger District
Lolo, Montana 59847

A limited number of single copies are available upon request to Kenneth P. Norman, Forest Supervisor, Clearwater National Forest, Orofino, Idaho 83544.

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 Kenneth P. Norman, Forest Supervisor, Clearwater National Forest, Route 3, Orofino, Idaho 83544. Comments must be received by April 25, 1974, in order to be considered in the preparation of the final environmental statement.

KEITH M. THOMPSON,
*Acting Regional Forester, Northern Region, Forest Service.*

FEBRUARY 25, 1974.

[FR Doc.74–5075 Filed 3–5–74;8:45 am]

### NATIONAL FOREST GRAZING ADVISORY COMMITTEES

#### Notice of Meeting

The Apache and Sitgreaves National Forest Grazing Advisory Committees will meet jointly at 1 p.m., March 22, 1974, at the Maxwell House in Show Low, Arizona.

The purpose of this meeting is to discuss grazing matters, and also to discuss the consolidation of the Apache-Sitgreaves National Forests.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, 333–4301. Written statements may be filed with the committee before or after the meeting.

HALLIE L. COX,
*Forest Supervisor.*

FEBRUARY 22, 1974.

[FR Doc.74–5119 Filed 3–5–74;8:45 am]

### NATIONAL FOREST MULTIPLE USE ADVISORY COMMITTEES

#### Notice of Meeting

The Apache National Forest Multiple Use Advisory Committee and the Sitgreaves National Forest Multiple Use Management Advisory Council will meet jointly at 10 a.m., April 12, 1974, at the Forest Supervisor's Office at Springerville, Arizona.

The purpose of this meeting is to:

1. Discuss the Apache-Sitgreaves Multiple Use Guide
2. Discuss Land Use Planning on the Mogollon Rim and Barometer Watershed Units
3. Discuss the proposed fiscal year 1975 Program of Work for the Forests
4. Other items as brought up by committee members

The meeting will be open to the public. The public may speak up at any time. The consensus of opinions on advisory items or recommendations will be limited to committee and council members only.

HALLIE L. COX,
*Forest Supervisor.*

FEBRUARY 22, 1974.

[FR Doc.74–5120 Filed 3–5–74;8:45 am]

### SUPERIOR NATIONAL FOREST ADVISORY COMMITTEE

#### Notice of Meeting

The Superior National Forest Advisory Committee will meet at 10 a.m. on April 9, 1974, at the Radisson-Duluth Hotel, Duluth, Minnesota.

The purpose of this meeting is to examine alternatives of some critical management issues of the Boundary Waters Canoe Area Management Plan and Environmental Statement.

The meeting will be open to the public. Persons who wish to attend should notify Harold E. Andersen, Forest Supervisor, Superior National Forest, P.O. Box 338, Duluth, Minnesota 55801. Written statements may be filed with the committee before or after the meeting.

HAROLD E. ANDERSEN,
*Forest Supervisor.*

FEBRUARY 25, 1974.

[FR Doc.74–5089 Filed 3–5–74;8:45 am]

### MULTIPLE-USE PLAN, SPOTTED BEAR PLANNING UNIT

#### Availability of Draft Environmental Statement

FEBRUARY 27, 1974.

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 proposed Multiple-Use plan—Spotted Bear Planning Unit, Report Number USDA–FS–DES (Adm.) RI–74–9.

The environmental statement concerns a proposed management plan for about 142,824 acres of National Forest land on the Spotted Bear Ranger District of the Flathead National Forest, Flathead County, Montana. The proposed plan provides the District Ranger with management direction and guidance for each of the fourteen management units within the total planning area.

This draft environmental statement was filed with CEQ on February 27, 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., S.W.
Washington, D.C. 20250

USDA, Forest Service
Region 1—Northern Region
200 East Broadway
Missoula, Montana 59801

USDA, Forest Service
Flathead National Forest
290 North Main
Kalispell, Montana 59901

USDA, Forest Service
Spotted Bear Ranger District
Hungry Horse, Montana 59919

A limited number of single copies are available upon request to Edsel L. Corpe, Forest Supervisor, Flathead National Forest, 290 North Main, Kalispell, Montana 59901.

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 Edsel L. Corpe, Forest Supervisor, Flathead National Forest, 290 North Main, Kalispell, Montana 59901. Comments must be received by April 29, 1974 in order to be considered in the preparation of the final environmental statement.

KEITH M. THOMPSON,
*Regional Forester, Forest Service, Northern Region.*

FEBRUARY 27, 1974.

[FR Doc.74-5128 Filed 3-5-74;8:45 am]

## NATIONAL WILDERNESS PRESERVATION SYSTEM

### Proposed Addition of Certain Eastern National Forest Lands; 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 final environmental statements for the establishment of the following named wilderness areas:

| *Name* | *Statement Number* |
|---|---|
| Beaver Creek Wilderness, Daniel Boone National Forest, Kentucky, | USDA-FS-FES (Leg) 74-74. |
| Caney Creek Wilderness, Ouachita National Forest, Arkansas, | USDA-FS-FES (Leg) 74-75. |
| Cohutta Wilderness, Chattahoochee and Cherokee National Forest, Georgia and Tennessee, | USDA-FS-FES (Leg) 74-76. |
| Ellicott's Rock Wilderness, Sumter National Forest, South Carolina, | USDA-FS-FES (Leg) 74-77. |
| Gee Creek Wilderness, Cherokee National Forest, Tennessee, | USDA-FS-FES (Leg) 74-78. |
| James River Face Wilderness, Jefferson National Forest, Virginia, | USDA-FS-FES (Leg) 74-79. |
| Laurel Fork Wilderness, George Washington and Monongahela National Forest, Virginia and West Virginia, | USDA-FS-FES (Leg) 74-80. |
| Sipsey Wilderness, Bankhead National Forest, Alabama, | USDA-FS-FES (Leg) 74-81. |
| Big Island Lakes Wilderness, Hiawatha National Forest, Michigan, | USDA-FS-FES (Leg) 74-82. |
| Bristol Cliffs Wilderness, Green Mountain National Forest, Vermont, | USDA-FS-FES (Leg) 74-83. |
| Dolly Sods Wilderness, Monongahela National Forest, West Virginia, | USDA-FS-FES (Leg) 74-84. |
| Hercules Wilderness, Mark Twain National Forest, Missouri, | USDA-FS-FES (Leg) 74-85. |
| Lye Brook Wilderness, Green Mountain National Forest, Vermont, | USDA-FS-FES (Leg) 74-86. |
| Rainbow Lakes Wilderness, Chequamegon National Forest, Wisconsin, | USDA-FS-FES (Leg) 74-87. |
| Whites Creek (Irish) Wilderness, Mark Twain National Forest, Missouri, | USDA-FS-FES (Leg) 74-88. |

The environmental statements concern proposals to establish the named areas as units of the National Wilderness Preservation System.

The final environmental statements were filed with CEQ on February 28, 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
1720 Peachtree Road, NW.
Atlanta, Georgia 30309
(statements numbered 74-74-74-81)

USDA, Forest Service
633 W. Wisconsin Ave.
Milwaukee, Wis. 53203
(statements numbered 74-80-74-88)

A limited number of single copies are available upon request to John R. McGuire, Chief, Forest Service, South Agriculture Bldg., 12th St. & Independence Ave., SW., Washington, D.C. 20250.

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.

ADRIAN M. GILBERT,
*Acting Deputy Chief, Forest Service.*

FEBRUARY 28, 1974.

[FR Doc.74-5168 Filed 3-5-74;8:45 am]

## Rural Electrification Administration

### COLORADO-UTE ELECTRIC ASSOCIATION, INC. AND TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

#### Draft Environmental Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Draft Environmental Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with loan applications from Colorado-Ute Electric Association, Inc., P.O. Box 1149, Montrose, Colorado 81401 and Tri-State Generation and Transmission Association, Inc., P.O. Box 29198, Denver, Colorado 80229 for financing their respective portions of the Yampa Project (generation and transmission).

Additional information may be secured on request, submitted to Mr. David H. Askegaard, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Comments are particularly invited 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 from which comments have not been requested specifically.

Copies of the REA Draft Environmental Statement have been sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality Guidelines. The Draft Environmental Statement may be examined during regular business hours at the office of REA in the South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C., Room 4310, or at the borrowers' addresses indicated above.

Comments concerning the environmental impact of the construction proposed should be addressed to Mr. Askegaard at the address given above. Comments must be received by May 6, 1974, to be considered in connection with the proposed action.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions, with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 1st day of March 1974.

DAVID A. HAMIL,
*Administrator, Rural Electrification Administration.*

[FR Doc.74-5169 Filed 3-5-74;8:45 am]

### TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

#### Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration intends to prepare a draft environmental impact statement in accordance with section

102(2)(C) of the National Environmental Policy Act of 1969 in connection with a loan application from Tri-State Generation and Transmission Association, Inc., P.O. Box 29198, Denver, Colorado 80229. The statement will cover the following transmission facilities:

A. Approximately 68 miles of 230 kV line from Laramie, Albany County, Wyoming, to Archer, Laramie County, Wyoming. Terminal facilities will be provided in a proposed substation to be constructed by Pacific Power and Light Company at Laramie, Wyoming, and an existing substation of the Bureau of Reclamation at Archer, Wyoming.

B. Approximately 86 miles of 230 kV line from Archer, Laramie County, Wyoming, to Brush, Morgan County, Colorado. Terminal facilities will be provided in the existing substation of the Bureau of Reclamation at Archer, Wyoming, and in Tri-State's existing Story Substation at Brush, Colorado.

C. Approximately 14.5 miles of 230 kV line from Ault, Weld County, Colorado, to Fort Collins, Larimer County, Colorado. Terminal facilities will be provided in a proposed substation to be constructed by the Bureau of Reclamation at Ault and in the existing substation of the City of Fort Collins.

D. Approximately 26.0 miles of 230 kV line from Tri-State's proposed Gore Pass Substation approximately 4.5 miles north of Kremmling, Grand County, Colorado, to an existing Bureau of Reclamation Switching Station 3 miles northwest of Granby, Grand County, Colorado. The proposed Gore Pass Substation will be a 20/26.6/35 MVA, 138 kV to 69 kV facility.

E. Approximately 75.0 miles of 230 kV line from Tri-State's Big Sandy Substation presently under construction near Limon, Lincoln County, Colorado, to Tri-State's proposed Burlington Substation near Burlington, Kit Carson County, Colorado. The Burlington Substation will be a 60/80/100 MVA, 230 kV to 115 kV facility.

Interested persons are invited to submit comments which may be helpful in preparing the draft EIS.

Comments should be forwarded to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with a copy to the borrower whose address was given above. Additional information may be obtained at the borrower's office during regular business hours.

Dated at Washington, D.C. this 1st day of March, 1974.

DAVID A. HAMIL,
*Administrator.*

[FR Doc.74-5170 Filed 3-5-74;8:45 am]

## DEPARTMENT OF COMMERCE

### Domestic and International Business Administration

### COMPUTER PERIPHERALS, COMPONENTS AND RELATED TEST EQUIPMENT TECHNICAL ADVISORY COMMITTEE

#### Notice of Meeting

The Computer Peripherals, Components and Related Test Equipment Technical advisory Committee of the U.S. Department of Commerce will meet March 12, 1974, at 9:30 a.m. in Room 3817 of the Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C.

Members advise the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer peripherals, components, and related test equipment, including technical data related thereto, and including those whose export is subject to multilateral (CO COM) controls.

Agenda items are as follows:

1. Approval of minutes of technical advisory committee meeting of January 8, 1974.
2. Presentation of papers or comments from the public.
3. Review of preliminary report of the committee, the final version of which is to be submitted to the Department by April 1, 1974.
4. Discussion of jurisdictional question between Semiconductor Manufacturing and Test Equipment Technical Advisory Committee and this committee relative to certain test equipment.
5. Executive Session:
   a. Review of security classified portion of report mentioned in 3 above.
   b. Discussion of future assignment.
6. Adjournment.

The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was established January 3, 1973, and consists of technical experts from a representative cross-section of the industry in the United States and officials representing various agencies of the U.S. Government. The industry members are appointed by the Assistant Secretary for Domestic and International Business to serve a two-year term.

The public will be permitted to attend the discussion of agenda items 1–4, and a limited number of seats—approximately 15—will be available to the public for these agenda items. To the extent time permits members of the public may present oral statements to the committee. Interested persons are also invited to file written statements with the committee.

With respect to agenda item (5), "Executive Session," the Assistant Secretary of Commerce for Administration, on December 20, 1973, determined, pursuant to section 10(d) of P.L. 92-463, that this agenda item should be exempt from the provisions of sections 10(a)(1) and (a)(3), relating to open meetings and public participation therein, because the meeting will be concerned with matters listed in 5 USC 552(b)(1).

Further information may be obtained from Rauer H. Meyer, Director, Office of Export Administration, Room 1886C, U.S. Department of Commerce, Washington, D.C. 20230 (A/C 202+967-4293).

Minutes of those portions of the meeting which are open to the public will be available 30 days from the date of the meeting upon written request addressed to: Central Reference and Records Inspection Facility, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: March 1, 1974.

RAUER H. MEYER,
*Acting Director, Bureau of East-West Trade, U.S. Department of Commerce.*

[FR Doc.74-5162 Filed 3-5-74;8:45 am]

### NUMERICALLY CONTROLLED MACHINE TOOL TECHNICAL ADVISORY COMMITTEE

#### Notice of Meeting

The Numerically Controlled Machine Tool Technical Advisory Committee of the U.S. Department of Commerce will meet Thursday, March 14, 1974, at 10 a.m. in Room 6802 of the Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C.

Members advise the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to numerically controlled machine tools, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

Agenda items are as follows:

1. Comments on minutes of previous meeting.
2. Presentation of papers or comments by the public.
3. Review of work program:
   a. Objectives.
   b. Work content.
   c. Completion date.
4. Executive Session:
   a. Discussion of subgroup report on end use patterns, including military and military support uses of numerically controlled machine tools presently under security control.
   b. Discussion of subgroup report on foreign availability, including production in USSR.

Eastern Europe and the People's Republic of China.

c. Discussion of subgroup report on clarification of existing security control definition of numerically controlled machine tools.

d. Disussion of recommendations of subgroups and drafting of preliminary report by the committee to the Department of Commerce.

5. Adjournment.

The public will be permitted to attend the discussion of agenda items 1–3, and a limited number of seats—approximately 15—will be available to the public for these agenda items. To the extent time permits, members of the public may present oral statements to the committee. Interested persons are also invited to file written statements with the committee.

With respect to agenda item (4), "Executive session," the Assistant Secretary of Commerce for Administration, on December 20, 1973, determined, pursuant to section 10(d) of P.L. 92–463, that this agenda item should be exempt from the provision of sections 10(a)(1) and (a)(3), relating to open meetings and public participation therein, because the meeting will be concerned with matters listed in 5 USC 552(b)(1).

Further information may be obtained from Rauer H. Meyer, Director, Office of Export Administration, Room 1886C, U.S. Department of Commerce, Washington, D.C. 20230 (A/C 202+967–4293).

Minutes of those portions of the meeting which are open to the public will be available 30 days from the date of the meeting upon written request addressed to: Central Reference and Records Inspection Facility, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: March 1, 1974.

RAUER H. MEYER,
*Acting Director, Bureau of East-West Trade, U.S. Department of Commerce.*

[FR Doc.74–5161 Filed 3–5–74;8:45 am]

## National Oceanic and Atmospheric Administration

### PAUL A. PAULBITSKI

### Issuance of Permit for Marine Mammals

On December 5, 1973, a notice was published in the FEDERAL REGISTER (38 FR 33508) that an application had been filed with the National Marine Fisheries Service by Paul A. Paulbitski, 2016 Wawona Street, San Francisco, California, for a permit to capture, tag and release 100 harbor seals (*Phoca vitulina richardii*) in San Francisco Bay.

Notice is hereby given that, on February 28, 1974, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for 20 harbor seals to Paul A. Paulbitski, subject to certain conditions set forth therein. The Permit is available for review by interested persons in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: February 28, 1974.

JACK W. GEHRINGER,
*Acting Director, National Marine Fisheries Service.*

[FR Doc.74–5107 Filed 3–5–74;8:45 am]

### CHARLES A. REPENNING

### Issuance of Permit for Marine Mammals

On December 10, 1973, a notice was published in the FEDERAL REGISTER (38 FR 34004) that an application had been filed with the National Marine Fisheries Service by Mr. Charles A. Repenning, Paleontology and Stratigraphy Branch, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025, for a permit to take certain marine mammals for the purpose of scientific research.

Notice is hereby given that on February 21, 1974, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit to Paleontology and Stratigraphy Branch for the taking of dead marine mammal specimens. The activities authorized by this Permit are subject to certain conditions set forth therein. The Permit is available for review by interested parties in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: February 21, 1974.

JACK W. GEHRINGER,
*Acting Director, National Marine Fisheries Service.*

[FR Doc.74–5108 Filed 3–5–74;8:45 am]

### FRANK E. SOUTH

### Issuance of Permit for Marine Mammals

On December 10, 1973, notice was published in the FEDERAL REGISTER (38 FR 34004) that an application had been filed with the National Marine Fisheries Service by Dr. Frank E. South, Dalton Research Center, University of Missouri, Columbia, Missouri, for a permit to take eight (8) California sea lions (*Zalophus californianus*) for the purpose of conducting scientific research on the physiology of diving mammals.

Notice is hereby given that, on February 27, 1974, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit to Frank E. South, subject to certain conditions set forth therein. The Permit is available for review by interested persons in the Office of the Director, National Marine Fisheries Service, Washington, D.C.

Dated: February 27, 1974.

JACK W. GEHRINGER,
*Director, National Marine Fisheries Service.*

[FR Doc.74–5106 Filed 3–5–74;8:45 am]

## National Technical Information Service

### GOVERNMENT-OWNED INVENTIONS

### Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the licensing policy of each Agency-sponsor.

Copies of Patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22151, at the prices cited. Requests for copies of patent applications must include the PAT-APPL number and the title.

Paper copies of patents cannot be purchased from NTIS but are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each.

Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
*Patent Program Coordinator, National Technical Information Service.*

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Maryland 20014.

Patent application 393,207: A Portable Ultrasonic Radiometer; filed 30 August 1973; PC $3.00/MF $1.45.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets, NW., Washington, DC 20240.

Patent 3,495,411: Water Level Control System; filed 28 June 1968, patented 17 February 1970; not available NTIS.

Patent 3,508,506: Process and Apparatus for Reduction of Unburned Combustible in Fly Ash; filed 13 June 1968, patented 28 April 1970; not available NTIS.

Patent 3,775,096: Production of Niobium and Tantalum; filed 15 January 1973, patented 27 November 1973; not available NTIS.

DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, VA 22217.

Patent 3,592,692: Apparatus for Battery Cell Connections; filed 19 February 1970, patented 13 July 1971; not available NTIS.

Patent 3,597,685: Semiconductor Electromagnetic Radiation Isolated Thermocouple; filed 23 April 1969, patented 3 August 1971; not available NTIS.

Patent 3,598,505: Bellows Pump; filed 24 October 1969, patented 10 August 1971; not available NTIS.

Patent 3,599,149: Sequence Recognition System; filed 9 April 1969, patented 10 August 1971; not available NTIS.

Patent 3,599,170: Flexible Hermetically Sealed Connector; filed 29 August 1969, patented 10 August 1971; not available NTIS.

Patent 3,601,899: Single Core Solid-State Compass; filed 3 July 1969, patented 31 August 1971; not available NTIS.

Patent 3,602,577: Optical Tunneling Acoustic Surface Wave Light Modulator; filed 17 March 1970, patented 31 August 1971; not available NTIS.

Patent 3,603,838: High Intensity Electron Beam Generator; filed 20 June 1969, patented 7 September 1971; not available NTIS.

Patent 3,607,379: Microelectronic Interconnection Substrate; filed 22 January 1968, patented 21 September 1971; not available NTIS.

Patent 3,608,510: Collapsible Pontoon; filed 26 February 1969, patented 28 September 1971; not available NTIS.

Patent 3,609,499: Electronic Chopper Circuit; filed 29 April 1969, patented 28 September 1971; not available NTIS.

Patent 3,609,571: Sideband Suppression for Broadband Parametric Amplifier; filed 27 October 1969, patented 28 September 1971; not available NTIS.

Patent 3,609,590: Expanded Laser Beam Output; filed 11 December 1969, patented 28 September 1971; not available NTIS.

Patent 3,631,551: Prepackaged Monopropellant Gas Generator Buoyancy System; filed 3 September 1969, patented 4 January 1972; not available NTIS.

Patent 3,631,835: Magnesium Bimetal and System for Flame Spraying Metals on Magnesium Substrate; filed 26 February 1969, patented 4 January 1972; not available NTIS.

Patent 3,631,850: Pressure Transducer Apparatus for Microhemocirculation Studies; filed 14 November 1969, patented 4 January 1972; not available NTIS.

Patent 3,632,519: Aqueous Solutions of omega-Aminoalkyl Alkylsulfones as Regenerative CO2 Absorbents; filed 10 November 1969, patented 4 January 1972; not available NTIS.

Patent 3,633,118: Amplifying Surface Wave Device; filed 22 July 1970, patented 4 January 1972; not available NTIS.

Patent 3,633,155: Pressure-Balanced Electrical Assembly; filed 13 April 1970, patented 4 January 1972; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA—Code GP–2, Washington, DC 20546.

Patent application 398,885: Fiber Modified Polyurethane Foam for Ballistic Protection; filed 17 September 1973, PC $3.00/MF $1.45.

Patent application 411,572: Ergometer Calibrator; filed 31 October 1973, PC $3.00/MF $1.45.

Patent application 412,379: Anti-Multipath Digital Signal Detector; filed 2 November 1973; PC $3.00/MF $1.45.

Patent 3,766,380: Monitoring Atmospheric Pollutants with a Heterodyne Radiometer Transmitter-Receiver; patented 16 October 1973; not available NTIS.

Patent 3,769,623: Low Loss Dichroic Plate; patented 30 October 1973; not available NTIS.

Patent 3,769,689: Method of Making Pressure Tight Seal for Super Alloy; Patented 6 November 1973; not available NTIS.

Patent 3,770,933: Apparatus for Welding Blades to Rotors; patented 6 November 1973; not available NTIS.

Patent 3,771,037: Solid State Controller Three Axes Controller; patented 6 November 1973; not available NTIS.

Patent 3,771,040: Regulated DC-to-DC Converter for Voltage Step-Up or Step-Down with Input-Output Isolation; patented 6 November 1973; not available NTIS.

Patent 3,771,074: Tunable Cavity Resonator with Ramp Shaped Supports; patented 6 November 1973; not available NTIS.

[FR Doc.74–5229 Filed 3–5–74;8:45 am]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

[Docket No. FDC–D–667; NADA No. 6–640V, etc.]

### ACME SCIENTIFIC CO., ET AL.

### New Animal Drug Applications; Notice of Opportunity for Hearing

Notice is hereby given to each holder of a new animal drug application (NADA) listed herein that the Commissioner of Food and Drugs proposes to issue an order under the provisions of section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of such applications and all approved supplements thereto on the grounds that:

The applicants have failed to make required reports pursuant to section 512(l) of the act for each new animal drug listed herein. Said reports include: (1) The notice regarding drug effectiveness which was published in the FEDERAL REGISTER of July 9, 1966 (31 FR 9426). This notice required holders of new drug applications approved between 1938 and October 10, 1962, to submit certain data, including data supporting efficacy of the products, in order to facilitate review of the products, by the National Academy of Sciences—National Research Council (NAS–NRC). The purpose of this review was to determine whether there may be grounds for withdrawing approval of the application; and (2) the report which was required by § 135.35 *Records and reports on new animal drugs and antibiotics for use in animals for which applications or certification Forms 5 and 6 became effective or were approved prior to June 20, 1963* published in the FEDERAL REGISTER of September 14, 1971 (36 FR 18378). This regulation required the submission of a report from the holder of the application for each new animal drug or antibiotic approved prior to June 20, 1963.

This action is intended to close the listed NADA's because they have been inactive for several years, and the sponsors have failed to submit the required reports.

Upon request, the Commissioner will provide any interested persons affected by this notice a statement of the composition of any of the listed drugs to the extent that such information was disclosed or is required by law to be disclosed in the labeling.

Notice is hereby given to the holders of the below-listed NADA's and any interested persons who may be adversely affected that the Commissioner proposes to issue an order under the provisions of section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of all of these NADA's and all amendments and supplements thereto:

1. Acme Scientific Co., Inc., P.O. Box 317, Richmond, VA 23202.
NADA:
6–640V, Sul-Nox (25% Sulfaquinoxaline).

2. Albers Milling Co., Carnation Bldg., 5045 Wilshire Boulevard, Los Angeles, CA 90036.
NADA's:
6–152V, Selfade (Sulfamerazine 0.25%).
7–235V, Selfade (Sulfaquinoxaline 0.1%).
7–503V, Selfade (Sulfamerazine and Sulfaquinoxaline).

3. American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540.
NADA's:
3–814V, Sulfanilamide Surgical Powder (P-Amino Benzene Sulfonamide).
4–552V, Sulfaguanidine 1% Mash Mixture Veterinary.
5–678V, Led-O-San (dl-2-Ethylhexyl) Ester of Sodium Sulfosuccinate and N-Octadecyl, N-(1,2-dicarboxyethyl) Tetrasodium Sulfosuccinamate).

4. Armour Pharmaceutical Co., P.O. Box 3113, Omaha, NB 68103.
NADA's:
9–077V, Somar (Somatotropin).
10–180V, Armycin-Sulfa (Erythromycin, Sulfadiazine, Sulfamerazine, and Sulfamethazine).
12–406V, Armathoid (Thyroid Stimulating Hormone).

5. Auburn University, Auburn, AL 36830.
NADA:
8–918V, Cecal Coccidiosis Vaccine (Sulfaquinoxaline).

6. Don Baxter, Inc., 1015 Grandview Ave., Glendale, CA 91201.
NADA:
8–000V, 5% Oxypolygelatin in Normal Saline.

7. Biochemical Corp. of America, Salem, VA 23153.
NADA:
9–198V, Ru-Mol (Concentrated Mold Enzyme Extract).

8. Butler Products Co., P.O. Box 571, Hamilton, OH 45012.
NADA:
1–383V, Vita-Septic Antiseptic Powder (Boric Acid, Alum, Phenol, Eucalyptol, Methylsalicylate and Thymol).

9. Cooperative G.L.F. Exchange, Inc., Attica, NY 14011.
NADA:
6–506V, G.L.F. Sulfamethazine in a Poultry Mash Base (Sulfamethazine 0.3%).

10. Cooper Tinsley Laboratories, 1180 Ave. of the Americas, New York, NY 10036.
NADA:
12–832V, Bitupal Foam Aerosol (Bituminous Asphaltite and Benzocaine).

11. Corn States Laboratories, Inc., 1124 Harney St., Omaha, NB 68102.
NADA:
11–900V, Statomycin T.S.F. (Erythromycin).

12. Crompton Grain Co., Inc., West Warwick, RI 02893.
NADA:
6–635V, Do-OX (Sulfaquinoxaline and Sulfur).

13. C.S.C. Pharmaceuticals, 1331 S. 1st St., Terre Haute, IN 47802.
NADA:
9–071V, Expandex (Dextran in Isotonic Sodium Chloride).

14. The Cudahy Laboratories, Washington Court House, OH 43160.
NADA:
9–201V, Hyaluronidase 1500 T.R. Units.

15. Diamond Laboratories, Inc., 2358 S.E. 43d Street, Des Moines, IA. 50304.
NADA's:

13-168V, Ferro-Plex 75 (Polysaccharide Iron, Cobalt, Zinc, Vitamin $B_{12}$ and Vitamin $B_6$).
13-169V, Ranch Iron Complex C (Polysaccharide Iron, Vitamin $B_{12}$ and Vitamin $B_6$).
16. Dorn & Mitchell Laboratories, P.O. Box 6528, Birmingham, AL 35217.
NADA:
8-935V, MF Coccivac (Sulfaquinoxaline).
17. Eby Co., Marengo, IA 52301.
NADA:
1-968V, Eby's Powder for Hogs and Chickens (Catechu, Benzoic Acid, Sodium Hyposulphite, and Oil of Anise).
18. Educational Laboratories, 1637 Court Pl., Denver, CO 80202.
NADA:
5-672V, Provet (Acetone, Terebene, Pyroxylin, Acrylic Resin, Camphor and Carbolic Acid).
19. Ells Poultry Products, Inc., Vineland, NJ 08360.
NADA:
7-978V, Quinel Powder (25% Sulfaquinoxaline).
20. Roscoe A. Fields, Church St., Farmville, NC 27827.
NADA:
2-399V, Fields Mange Remedy (Refined Petroleum, Spirits of Turpentine, and Flowers of Sulphur).
21. Flint River Mills, Inc., Bainbridge, GA 31717.
NADA:
8-750V, F-R-M Wormal Mix Crumbles (Butylnorate, Nicotine and Phenothiazine).
22. Fort Dodge Laboratories, Inc., Fort Dodge, IA 50501.
NADA:
6-313V, Anthelmintic Tablets for Sheep (Nicotine Arsenate and Copper Sulfate).
23. Goodwinol Products Corp., 90 Prince St., New York, NY 10012.
NADA:
3-603V, Goodwinol (Rotenone and Orthophenylphenol)
24. Jensen-Salsbery Laboratories, Inc., Division of Richardson-Merrell, Inc., Kansas City, MO 64141.
NADA:
3-136V, D-C-M Solution (Calcium Borogluconate, Magnesium Borogluconate, and Dextrose).
25. Hales & Hunter Co., 140th & Stewart Sts., Riverdale, IL 60627.
NADA:
6-435V, Red Comb Sulfacrums (Sulfamethazine 0.4%).
26. Lookout Products Manufacturing Co., 3939 St. Elmo Ave. Chattanooga, TN 37409.
NADA:
9-057V, Sodium Sulfaquinoxaline Solution Veterinary.
27. Charles W. Lowe, 438 Columbia Rd., Dorchester, MA 02154.
NADA:
180V, T.A.P. Liniment (Oil of Amber, Oil of Cloves, Oil of Cajuput, Oil of Eucalyptus, Oil of Turpentine, Oil of Olives, Commonwealth Oil, Gum Camphor, and Menthol Crystal).
28. Dr. J. Lynch, Shepherd, MI 48883.
NADA:
3-468V, Vitro (Hydrated Lime, Ferrous Sulphate, Calcium Acid Phosphate, Hard Wood Ash, Epsom Salts, Sodium Chloride, and Bone Meal).
29. L. A. Mosher Co., P.O. Box 1533, Atlanta, GA 30301.
NADA:
6-923V, Sulfaquin Powder (Sulfaquinoxaline 10%).
30. Norden Laboratories, Inc., 601 W. Cornhusker Highway, Lincoln, NB 68501
NADA:
12-930V, Dex Iron-100 (Ferric Hydroxide).
31. Northern States Laboratories, Box 95, Luverne, MN 56156.
NADA:
12-116V, Ferrex (Injectable Iron).
32. Northern States Poultry Service Co., Luverne, MN 56156.
NADA:
7-315V, Nox-O-Lyn (Sodium Sulfaquinoxaline).
7-316V, Nox (Sodium Sulfaquinoxaline).
33. North Florida Veterinary Supply, P.O. Box 436, Melrose, FL 32666.
NADA:
9-301V, Red Feather Worm and Conditioner capsules for Dogs (Naphthalene, Oil Wormseed, Benzoic Acid, Iodine, Chloroform and Milk Sugar).
34. Ortho Pharmaceutical Corp., Animal Health Div., Raritan, NJ 08869.
NADA:
6-489V, Bovine Semen Diluter (Carboxymethoxyamine Hemihydrochloride, Sodium Salt of Dehydroacetic Acid, 9-Aminoacridine HCl, Sulfanilamide, Sodium Citrate Dextrose, and Egg).
35. Parlam Corp., 266 South Dean St., Englewood, NJ 07631.
NADA:
12-271V, Prednisolone Veterinary.
36. Pfizer, Inc., 235 E. 42d St., New York, NY 10017.
NADA's:
7-880V, Terramycin Ointment (Terramycin Hydrochloride).
9-210V, Terramycin Eye Pellet (Oxytetracycline HCl, Polymixin B Sulfate and Tetracycline HCl).
37. Pitman-Moore, Inc., P.O. Box 344, Washington Crossing, NJ 08560.
NADA's:
2-988V, Sulfapyridine Canine Tablets.
4-535V, Parenteral Solution Somnopentyl (Pentobarbital Sodium, Alcohol and Sodium Carbonate).
5-067V, Pulitox (Orthophenylphenol 5%).
5-688V, Di-Sulfalac (Sodium Sulfathiazole, Sodium Sulfapyridine, and Dextrose).
38. Pratt Food Co., Hammond, IN 46322.
NADA:
9-731V, Rumen Booster and Calf Inoculum (Rumen Micro-Organism Concentrate).
39. Progressive Research Co., 836 E. Apricot Ave., Tulare, CA 93274.
NADA:
4-013V, Con-Dits (Castor Oil, Croton Oil and Thymol).
40. R. L. Prouty, Druggist, San Bruno, CA 94066.
NADA:
2-038V, Prouty's Tightener (Ext. Belladonna/Acid Tannic & Alcohol Contents 50%).
41. I. D. Russell Co. Laboratories, 2463 Harrison, Kansas City, MO 64108.
NADA's:
6-019V, Ruco Poultry Tablets (3-Nitro-4-Hydroxy-Phenylarsonic Acid, Ammonium Phenolsulphonate, and Boric Acid).
6-081V, Korum (3-Nitro-4-Hydroxyphenylarsonic Acid).
6-860V, Zuco Tablets (Arsanilic Acid).
8-902V, Hepsol (2-Amino-5-Nitrothiazole).
42. Songstar Products, Upper Dawson St., Liverpool, England.
NADA:
503V, Songstar Tonic Drops (Liquid Ferri Perchloride, Infusion Gentian Co. Conc. and Aqua Camphorae Con.).
43. E. R. Squibb & Sons, Inc., New Brunswick, NJ 08903.
NADA:
10-941V, Serpasil Injection Veterinary (Reserpine).
44. Standard Brands, Inc., 595 Madison Ave., New York, NY 10022.
NADA:
9-546V, Fidy (Irradiated Dry Yeast).
45. The Standard Chemical Co., 1013-17 High St., Des Moines, IA 50309.
NADA's:
559V, Stanex Balm (Zinc Oxide, Calamine, Bismuth Subnitrate, Resorcin, Benzocaine, Oil Birch Tar, and Ichthyol).
582V, Nicotinic Acid (Nicotinic Acid).
46. Standard Oil Co. of California, 841 Standard Ave., Richmond, CA 94802.
NADA:
3-736V, Standard Animal Salve (Synthetic Hydrocarbon Oil, Pine Tar Oil, and Amorphous Wax).
47. R. J. Strasenburgh Co., 755 Jefferson, Rochester, NY 14603.
NADA:
2-559V, Ributyl (n-Butyl Chloride and Oleum Ricini).
48. Stuyvesant Laboratories Inc., 50 York St., Camden, NJ 08102.
NADA:
2-746V, Virex (Iodine, Sodium Iodate, Sodium Iodide, and Organic Iodine).
49. W. D. Taylor Co., Bessemer, AL 35020.
NADA:
1-199V, Chico (Potassium Permanganate, Ferrous Sulphate, Potassium Alum, Barium Sulphate, and Kaolin).
50. The Upjohn Co., Kalamazoo, MI 49001.
NADA's:
7-837V, Mycifradin Sulfate (Neomycin Sulfate).
11-248V, Cardrase (Ethoxyzolamide).
12-608V, Neomycin Sulfate Sterile Solution.
51. U.S. Vitamin Corp., 250 E. 43d St., New York, NY 10017.
NADA:
2-924V, Chevinal (Vitamins A, $B_1$, $B_2$, $B_6$, D, E, and Nicotinic Acid, Calcium, Phosphorus, Potassium, Sodium Iron, Magnesium, Manganese, Copper, Zinc and Iodine).
52. Vet Products Inc., 1524 Holmes, Kansas City, MO 64108.
NADA's:
6-729V, Sulfaquinoxaline Sodium Tablets.
6-747V, Sulfaquinoxaline Sodium.
7-265V, Sulfaquinoxaline Solubilized 25% Veterinary.
7-480V, Sul-Mer-Zole Solution Veterinary (Sulfamerazine Sodium and Sulfathiazole Sodium).
7-482V, Sul-Meth-Mer Solution Veterinary (Sodium Sulfamethazine and Sodium Sulfamerazine).
12-742V, Injectable Iron.
53. Vitamins, Inc., 809 W. 58th St., Chicago, IL 60621.
NADA:
10-416V, Viosterol (Irradiated Ergosterol).
54. Warner-Chilcott, 201 Tabor Rd., Morris Plains, NJ 07950.
NADA:
10-684V, Paxital (Mepazine).
55. Whitmoyer Laboratories Inc., 19 North Railroad St., Myerstown, PA 17067.
NADA's:
6-634V, Sul-Clo (Sulfaquinoxaline 1%).
9-005V, SQ 12 (Sulfaquinoxaline).
56. Winthrop Laboratories, 1450 Broadway, New York, NY 10018.
NADA:
7-496V, Pentobrocanal Solution (Pentobarbital Sodium).
57. Dr. C. W. Zike, Sidney, NB 69162.
NADA:
2-088V, Zikes Chemical Compound (Potassium Iodide, Phenol, Sodium Bicarbonate, Iron Oxide and Calcium Carbonate).

Therefore, notice is given to the above-listed firms and to any other interested persons who may be adversely affected that the Commissioner proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of the listed NADA's and all amendments and supplements thereto on

the grounds that the holders of said applications have repeatedly or deliberately failed to make required reports.

In accordance with the provisions of section 512 of the act and the regulations promulgated thereunder (21 CFR Part 135), the Commissioner hereby gives the applicants and any other interested persons an opportunity for a hearing to show why approval of the new animal drug applications should not be withdrawn.

On or before April 5, 1974, the applicants and any other interested persons are required to file with the Hearing Clerk, Food and Drug Administration, Room 6–86, 5600 Fishers Lane, Rockville, MD 20852, a written appearance electing whether or not to avail themselves of the opportunity for a hearing. Failure of the applicants or any other interested persons to file a written appearance of election on or before April 5, 1974, will constitute an election by them not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing approval of the applications.

If the applicants or any other interested persons elect to avail themselves of the opportunity for a hearing, they must file, on or before April 5, 1974, a written appearance requesting the hearing, giving the reasons why approval of the new animal drug applications should not be withdrawn, together with a well-organized and full factual analysis of the data they are prepared to prove in support of their opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing (21 CFR 135.15(b)).

If review of the data submitted by an applicant or any other interested persons warrants the conclusion that there exists substantial evidence demonstrating the safety and efficacy of a product, the Commissioner will rescind this notice of opportunity for a hearing for that product.

If review of the data in the applications and data submitted by the applicants or any other interested persons in a request for a hearing, together with the reasoning and factual analysis in a request for a hearing, warrants the conclusion that no genuine and substantial issue of fact precludes the withdrawal of approval of the applications, the Commissioner will enter an order of withdrawal making findings and conclusions on such data.

If, upon the requests of the new animal drug applicants or any other interested persons, a hearing is justified, the issues will be defined, and administrative law judge will be named, and he shall issue, as soon as practicable after April 5, 1974, a written notice of the time and place at which the hearing will commence. All persons interested in identical, related, or similar products covered by the new animal drug applications will be afforded an opportunity to appear at the hearing, file briefs, present evidence, cross-examine witnesses, submit suggested findings of fact, and otherwise participate as a party. The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

Requests for hearing and/or elections not to request a hearing may be seen in the Office of the Hearing Clerk, Food and Drug Administration, Room 6–86, 5600 Fishers Lane, Rockville, MD 20852, during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 343–351; 21 U.S.C. 360b(e)) and under authority delegated to the Commissioner (21 CFR 2,120).

Dated: February 27, 1974.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.74-5159 Filed 3-5-74;8:45 am]

## BIOLOGICAL PRODUCTS; ALLERGENIC EXTRACTS

### Request for Consumer and Industry Participation in Advisory Review Panel

The Commissioner of Food and Drugs is in the process of forming the expert review panel for allergenic extracts. The panel was authorized August 24, 1973 as published in the FEDERAL REGISTER of October 2, 1973 (38 FR 27313) and will function under the provisions of § 601.25 (21 CFR 601.25, formerly § 273.245, recodified in the FEDERAL REGISTER of November 20, 1973 (38 FR 32053)) to make recommendations to the Commissioner on safety, efficacy, and labeling for all licensed biological products in the allergenic extract category. The Request for Data and Information for these products was published in a notice in the FEDERAL REGISTER of January 4, 1974 (39 FR 1082) with a deadline of April 4, 1974.

Voting members of the Panel on Review of Allergenic Extracts are being selected from lists of nominees recommended by interested persons, including members of national medical and professional societies, and consumer groups. The panel will be composed of experts, among them, practicing allergists, physicians, and scientists with training and experience in clinical and laboratory research in allergy or immunology.

In addition to qualified experts, the Commissioner has concluded that the panel on allergenic extracts should include one non-voting representative of consumer interests, and one non-voting representative of the regulated industry as do the first three biologics review panels.

Accordingly, any group or organization interested in participating in the selection of an appropriate non-voting representative of consumer interests for the panel should send such nominations to:

Mr. Alexander Grant
Food and Drug Administration
Director, Consumer Affairs (HFI–1)
5600 Fishers Lane
Rockville, MD 20852

A brief sketch of each nominee's experience should be included along with a statement indicating whether the nominee will represent the views and interests of an organization, association, or group. A description of the nominee's activities related to his potential contribution to or interest in the review panel should be included. The nominee should be willing to serve at 2-day meetings which will occur at intervals of 6 to 8 weeks for a period of one to two years. After receipt of such nominations, a list of the nominees for consumer interests for the panel will be compiled and submitted to each consumer group or organization responding along with a voting sheet which will be filled in and returned to the Food and Drug Administration. The nominee with the highest number of votes will be the consumer representative for the panel.

Similarly, any group or organization interested in participating in the selection of an appropriate non-voting representative of the regulated industry for the panel should send such nominations to:

Dr. Morris Schaeffer
Food and Drug Administration
Bureau of Biologics (HFB–5)
Building 29, Room 124
8800 Rockville Pike
Bethesda, MD 20014

After receipt of such nominations, a list of the nominees for the industry representative for the panel will be compiled and submitted to each industry group or organization responding. The responding parties, after deliberating among themselves, will select the industry representative. If the responding parties do not provide the name of the industry representative for the panel by a predetermined date, the Food and Drug Administration will choose the industry representative.

It will be the responsibility of the nonvoting consumer and industry members of the panel to represent consumer and industry interests in all deliberations.

To be considered, all letters must be received on or before April 5, 1974.

Dated: February 27, 1974.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.74-5160 Filed 3-5-74;8:45 am]

## Office of Education

## ADVISORY COMMITTEE ON ACCREDITATION AND INSTITUTIONAL ELIGIBILITY

### Notice of Public Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the spring meeting of the Advisory Committee on Accreditation and Institutional Eligibility will be held on March 14–15, 1974, at 9 a.m. local time, in the auditorium of the

HEW North Building, 330 Independence Avenue, SW., Washington, D.C.

The Advisory Committee on Accreditation and Institutional Eligibility is established pursuant to section 253 of the Veterans' Readjustment Assistance Act (Chapter 33, Title 38, U.S. Code). The Committee is established to advise the Commissioner of Education in fulfilling his statutory obligations to publish a list of nationally recognized accrediting agencies and associations which he determines to be reliable authority as to the quality of training offered by educational institutions and programs. It also serves to advise the Commissioner in fulfilling his statutory obligation to publish a list of State agencies which he has determined to be reliable authority concerning the quality of public postsecondary vocational education in their respective States, pursuant to section 438(b) of the Higher Education Act of 1965, as amended by Pub. L. 92–318.

The meeting of the Committee shall be open to the public on Thursday, March 14. The proposed agenda includes presentations by representatives of the nationally recognized accrediting agencies and associations and of the State agencies which have petitions for recognition pending before the Committee, and a review of various policy items. Under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and section 552(b) of Title 5 of the United States Code, the meeting will be closed to the public on Friday, March 15. Records shall be kept of all Committee proceedings.

Signed at Washington, D.C., on February 27, 1974.

JOHN R. PROFFITT,
*Director, Accreditation and Institutional Eligibility Staff, Office of Education.*

[FR Doc.74–5094 Filed 3–5–74;8:45 am]

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### Office of the Secretary

### PUBLIC HEALTH SERVICE

#### Statement of Organization, Functions, and Delegations of Authority

Part 1 in the Statement of Organization, Functions, and Delegations of Authority of the Department, Chapter 1N, entitled Office of the Assistant Secretary for Health (38 FR 18571, July 12, 1973) is hereby amended to establish a new Office of Health Legislation under the Office of the Assistant Secretary for Health.

*Section 1N.10 Organization.* Under Special Functions, after Office of Nursing Home Affairs, add Office of Health Legislation.

*Section 1N.20 Functions.* After the subsection 1N.20B2h, Office of Nursing Home Affairs, add a new subsection 1N.20B2i, Office of Health Legislation to read as follows:

1. *Office of Health Legislation (1N09).* The Office is responsible for coordinating and directing legislative matters affecting health activities of the Department and the Public Health Service, and for providing liaison services between the Public Health Service and the Assistant Secretary for Legislation.

The Office: (1) provides legislative advice, policy guidance, and staff support in the area of health legislation to the Assistant Secretary for Health and the Public Health Service; (2) advises the Assistant Secretary for Health in development of the Department's overall legislative health program and coordinates implementation of that program; (3) coordinates preparation of testimony or statements on legislative proposals for the Assistant Secretary for Health; (4) provides guidance and assistance to the health agencies in development and presentation of materials for hearings, executive sessions, and conferences on proposed legislative matters; (5) maintains liaison and develops contacts with interest groups concerned with health legislation; and (6) develops policies for and reviews agency reports requested by Congress.

Dated: February 27, 1974.

THOMAS S. MCFEE,
*Acting Assistant Secretary for Administration and Management.*

[FR Doc.74–5114 Filed 3–5–74;8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D–74–270]

### PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION, BOARD OF DIRECTORS

#### Designation of Member

David O. Meeker, Jr., Assistant Secretary for Community Planning and Development, is designated to serve on the Board of the Pennsylvania Avenue Development Corporation pursuant to section 3(d) of Public Law 92–578 (86 Stat. 1266).

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); sec. 3(d), Pennsylvania Avenue Development Corporation Act of 1972, P.L. 92–578)

*Effective date.* This designation is effective as of December 27, 1973.

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

[FR Doc.74–5135 Filed 3–5–74;8:45 am]

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[Docket No. D–74–271]

### SMALL BUSINESS ADMINISTRATOR

#### Revocation of Delegated Authority

The Delegation of Authority to the Administrator, Small Business Administration, issued under the authority of section 312(f), Housing Act of 1964 as amended, 42 U.S.C. 1425b, to make and administer loans to finance rehabilitation under section 312, as published at 32 FR 4509, March 24, 1967, is hereby revoked.

*Effective date.* This document is effective as of February 27, 1974.

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

[FR Doc.74–5136 Filed 3–5–74;8:45 am]

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## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### INTERNATIONAL CENTRE COMMITTEE

#### Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (P. L. 92–463) that the regular meeting of the International Centre Committee of the Advisory Council on Historic Preservation will be held on March 26, 1974, at 10:00 a.m. in Room 2010 of the New Executive Office Building, Washington, D.C. This meeting will be open to the public.

The International Centre Committee coordinates United States membership and participation in the International Centre for the Study of the Preservation and Restoration of Cultural Property in Rome, Italy. The Committee identifies special preservation problems in the United States, arranges for International Centre assistance in solving them, reviews American applicants for Centre training courses, convenes meetings of experts, and makes recommendations on American criteria and standards for preservation and restoration. The Committee's membership includes representatives of 28 national institutions and Federal agencies interested in the Centre's activities.

The agenda is as follows:

Call to Order
Chairman's Welcome
Review of November, 1973 Meeting Minutes
I. Committee Administrative Matters
II. Introduction and Distribution of Questionnaire on the State of European Conservation Expertise for Objects and Structures, and International Exchange carried on by Member Organizations.
III. Report and Discussion Concerning the Illegal or Illicit Export and Import of Cultural Objects
IV. Report on the Proposed Establishment of a National Architectural Archives

Additional information is available from the Executive Director, International Centre Committee, Suite 430, 1522 K Street NW., Washington, D.C. 20005.

JOHN D. MCDERMOTT,
*Executive Director.*

[FR Doc.74–5118 Filed 3–5–74;8:45 am]

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## ATOMIC ENERGY COMMISSION

[Docket Nos. 50–461, 50–462]

### ILLINOIS POWER CO.

#### Notice and Order for Prehearing Conference

In the matter of Illinois Power Company (Clinton Power Station, Units 1 and 2), Docket Nos. 50–461, 50–462.

Take notice, that pursuant to the "Notice of Hearing on Application for Construction Permits" published by the Atomic Energy Commission on December 7, 1973 (38 FR 33789) regarding the above-captioned proceeding, the Atomic Safety and Licensing Board will hold a special prehearing conference in this proceeding in Clinton, Illinois, on April 4, 1974.

The purposes of the prehearing conference are to (1) consider petitions for leave to intervene and make such preliminary or final determination as to the parties to the proceeding, as may be appropriate; (2) permit identification of the key issues in the proceeding; (3) take any steps necessary for further identification of the issues; and (4) establish a schedule for further actions in the proceeding.

Members of the public may attend the prehearing conference, as well as the evidentiary hearing, which will be held at a later time to be fixed by the Board. However, members of the public who may wish to participate in the hearing by way of limited appearance will not be permitted to do so at the prehearing conference. Oral and written limited appearance statements will be accepted by the Board at the commencement of the aforementioned evidentiary hearing.

*Wherefore, It is ordered,* In accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Commission, that the parties and any petitioners for intervention, or their counsel, shall appear for a prehearing conference on the matters required by § 2.751a (a) through (d) of the Commission's Rules of Practice relating to this proceeding. The prehearing conference shall be convened at 1 p.m. local time, on Thursday, April 4, 1974, in Circuit Courtroom No. 1, DeWitt County Courthouse, Clinton, Illinois 61727.

Issued at Washington, D.C., this 1st day of March 1974.

ATOMIC SAFETY AND LICENSING BOARD,
ROBERT M. LAZO,
*Chairman.*

[FR Doc.74-5133 Filed 3-5-74;8:45 am]

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[Docket No. 50-309]

## MAINE YANKEE ATOMIC POWER CO.

### Notice of Availability of Decision and Issuance of Amendment to Facility Operating License

Pursuant to the United States Atomic Energy Commission's regulation in Appendix D, Section A-11, to 10 CFR Part 50, notice is hereby given that the Atomic Safety and Licensing Appeal Board has rendered their decision dated November 30, 1973, of the review of the Initial Decision by the Atomic Safety and Licensing Board and the exceptions to the Initial Decision by the intervenors in the proceedings that authorized the issuance of an operating license to the Maine Yankee Atomic Power Company. The operating license is for the operation of the Maine Yankee Atomic Power Station, a pressurized, light-water moderated and cooled reactor, that is designed for initial operation at 2440 megawatts (thermal), and is located in Lincoln County, Maine. The Initial Decision and the Decision dated November 30, 1973, are available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C., and in the Wiscasset Public Library Association, High Street, Wiscasset, Maine.

Based upon the record developed in the above captioned matter, the Decision modified in certain respects the contents of the Final Environmental Statement relating to the operation of the Maine Yankee Atomic Power Station prepared by the Commission's Directorate of Licensing. A copy of the Final Environmental Statement is also available for public inspection at the above designated locations.

Pursuant to the provisions of 10 CFR Part 50, Appendix D, Section A-11, notice is hereby given that the Final Environmental Statement is deemed modified to the extent that the findings and conclusions relating to environmental matters contained in the Decision are different from those contained in the Final Environmental Statement. As required by Section A-11 of Appendix D, a copy of the Decision, which modifies the Final Environmental Statement, has been transmitted to the Council on Environmental Quality and is being made available to the public as noted herein.

In accordance with the Commission's regulations in 10 CFR Part 2, notice is hereby given that pursuant to the Decision, Amendment No. 2 to the operating license has been issued by the Commission's Directorate of Licensing. The amendment adds a condition to the license for the protection of the environment that requires the licensee to abide by the mixing zone criteria in the August 23, 1972 order of the Department of Environmental Protection of the State of Maine or in any amendments to that order. Appendix B of the Technical Specifications of License No. DPR-36 is also being changed to comply with the Decision.

Single copies of the Decision dated November 30, 1973; Amendment No. 2 to License No. DPR-36; and of the Final Environmental Statement may be obtained by writing to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Maryland, this 22d day of February 1974.

For the Atomic Energy Commission.

ROBERT J. SCHEME,
*Chief, Operating Reactors Branch No. 1, Directorate of Licensing.*

[FR Doc.74-5130 Filed 3-5-74;8:45 am]

## OAK RIDGE OPERATIONS OFFICE

### Trespassing on Commission Property

The notice concerning unauthorized entry into or upon certain installations and facilities of the Oak Ridge Operations Office of the Atomic Energy Commission dated October 12, 1965, appearing at pages 13285-13287 of the FEDERAL REGISTER of October 19, 1965, 30 FR 13285 (FR Doc. 65-11108), and amended at page 5384 of the FEDERAL REGISTER of March 30, 1967, 32 FR 5384 (FR Doc. 67-3473); at page 18302 of the FEDERAL REGISTER of December 1, 1970, 35 FR 18302 (FR Doc. 70-16033); and at page 1301 of the FEDERAL REGISTER of January 11, 1973, 38 FR 1301 (FR Doc. 73-578) is hereby further amended in the following respects:

The following installations and facilities are added to this notice:

The Atomic Energy Commission installation known as the Oak Ridge National Laboratory Nuclear Safety Pilot Plant, located in the Second Civil District, Roane County, Tennessee, within the corporate limits of the City of Oak Ridge, on the south side of Melton Valley Drive, approximately 0.4 mile east of the intersection of Melton Valley Drive and First Street, said intersection being approximately 0.6 mile south of the intersection of First Street and Bethel Valley Road. This installation contains approximately 2 acres and is enclosed with a seven-foot chain link fence topped with three strands of barbed wire.

The Atomic Energy Commission installation known as the Oak Ridge National Laboratory 7000 Area, a complex of fabrication shops and stores warehouses, located in the Second Civil District, Roane County, Tennessee, within he corporate limits of the City of Oak Ridge, on the south side of Bethel Valley Road immediately east of the intersection of Bethel Valley Road and Melton Valley Access Road, said intersection being approximately 2.2 miles east of the intersection of Bethel Valley Road and Tennessee State Highway 95. Said installation contains approximately 28 acres and is enclosed by a seven-foot chain link fence topped with three strands of barbed wire.

Dated at Germantown, Maryland this 28th day of February 1974.

JOHN A. ERLEWINE,
*General Manager.*

[FR Doc.74-5132 Filed 3-5-74;8:45 am]

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[Construction Permit Nos. CPPR-77, CPPR-78]

## VIRGINIA ELECTRIC AND POWER CO.

### Notice of Reconstitution of Board

In the matter of Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), Construction Permit Nos. CPPR-77, CPPR-78, Show Cause.

Dr. Emil T. Chanlett was a member of the Atomic Safety and Licensing Board established to consider the above matter. Dr. Chanlett is unable to continue in his duties as a member of this Board. Accordingly, Mr. Lester Kornblith, Jr., whose address is Atomic Safety and Li-

censing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545, is appointed a member of the Board. Reconstitution of the Board in this manner is in accordance with § 2.721 of the Rules of Practice, as amended.

Dated at Washington, D.C. this 1st day of March 1974.

NATHANIEL H. GOODRICH,
*Chairman, Atomic Safety and Licensing Board Panel.*

[FR Doc.74-5131 Filed 3-5-74:8:45 am]

## CIVIL AERONAUTICS BOARD

[Docket Nos. 25280; et al.; Order No. 74-2-126]

### INTERNATIONAL AIR TRANSPORT ASSOCIATION

#### Order Relating to Increased Fuel Costs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 28th day of February, 1974.

By procedural Order 74-2-50 of February 14, 1974, the Board set dates for the receipt of justification, comments and objections pertaining to Agreement C.A.B. 24208 which would further increase passenger fares intended for application on or after March 1, 1974 and through March 31, 1975, by a uniform seven percent as a consequence of escalating fuel prices. The proposed increases in passenger fares would apply on tickets sold for transportation by air within and between Europe/Africa and the Middle East and for travel by air over the Mid- and South Atlantic routes to Europe and/or beyond to Asia. Insofar as direct air transportation is concerned, the increases would apply on passenger travel over the Mid-Atlantic to and from Puerto Rico and the Virgin Islands.

As part of the same agreement, increases of seven percent are to be applied to cargo rates within the Western Hemisphere, within and between Europe/Africa and the Middle East and over the Atlantic to Europe and/or beyond. As far as direct air transportation is concerned, the increases would apply on rates intended for application on or after March 1, 1974 through September 30, 1975, between the United States and South/Central America and the Caribbean and between the United States and Europe/Africa and Asia when shipment is routed over the Atlantic. The required documentation has been received and evaluated, and the matter now stands ready for the Board's decision.

Justification has been submitted by American Airlines, Inc. (American), Braniff International (Braniff), Eastern Air Lines, Inc. (Eastern), Pan American World Airways, Inc. (Pan American), and Trans World Airlines, Inc. (TWA). A statement of support has been filed by National Airlines while Delta Air Lines, Inc. takes no position on the proposed increases alleging that it has no direct involvement in the areas covered by the procedural order. Seaboard World Airlines, Inc. has submitted comments in support of the agreement.

Pan American alleges that present fuel costs have increased by 124 percent over 1973 to an average of 32.02 cents per gallon with prices for bonded fuel ranging from 28.31 cents at New York to 33.50 cents at Berlin. At the cargo rates presently in effect over the North Atlantic, Pan American estimates a 4.4 percent negative return on investment on its all-cargo services for the year ending March 31, 1975. With the proposed 7 percent increase, the rate of return is expected to improve but still remain at a negative .04 percent. In its Latin American all-cargo services, adjusted to exclude services to Puerto Rico and the Virgin Islands, Pan American's forecast for the year ended March 31, 1975 indicates a 7.4 percent rate of return under *status quo* rates and a 13.2 percent rate of return with the 7 percent increase.

TWA indicates that the six percent fuel-related rate increase implemented on February 4, 1974 over the North Atlantic is no longer sufficient to recover increased fuel costs. TWA's actual January 1974 price per gallon of fuel was 37.27 cents compared with 13.66 cents in September 1973 and 19.82 cents in December 1973. At the present North Atlantic cargo rates, TWA projects a negative 9.1 percent rate of return on investment in its all-cargo services for calendar year 1974. With the proposed increases the rate of return would improve to a negative 3.9 percent.

Eastern alleges that as at February 1, 1974, its system contractual fuel expense has increased by 88.8 percent over the 12-month period ending September 30, 1973, from 11.14 cents to 21.55 cents per gallon. For the twelve-month period ending September 30, 1973 Eastern indicates it earned a 9.3 percent return on investment. Had the present fuel prices and proposed cargo rate increases been in effect during this period Eastern estimates a reduced rate of return of 8.8 percent. However, if no relief were granted to offset increased fuel costs, Eastern projects a 2.5 percent rate of return on investment during that period.

Braniff alleges that all international fueling points on its system are experiencing uncontrollable increases. Fuel costs per available seat-mile for the first quarter of 1974 were 1.052 cents compared with 0.438 cents and 0.591 cents for the 3rd and 4th quarter of 1973 respectively. The increases represent an annual revenue imbalance to Braniff of approximately $16.4 million. The previously approved 6 percent passenger and cargo increase, effective January 1, 1974, produced revenue increases of $5.2 million. The additional 7 percent cargo increase is expected to generate another $589,000. In sum the total revenue increases would approximate $5.8 million against expense needs of $16.4 million.

American asserts that its fuel costs per gallon increased in the Mainland/Mexico and Mainland/Caribbean markets by 53.4 percent and 102.7 percent each, respectively, over the costs incurred in the third quarter of 1973. The prior increase granted because of increased fuel costs and the seven percent increase contained in the instant agreement would, based on American's operations for the 12-month period ending September 30, 1973, produced $406,000 additional revenues; however, the fuel costs have increased by $482,000.

Seaboard alleges that the imposition of the six percent fuel-cost-related increase and the proposed seven percent increase, in total, would result in a shortfall of $7.5 million in 1974. Seaboard indicates that its average cost per gallon for bonded fuel has increased from 10.47 cents for the year ended June 30, 1973 to 33.05 cents in February 1974, an overall increase of 215.6 percent per gallon. Based on actual operations for the 12-month period ended June 30, 1973, Seaboard's total operating cost per revenue-ton-mile would increase by 26.6 percent whereas the revenue increases would only be thirteen percent.

Upon consideration of the carrier justifications and comments, we have concluded that the request for an additional 7 percent increase in the various world areas covered by the instant agreement appears warranted in view of the unprecedented increases in the costs of fuel. While we are cognizant of increased economies to the airlines resulting from cost reductions including reductions in the personnel force and curtailment of flights, such reductions vary significantly by carrier and would impact more on passenger rather than all-cargo services. Both Pan American and TWA have provided future projections of the impact of the instant agreements which appear to take into account the various economy measures already implemented. Both carriers, however, project declines in the rate of return on their North Atlantic all-cargo operations even with the proposed increases. We have also reviewed Pan American's justification for the proposed increases in Mid-Atlantic passenger fares, and it does not appear that the increases are unreasonable.[1] In sum, the proposed increases appear to be justified by experienced cost increases, do not appear excessive and should not result in increased profits.

The Board, acting pursuant to sections 102, 204(a), 404(b), 412 and 1002 of the Act, finds that the resolutions set forth in Agreement C.A.B. 24208, R-1 through R-7, are not adverse to the public interest or in violation of the Act.

Accordingly, *It is ordered that:*

1. Agreement 24208, R-1 through R-7, be and hereby is approved;

2. The carriers are hereby authorized to file tariffs implementing the approved agreement on not less than one day's notice for effectiveness not earlier than March 1, 1974. The authority granted in this paragraph expires with March 31, 1974;

3. Tariffs implementing the agreement in respect to passenger fares shall be

[1] Pan American indicates it will experience a revenue improvement of $187,000 or 4.7 percent rather than a full 7 percent due to demand elasticity.

marked to expire no later than March 31, 1975; and

4. Tariffs implementing the agreement in respect to cargo rates shall be marked to expire no later than September 30, 1975.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
*Acting Secretary.*

[FR Doc.74-5163 Filed 3-5-74;8:45 am]

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[Docket No. 26463; Order No. 74-2-128]

## AMERICAN AIRLINES, INC., ET AL.

### Order of Suspension and Investigation Regarding Increased Freight Rates and Charges

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 28th day of February, 1974.

By tariff revisions [1] marked to become effective March 1 and 8, 1974, several carriers serving these markets, American Airlines, Inc., (American), Eastern Air Lines, Inc. (Eastern), and Pan American World Airways, Inc. (Pan American), propose, variously, to increase local and joint (in which these carriers participate with other carriers) general and specific commodity bulk and container rates and charges between points in the U.S. and points in Puerto Rico/Virgin Islands, between Puerto Rico and the Virgin Islands, within Puerto Rico, and within the Virgin Islands.

All the aforementioned carriers propose to increase the minimum charges per shipment in these markets, as indicated below.

| | Current | Proposed |
|---|---|---|
| Between points in the United States and points in Puerto Rico/Virgin Islands | $10 | $13 |
| Between points in Puerto Rico and points in the Virgin Islands | 10 | 12 |
| Between St. Thomas and St. Croix | 8 | 10 |

The carriers propose to increase other rates and charges in U.S.-Caribbean markets as follows:

AMERICAN

BULK

1. General commodity rates—southbound by 8 percent, northbound by 10 percent; 5,000- and 10,000-pound weight breaks canceled; and

2. Specific commodity rates—southbound by 8 percent, northbound by 10 percent.

CONTAINER

1. Standard service general commodity rates—increase to reflect the higher bulk rates proposed;

2. Daylight general commodity rates—southbound by 8 percent, northbound by 10 percent; and

3. Specific commodity rates—from Dallas/New York to San Juan by 8 percent.

EASTERN

BULK

1. General commodity rates—southbound by 8 percent, northbound by 10 percent; 5,000- and 10,000-pound weight breaks canceled; and

2. Specific commodity rates—southbound by 8 percent, northbound by 10 percent.

CONTAINER

1. Standard service general commodity rates—all A-1, B, B-2, D, LD-3, and LD-N container rates and charges, with certain exceptions, increased, reflecting the increased 3,000-pound bulk general commodity rate. LD-10 rates and charges are increased to reflect the ratio of cubic capacity of an LD-10 to an LD-3 container, or 151.3 percent of the LD-3 charge; and

2. Daylight general commodity rates—LD-3 and LD-10 charges by 8 percent, except from San Juan to New York/Philadelphia, by 10 percent.

PAN AMERICAN

BULK

1. General commodity rates—southbound by 8 percent and northbound by 10 percent; weight breaks at 2,000, 5,000, and 10,000 pounds are being canceled; and

2. Specific commodity rates—between 6.2 and 12.5 percent.

CONTAINER

General commodity container and pallet rates for Types D, 5A, and 8A by between 7.4 and 9.1 percent for pivot weight and from 7.7 to 11.1 percent for weight in excess of pivot weight.

American asserts that the total revenue impact of this proposal is estimated at $580,000, of which $235,000 is attributable to New York-San Juan all-cargo operations; for the period ending June 30, 1973, costs rose while traffic deteriorated to the point where American incurred a $161,000 operating loss and the projection for the year ending June 30, 1974, without regard to the instant proposal, is an operating loss of $52,000.

Eastern alleges that the proposal will produce approximately $500,000 additional revenue annually, which represents an increase of 8.9 percent based upon total San Juan/Virgin Islands revenues; for the year ending September 30, 1973, the carrier suffered an operating loss of $3,812,000; and that the additional revenue estimated to accrue from this increase is not nearly sufficient to offset the losses currently being experienced.

In support of its proposal, Pan American asserts that it estimates that the proposed increase would increase revenues by 10.9 percent, or $520,000 in the forecast year ending February 28, 1975; on a per-round-trip basis, the proposal would increase revenues by $1,423 and return on investment by $1,096; and rate of return would rise by 9.8 percentage points, resulting in a rate of return in this matter of 9.3 percent.

The carriers have adequately justified a need for higher revenues. The Board is aware of the sharp increases in costs, including fuel prices, in recent months and believes that some adjustment in rates and charges is consequently justified. In permitting certain of the rate increases proposed, we are giving weight to higher fuel prices claimed by the carriers to be actually experienced or those to be shortly effected pursuant to existing contracts, as well as other indications of demonstrated need for additional earnings.

Upon consideration of all relevant factors, however, the Board finds that the proposed increased rates and charges, to the extent that they apply to general commodity bulk and container shipments between points in the U.S. and San Juan involving lengths of haul of 2,200 miles or over (other than minimum charges per bulk shipment) may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the aforementioned increases should be suspended pending investigation.

Although the carriers present data indicating their need for additional revenues, they make no showing that the rates proposed for various lengths of haul are in line with their costs. The proposed general commodity bulk and container rates and charges for shipments of 2,200 miles or more appear excessive in relation to costs, as indicated by data available to the Board. The remaining portions of the proposals, including bulk minimum charges, general commodity bulk and container rates and charges for less than 2,200 miles, and all specific commodity increases appear sufficiently related to costs that the Board will permit them to become effective.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a) and 1002 thereof,

*It is ordered*, That:

1. An investigation be instituted to determine whether the rates and charges described in Appendices A and B [2] hereto, and rules, regulations, and practices affecting such rates and charges, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful rates and charges, and rules, regulations, or practices affecting such rates and charges;

2. Pending hearing and decision by the Board, the rates and charges described in: Appendix A hereto are suspended and their use deferred to and including May 29, 1974; Appendix B hereto are suspended and their use deferred to and including June 5, 1974; unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein, designated Docket 26463, be assigned before an Administrative Law Judge of the Board at a time and place to be designated; and

[1] Revisions to Air Tariffs Corp., Agent, Tariffs C.A.B. 38, 41, and 42; Eastern Air Lines, Inc., Tariff C.A.B. 353; and International Air Traffic Tariffs Corp., Agent, Tariffs C.A.B. 193, 364, and 400.

[2] Appendices A, B and C filed as part of the original document.

4. Copies of this order shall be filed with the tariffs and served upon all the participating carriers named in Appendix C, which are hereby made parties to Docket 26463.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
*Acting Secretary.*

[FR Doc.74-5164 Filed 3-5-74;8:45 am]

[Docket No. 24554]

## NISHI NIPPON RAILROAD CO., LTD. (JAPAN)

### Notice of Postponement of Hearing

Notice is hereby given that the hearing presently set for March 13, 1974 (39 FR 7612, February 27, 1974), is hereby postponed until March 21, 1974, at 10 a.m. (local time), in Room 503, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., February 28, 1974.

[SEAL] HYMAN GOLDBERG,
*Administrative Law Judge.*

[FR Doc.74-5166 Filed 3-5-74;8:45 am]

# COMMISSION ON CIVIL RIGHTS

## ARIZONA STATE ADVISORY COMMITTEE

### Notice of Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Arizona State Advisory Committee (SAC) to this Commission will convene at 8:00 a.m. on March 14, 1974, at the Municipal Building, 251 West Washington Street, Phoenix, Arizona 85034, and reconvene at 8:00 a.m. on March 15, 1974, at the Pinal County Courthouse, Florence, Arizona 85232. These sessions shall be open to the public.

Closed or executive SAC sessions may be held at such time and place as deemed necessary to discuss matters which may tend to defame, degrade, or incriminate individuals. Such sessions will not be open to the public.

The purpose of this meeting shall be to collect information concerning legal developments constituting a denial of the equal protection of the laws under the Constitution because of race, color, religion, sex, national origin, or in the administration of justice which affect persons residing in the State of Arizona with special emphasis on the conditions in Arizona penal institutions as they relate to the civil rights of inmates; to appraise denial of equal protection of the laws under the Constitution because of race, color, religion, sex, national origin, or in the administration of justice as these pertain to Arizona penal institutions as they relate to the civil rights of inmates; and to disseminate information with respect to denials of the equal protection of the laws because of race, color, religion, sex, national origin, or in the administration of justice with respect to Arizona penal institutions; and to related areas.

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.74-5149 Filed 3-5-74;8:45 am]

## NEW JERSEY STATE ADVISORY COMMITTEE

### Notice of 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 New Jersey State Advisory Committee (SAC) to this Commission will convene at 7:30 p.m. on March 14, 1974, at the Labor Education Center, Rutgers University, Ryders Lane, New Brunswick, New Jersey 08903.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Mid-Atlantic Regional Office of the Commission, Room 510, 2120 L Street NW., Washington, D.C. 20425.

The purposes of this meeting shall be (1) to formulate plans for followup activities to the New Jersey SAC factfinding meeting on prisons and (2) to begin preparation of the New Jersey SAC report on prison conditions.

This meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 28, 1974.

ISAIH T. CRESWELL, Jr.,
*Advisory Committee Management Officer.*

[FR Doc.74-5150 Filed 3-5-74;8:45 am]

# CIVIL SERVICE COMMISSION

## FEDERAL PREVAILING RATE ADVISORY COMMITTEE

### Notice of Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, effective January 5, 1973, notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, March 7, 1974
Thursday, March 14, 1974
Thursday, March 28, 1974

The meetings will convene at 10 a.m. and will be held in Room 5A06A, Civil Service Commission Building, 1900 E Street NW., Washington, D.C.

The committee's primary responsibility is to study the prevailing rate system and from time to time advise the Civil Service Commission thereon.

At these scheduled meetings, the committee will consider proposed plans for implementation of Public Law 92-392, which law establishes pay systems for Federal prevailing rate employees.

The meetings will be closed to the public under a determination to do so, made under the provisions of Section 10(d) of Public Law 92-463.

However, members of the public who wish to do so, are invited to submit material in writing to the Chairman concerning matters felt to be deserving of the committee's attention. Additional information concerning these meetings may be obtained by contacting the Chairman, Federal Prevailing Rate Advisory Committee, Room 5451, 1900 E Street NW., Washington, D.C.

DAVID T. ROADLEY,
*Chairman, Federal Prevailing Rate Advisory Committee.*

FEBRUARY 27, 1974.

[FR Doc.74-5072 Filed 3-5-74;8:45 am]

## PROFESSIONAL ENGINEERS—NATIONWIDE

### Notice of Establishment of Minimum Rates and Rate Ranges

Under authority of 5 U.S.C. 5303 and Executive Order 11721, the Civil Service Commission has established special minimum salary rates and rate ranges as follows:

Occupational coverage: All Professional Series in the GS-800 Engineering and Architecture Group.
Geographic Coverage: Nationwide.
Effective Date: First day of the first pay period beginning on or after March 3, 1974.

| | ANNUAL RATES | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Grade | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| GS-5 | $10,467 | $10,735 | $11,003 | $11,271 | $11,539 | $11,807 | $12,075 | $12,343 | $12,611 | $12,879 |
| GS-7 | 11,297 | 11,629 | 11,961 | 12,293 | 12,625 | 12,957 | 13,289 | 13,621 | 13,953 | 14,285 |

Under the provisions of section 3-2b, Chapter 571, FPM, agencies may pay the travel and transportation expenses to first post of duty under 5 U.S.C. 5723, of new appointees to positions cited.

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

[FR Doc.74-5073 Filed 3-5-74;8:45 am]

[1] Appendices A, B and C filed as part of the original document.

## AIRPORT POLICEMAN, WASHINGTON NATIONAL AND DULLES INTERNATIONAL AIRPORTS

### Notice of Establishment of Minimum Rates and Rate Ranges

Under authority of 5 U.S.C. 5303 and Executive Order 11721, the Civil Service Commission has established for a separate class of airport policemen who perform airport security and law enforcement functions at both national capital airports special minimum salary rates and rate ranges as follows:

(Table No. 012)
Occupational Coverage: GS-083 Airport Police Officer. Supervisory Airport Police Officer.
Geographic Coverage: Washington National Airport and Dulles International Airport, Washington, D.C.
Effective Date: First day of the pay period beginning on or after March 3, 1974.

ANNUAL RATES

| Grade | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| GS-4 | $9,118 | $9,358 | $9,598 | $9,838 | $10,078 | $10,318 | $10,558 | $10,798 | $11,038 | $11,278 |
| GS-5 | 9,931 | 10,199 | 10,467 | 10,735 | 11,003 | 11,271 | 11,539 | 11,807 | 12,075 | 12,343 |
| GS-7 | 10,301 | 10,633 | 10,965 | 11,297 | 11,629 | 11,961 | 12,293 | 12,625 | 12,957 | 13,289 |

All new employees in the specified occupational level will be hired at the new minimum rates.

As of the effective date, a pay adjustment will be processed to increase the pay of employees on the roles in the affected occupational levels as follows:

1. An employee who immediately prior to the effective date was receiving compensation at one of the statutory rates shall receive basic compensation at the corresponding numbered rate authorized by this notice on or after such date;

2. An employee who immediately prior to the effective date was receiving compensation at a "saved rate" because of the previous termination of special salary rates shall receive compensation based on the following determination:

Compare the employee's saved rate with the tenth rate of the new special rate range, and

a. If the tenth rate of the special range is higher than the saved rate, place the employee in the tenth rate and make the appropriate pay adjustment; or,

b. If the saved rate is higher than the tenth rate of the special range, the employee retains his saved rate.

The pay adjustment will not be considered an equivalent increase within the meaning of 5 U.S.C. 5335.

Under the provisions of section 3-b, Chapter 571, FPM, the travel and transportation expenses may be paid to the first post of duty under 5 U.S.C. 5723 of new appointees to positions cited.

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

[FR Doc.74-5141 Filed 3-5-74;8:45 am]

## COST OF LIVING COUNCIL

### FOOD INDUSTRY WAGE AND SALARY COMMITTEE

### Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that the Food Industry Wage and Salary Committee, established under the authority of section 212(f) of the Economic Stabilization Act, as amended, section 4(a)(iv) of Executive Order 11695, and Cost of Living Council Order No. 14, will meet on Friday, March 8, 1974. The meeting will be open to the public on a first-come, first-served basis at 9:00 a.m., in Conference Room 8202, 2025 M Street NW., Washington, D.C.

The agenda will consist of a discussion of policy questions involving food industry wage matters, and, if circumstances permit, of food industry wage cases pending before the Cost of Living Council.

The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

Issued in Washington, D.C., on March 4, 1974.

HENRY H. PERRITT, Jr.,
*Executive Secretary, Cost of Living Council.*

[FR Doc.74-5358; Filed 3-4-74;4:49 pm]

## ENVIRONMENTAL PROTECTION AGENCY

### AMERICAN CYANAMID CO.

### Filing of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 4F1465) has been filed by the American Cyanamid Co., Post Office Box 400, Princeton, NJ 08540, proposing establishment of a tolerance (40 CFR Part 180) for negligible residues of the insecticide phorate (*O,O*-diethyl *S*-[(ethylthio)methyl]phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity soybeans at 0.1 part per million.

The analytical method proposed in the petition for determining residues of the insecticide and its metabolites is a procedure in which the residues are reacted with metachloroperbenzoic acid and determined by gas chromatography using cesium bromide thermionic detection.

Dated: February 27, 1974.

JOHN B. RITCH, Jr.,
*Director, Registration Division.*

[FR Doc.74-5096 Filed 3-5-74;8:45 am]

### STAUFFER CHEMICAL CO.

### Notice of Filing of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a pesticide petition (PP 4F1464) has been filed by the Stauffer Chemical Co., 1200 South 47th Street, Richmond, CA 94804, proposing establishment of tolerances (40 CFR Part 180) for combined residues of the insecticide *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) and its oxygen analog *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorothioate) in or on the raw agricultural commodities almond hulls, blueberries, corn forage and fodder, cranberries, and pea vine forage and hay at 10 parts per million; citrus fruits at 5 parts per million; fresh corn including sweet corn (kernels plus cob with husk removed), corn grain including popcorn, and peas including dry peas and succulent peas with pods at 0.5 part per million; and nuts at 0.1 part per million (negligible residue).

The analytical method proposed in the petition for determining residues of the insecticide is a gas chromatographic procedure using a phosphorus-specific alkali flame ionization detector (rubidium sulfate tip).

Dated: February 26, 1974.

JOHN B. RITCH, Jr.,
*Director, Registration Division.*

[FR Doc.74-5095 Filed 3-5-74;8:45 am]

[OPP-32000/20]

## NOTICE OF 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 (until May 6, 1974) before commencing processing. If claims are not received, the application will be processed in normal procedure. However, if claims are received by May 6, 1974, 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 Reg. No. 3125-277. Chemagro Division of Baychem Corporation, P.O. Box 4913, Kansas City, Missouri 64120. *SENCOR 50% Wettable Powder Herbicide.* Active Ingredients: 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one 50%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 9046-EG. Consan Pacific, Inc., P.O. Box 208, 11745 E. Washington Blvd., Whittier, California 90608. *Control III Detergent/Germicide.* Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 4.5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 4.5%; Tetrasodium ethylenediamine tetraacetate 2.0%; Sodium Carbonate 4.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 9215-E. Pool Water Products, 11601 Anabel Ave., Garden Grove, California 92643. *All Clear 3 Concentrated Pool Chlorine.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%; Available Chlorine 56%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA Reg. No. 400-107. Uniroyal Chemical, Division of Uniroyal, Inc., Amity Road, Bethany, Connecticut 06525. *Vitavax Flowable Fungicide.* Active Ingredients: Carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) 34%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 400-RRE. Uniroyal Chemical, Division of Uniroyal, Inc., Amity Road, Bethany, Connecticut 06525. *Vitavax-200 Flowable Fungicide.* Active Ingredients: Carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) 17.0%; Thiram (tetramethylthiuram disulfide) 17.0%. Method of Support: Application proceeds under 2(b) of interim policy.

Dated: February 27, 1974.

JOHN B. RITCH, Jr.,
*Director,*
*Registration Division.*

[FR Doc.74-4935 Filed 3-5-74;8:45 am]

## FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1416]

### GAVEL FORWARDING CORP.

#### Order of Revocation

By letter dated January 7, 1974, Gavel Forwarding Corporation, 338 Northern Boulevard, Great Neck, New York 11022, was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1416 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before February 4, 1974.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Gavel Forwarding Corporation has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised) § 7.04(g) (dated 9/15/73);

*It is ordered;* That, Independent Ocean Freight Forwarder License No. 1416 of Gavel Forwarding Corporation be returned to the Commission for cancellation.

*It is further ordered;* That, Independent Ocean Freight Forwarder License No. 1416 be and is hereby revoked effective February 4, 1974.

*It is further ordered;* That a copy of this Order be published in the FEDERAL REGISTER and served upon Gavel Forwarding Corporation.

AARON W. REESE,
*Managing Director.*

[FR Doc.74-5177 Filed 3-5-74;8:45 am]

### NORTH ATLANTIC UNITED KINGDOM FREIGHT CONFERENCE

#### Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before March 26, 1974. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the Commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

NORTH ATLANTIC UNITED KINGDOM FREIGHT CONFERENCE

Notice of Agreement Filed by:

Howard A. Levy, Esq., 17 Battery Place, New York, N.Y. 10004.

Agreement No. 7100-16, among the members of the North Atlantic United Kingdom Freight Conference, is an application for unlimited and unconditional approval of the Conference's inland authority in the United Kingdom, Northern Ireland and the Republic of Ireland.

By Order of the Federal Maritime Commission.

Dated: March 1, 1974.

FRANCIS C. HURNEY,
*Secretary.*

[FR Doc.74-5176 Filed 3-5-74;8:45 am]

## FEDERAL POWER COMMISSION

[Docket No. RI74-46]

### DALPORT OIL CORP.

#### Order Fixing Hearing Date

FEBRUARY 26, 1974.

On July 11, 1973, Dalport Oil Corporation (Dalport) filed an application for special relief pursuant to § 2.76[1] of the Commission's general policy and interpretations.[2] The application took the form of an amendment, dated June 21, 1973, to a contract for the sale of gas to El Paso Natural Gas Company (El Paso) from A. L. Christmas lease in Lea County, New Mexico (Permian Basin Area).[3] Dalport received a small producer certificate in Docket No. CS66-15 on June 14, 1966; the contract is designated FPC Rate Schedule No. 6.[4]

The amended contract provides for an increase from the presently effective rate of 17.0533 cents per Mcf to 36 cents per Mcf for the period commencing January 1, 1974, with escalations of one cent per Mcf on January 1 of each successive year until the extended contract expires

[1] 18 C.F.R. § 2.76.

[2] Order promulgating policy with respect to sales where reduced pressures, need for reconditioning, deeper drilling, or other factors make further production uneconomical at existing prices, Order No. 481, Docket No. R-458,——F.P.C.——(issued April 12, 1973); Amended in Order amending order No. 481 and granting and denying petitions for rehearing, Docket No. R-458,——F.P.C.——(Issued June 8, 1973).

[3] Commission Opinion No. 662 (Permian Basin Area) prescribes a rate of 23 cents per Mcf until September 30, 1974, for contracts dated prior to October 1, 1968.

[4] Rate Schedule No. 6 was cancelled by Commission order dated June 14, 1966, and reinstated by Commission order dated March 21, 1967.

under its own terms on January 1, 1980.

Dalport's petition was noticed on December 5, 1973, and published in the FEDERAL REGISTER on December 14, 1973, 38 FR 34495. No petitions to intervene were filed.

An examination of the petition and the data in support thereof raises a question of whether there is sufficient basis for us to find that the proposed rate is just and reasonable. Therefore, we deem it necessary that a hearing be held in this matter.

The Commission finds:

(1) It is necessary and in the public interest that the above-docketed proceeding be set for hearing.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7, 14, and 16 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 C.F.R., Chapter I), Docket No. RI74-46 is set for the purpose of hearing and disposition.

(B) A public hearing on the issues presented by the application herein shall be held commencing on March 20, 1974, 10:00 a.m. (e.d.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(C) A Presiding Law Judge to be designated by the Chief Law Judge for that purpose (See Delegation of Authority, 18 C.F.R. 3.5(d)), shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

(D) Dalport shall file their direct testimony and evidence on or before February 12, 1974. All testimony and evidence shall be served upon the Presiding Judge, the Commission Staff, and all other parties to this proceeding.

(E) The Commission Staff, and any intervenor opposing the application, shall file their direct testimony and evidence on or before February 26, 1974. All testimony and evidence shall be served upon the Presiding Judge, and all other parties to this proceeding.

(F) All rebuttal testimony and evidence shall be served on or before March 8, 1974. All parties submitting rebuttal testimony and evidence shall serve such testimony upon the Presiding Judge, the Commission staff, and all other parties to the proceeding.

(G) The Administrative Law Judge's decision shall be rendered on or before April 15, 1974. All briefs on exceptions shall be due on or before April 30, 1974, and replies thereto shall be due on or before May 10, 1974.

(H) The amended contract between Dalport and El Paso dated June 21, 1973, is accepted for filing and will be designated as a supplement to Dalport's rate schedule.

By the Commission.

[SEAL] KENNETH F. PLUMB,
*Secretary.*

[5] Commissioner Moody's concurring, statement filed as part of the original document.

[FR Doc.74-4965 Filed 3-5-74;8:45 am]

[Docket No. G-4327, etc.]

## KALDA CO. ET AL.

### Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

FEBRUARY 27, 1974.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 21, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| G-4237 ..... E 2-4-74 | KALDA Co. (successor to Skelly Oil Co.), 300 City National Bldg., Wichita Falls, Tex. 76301. | Arkansas Louisiana Gas Co., Bethany-Longstreet Field, De Soto, Parish, La. | 13.4667 | 15.025 |
| CI61-1307 ..... C 2-1-74 | Amoco Production Co., Security Life Bldg., Denver, Colo. 80202. | El Paso Natural Gas Co., Huerfano Gallup Field, San Juan County, N. Mex. | [1] 28.0 | 15.025 |
| CI66-287 ..... D 2-12-74 | Robert Mosbacher (Operator) et al., 21st Floor, Capital National Bank Bldg., Houston, Tex. 77002. | Transcontinental Gas Pipe Line Corp., North Live Oak Field, Vermilion Parish, La. | Depleted | ..... |
| CI66-1056 ..... E 2-4-74 | American Petrofina Co. of Texas (Operator) et al. (successor to River Corp.) P.O. Box 2159, Dallas, Tex. 75221. | Texas Eastern Transmission Corp., Bethany-Longstreet Field, De Soto Parish, La. | [2] 19.3423 | 15.025 |
| CI66-1057 ..... E 2-4-74 | American Petrofina Co. of Texas (Operator) et al. (successor to River Corp.). | Tennessee Gas Pipeline Co., a division of Tenneco Inc., La Rose Field, Lafourche Parish, La. | [2] 23.75 | 15.025 |
| CI66-1058 ..... E 2-4-74 | do | Tennessee Gas Pipeline Co., a division of Tenneco Inc., Little Lake Field, Jefferson Parish, La. | [2] 23.96667 | 15.025 |
| CI66-1060 ..... E 2-4-74 | do | Southern Natural Gas Co., Coquille Bay Field, Plaquemines Parish, La. | [2] 23.5 | 15.025 |
| CI66-1066 ..... E 1-28-74 | do | Texas Gas Transmission Corp., Simon Pass Field, St. Martin Parish, La. | [2] 23.75<br>[3] 26.875 | 15.025 |
| CI66-1068 ..... E 2-1-74 | do | Texas Gas Transmission Corp., Pass Wilson and Bay Round Fields, Terrebonne Parish, La. | [2] 23.75<br>[4] 25.75 | 15.025 |
| CI66-1070 ..... E 1-28-74 | do | Texas Gas Transmission Corp., Lake Palourde Field, St. Mary and St. Martin Parishes, La. | [2] 23.75 | 15.025 |
| CI69-1155 ..... E 1-31-74 | The Nueces Co. (successor to Pecos Growers Oil Co.), Fidelity Union Tower Bldg., Dallas, Tex. 75201. | El Paso Natural Gas Co., Chenot Field, Pecos County, Tex. | [5] 17.5 | 14.65 |
| CI73-769 ..... C 2-4-74 | Amoco Production Co., Security Life Bldg., Denver, Colo. 80202. | El Paso Natural Gas Co., Gonzales Mesa Verde Field, Rio Arriba County, N. Mex. | [5] 28.5 | 15.025 |
| CI74-145 ..... C 2-6-74 | Gulf Oil Corp., P.O. Box 1589, Tulsa, Okla. 74102. | El Paso Natural Gas Co., Drinkard Pool, Lea County, N. Mex. | [5] [6] 36.0 | 14.65 |
| CI74-409 ..... (CI67-517) F 2-1-74 | Amoco Production Co. (successor to Exxon Corp.). | Northern Natural Gas Co., Arnett Field, Ellis County, Okla. | [5] 18.0 | 14.65 |
| CI74-412 ..... (CI67-577) B 1-14-74 | Tom W. Penn, d.b.a. Penntex Petroleum Co., et al., 618 Caroline, Houston, Tex. 77002. | Truckline Gas Co., East Huffsmith Field Area, Harris County, Tex. | Depleted | ..... |
| CI74-413 ..... (CI68-88) F 1-21-74 | Richard D. Buck, Jr. (successor to Skelly Oil Co.), 3545 Northwest 58th, Suite 560, Oklahoma City, Okla. 73112. | Arkansas Louisiana Gas Co., Southwest Lacey Field, Blaine County, Okla. | 17.0 | 14.65 |

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI74-414 (G-2798) F 1-21-74 | Petro-Lewis Funds, Inc. (successor to Forest Oil Corp.), 1600 Broadway, Denver, Colo. 80202. | Columbia Gas Transmission Corp., Bourg Field, Lafourche and Terrebonne Parishes, La. | [2] 23.75 | 15.025 |
| CI74-415 (G-2804) F 1-25-74 | do | Columbia Gas Transmission Corp., Acadia-Ellis Field, Acadia Parish, La. | [2] 23.75 | 15.025 |
| CI74-417 (G-10181) F 1-29-74 | Texas Oil & Gas Corp. (successor to HNG Oil Co. (Operator) et al.), 2700 Fidelity Union Tower, Dallas, Tex. 75201. | Texas Eastern Transmission Corp., Salem Field, Victoria County, Tex. | 15.3733 | 14.65 |
| CI74-418 (CI63-1319) B 2-4-74 | Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001. | United Gas Pipe Line Co., West Hollywood Field, Terrebonne Parish, La. | Depleted | ---- |
| CI74-419 (CS72-1144) F 1-30-74 | McLain J. Forman (successor to C. E. Whipp), 540 Oil & Gas Bldg., New Orleans, La. 70112. | Florida Gas Transmission Co., Arnaudville Field, St. Martin and St. Landry Parishes, La. | [2][10] 35.0 | 15.025 |
| CI74-420 (G-19338) B 2-4-74 | Anadarko Production Co., P.O. Box 9317, Fort Worth, Tex. 76107. | Northern Natural Gas Co., Camp Creek Field, Beaver County, Okla. | Contract terminated | ---- |
| CI74-421 (G-18980) F 2-4-74 | The California Co., a division of Chevron Oil Co. (successor to Tenneco Oil Co.), 1111 Tulane Ave., New Orleans, La. 70112. | Transcontinental Gas Pipe Line Corp., Block 40, West Cameron Area, offshore Louisiana. | [11] 28.0 | 15.025 |
| CI74-422 (CI65-557) F 2-5-74 | Florida Gas Exploration Co. (Operator) et al. (successor to Barnwell Production Co.), P.O. Box 44, Winter Park, Fla. 32789. | Southern Natural Gas Co., Lake St. Catherine Field, Orleans Parish, La. | [12][13] 30.0 | 15.025 |
| CI74-423 A 2-6-74 | Petroleum, Inc., 300 West Douglas Wichita, Kans. 67202. | Panhandle Eastern Pipe Line Co., acreage in Texas County, Okla. | [12] 21.0 | 14.65.3 |

[1] Applicant is willing to accept a certificate at an initial rate of 24 cents per M ft³, subject to upward and downward Btu adjustment; however, the contract price is 28 cents per M ft³, subject to upward and downward Btu adjustment.
[2] Subject to downward Btu adjustment.
[3] Rate for gas from the 13,100-foot sand reservoir.
[4] Rate for gas from the Cristellaria "K" and "D" Reservoir.
[5] Rate in effect subject to refund in Docket No. RI70-725.
[6] Applicant is willing to accept a certificate at an initial rate of 24 cents per M ft³, subject to upward and downward Btu adjustment; however, the contract price is 28.5 cents per M ft³, subject to upward and downward Btu adjustment.
[7] Applicant is willing to accept a permanent certificate in accordance with Commission Opinion No. 662.
[8] Subject to upward and downward Btu adjustment; estimated upward adjustment is 6.48 cents per M ft³, based upon the 36 cents price.
[9] Subject to upward and downward Btu adjustment; estimated downward adjustment is 0.760 cents per M ft³.
[10] Applicant is willing to accept a permanent certificate at the applicable area ceiling rate.
[11] Applicant is willing to accept a certificate at an initial rate of 21.875 cents per M ft³ subject to downward Btu adjustment; however, the contract price is 28 cents per M ft³, subject to downward Btu adjustment.
[12] Subject to upward and downward Btu adjustment.
[13] Applicant is willing to accept a permanent certificate conditioned in accordance with Commission Opinion No. 598.

[FR Doc.74-4962 Filed 3-5-74;8:45 am]

[Rate Schedule Nos. 1, 5 etc.]

## TEXAS GAS EXPLORATION CORP., ET AL.

### Rate Change Filings

FEBRUARY 25, 1974.

Take notice that the producers listed in the Appendix A attached hereto have filed proposed increased rates to the applicable area new gas ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 639, issued December 12, 1972.

The information relevant to each of these sales is listed in the Appendix.

Any person desiring to be heard or to make any protest with reference to said filings 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 party 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.*

| Filing date | Producer | Rate schedule No. | Buyer | Area |
|---|---|---|---|---|
| Feb. 6, 1974 | Texas Gas Exploration Corp., P.O. Box 52310, Houston, Tex. 77052. | 1 | Texas Gas Transmission Corp. | Other Southwest. |
| Feb. 8, 1974 | Sun Oil Co., Southland Center, P.O. Box 2880, Dallas, Tex. 75221. | 17 | United Gas Pipe Line Co. | Texas Gulf Coast. |
| Feb. 11, 1974 | Murphy Oil Corp., 200 Jefferson Ave., El Dorado, Ark. 71730. | 7 | Arkansas Louisiana Gas Co. | Other Southwest. |
| Do | Sun Oil Co., Southland Center, P.O. Box 2880, Dallas, Tex. 75221. | 219 | Lone Star Gas Co. | Do. |
| Do | do | 220 | do | Do. |
| Do | Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001. | 125 | Texas Eastern Transmission Corp. | Texas Gulf Coast. |
| Feb. 13, 1974 | Kerr-McGee Corp., Kerr-McGee Center, Oklahoma City, Okla. 73102. | 3 | Texas Gas Transmission Corp. | Other Southwest. |

| Docket No. and date filed | Applicant | | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|---|
| Feb. 14, 1974 | Midwest Oil Corp., 1700 Broadway, Denver, Colo. 80202. | 6 | Natural Gas Pipeline Co. of America. | Texas Gulf Coast. | |
| Feb. 15, 1974 | Mobil Oil Corp., 3 Greenway Plaza East, Suite 800, Houston, Tex. 77046. | 16 | Transcontinental Gas Pipeline Corp. | South Louisiana. | |
| Feb. 19, 1974 | Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221. | 36 | Texas Eastern Transmission Corp. | Texas Gulf Coast. | |
| Do | Texaco, Inc., P.O. Box 52332, Houston, Tex. 77052. | 259 | Transcontinental Gas Pipeline Corp. | Do. | |
| Do | Sohio Petroleum Co., 1100 Penn Tower, Oklahoma City, Okla. 73118. | 20 | Tennessee Gas Pipeline Co. | South Louisiana. | |
| Do | Sun Oil Co., Southland Center, P.O. Box 2880, Dallas, Tex. 75221. | 60 | Northern Natural Gas Co. | Permian Basin. | |

[FR Doc.74-4960 Filed 3-5-74;8:45 am]

## GAS INDUSTRY RESEARCH PLAN

### Notice of Conference

A conference between members of the Federal Power Commission staff and representatives of the natural gas industry is to be held in Room 5200 of the Federal Power Commission offices, 825 North Capitol Street NE., Washington, D.C., on Monday, March 11, 1974, at 10:00 a.m. to further discuss a Gas Industry Research Plan defining the total research needs for the natural gas industry covering exploration, production, synthetic supplies, transmission, distribution, LNG, and utilization. As this research will be funded both by the Federal Government and industry, the group will explore various concepts for providing industry funds and developing an organization to effectively manage the broad research program.

The conference is open to the public.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-5197 Filed 3-5-74;8:45 am]

## PETROLEUM INDUSTRY RESEARCH AND DEVELOPMENT

### Notice of Conference

Representatives of the American Petroleum Institute will describe the objectives of research and development efforts being undertaken by the petroleum industry. The intention of the conference is to assist FPC staff in better understanding this segment of the national energy research and development effort. The meeting will be held in Room 5200 of the Federal Power Commission offices, 825 North Capitol Street NE., Washington, D.C., on Monday, March 11, 1974, at 2:30 p.m.

The conference is open to the public.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-5198 Filed 3-5-74;8:45 am]

# FEDERAL RESERVE SYSTEM

## BANKS OF IOWA, INC.

### Proposed Acquisition of Eldon Insurance Agency

Banks of Iowa, Inc., Cedar Rapids, Iowa, has applied, pursuant to section 4 (c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire the assets of Eldon Insurance Agency, Eldon, Iowa. Notice of the application was published on December 19, 1973, in the Ottumwa Courier, a newspaper circulated in Wapello County, Iowa.

Applicant states that the proposed subsidiary would engage in the activities of (1) a general insurance agency in Eldon, Iowa, a community with a population not exceeding 5,000, and (2) the sale of insurance directly related to extensions of credit by a bank or bank related firm. Applicant also proposes to expand the lines of insurance sold to include crop hail insurance and life insurance. Such activities have been specified by the Board in § 225.4(a)(9) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System,, Washington, D.C. 20551, not later than March 26, 1974.

Board of Governors of the Federal Reserve System, February 26, 1974.

[SEAL] ELIZABETH L. CARMICHAEL,
*Assistant Secretary of the Board.*

[FR Doc.74-5081 Filed 3-5-74;8:45 am]

## BEZANSON INVESTMENTS, INC., AND MORAMERICA FINANCIAL CORP.

### Order Approving Acquisition of Bank

Bezanson Investments, Inc. (Bezanson), and its subsidiary, MorAmerica Financial Corporation (MorAmerica), both of Cedar Rapids, Iowa, both bank holding companies within the meaning of the Bank Holding Company Act, have applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) for MorAmerica to acquire directly, and for Bezanson to acquire indirectly, 76 per cent or more of the voting shares of First Trust and Savings Bank, Wheatland, Iowa (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none have been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicants are bank holding companies by reason of the 1970 Amendments to the Bank Holding Company Act and of MorAmerica's direct control and Bezanson's resultant indirect control, since 1964, of Jackson State Bank and Trust Company, Manquoketa, Iowa. Jackson Bank, the 44th largest of Iowa's 670 commercial banks, holds deposits of about $32.8 million[1] which represents approximately 0.4 per cent of total deposits in commercial banks in the State. Jackson Bank is the largest of five commercial banks which compete in the Manquoketa Banking Market[2] and holds approximately 50 per cent of total commercial bank deposits in said market. Bank's Lost Nation Office is located approximately 12 miles from Manquoketa, on the periphery of Jackson Bank's market area. Approximately $1.5 million of Bank's total deposits of $9.6 million are attributable to the Manquoketa market and Bank, accordingly, is the smallest of the market's 5 commercial banks with about 2.6 per cent of total market deposits.

On August 29, 1972, the Board denied Applicants' previous request for prior approval to acquire Bank.[3] The principal basis for denial was the Board's conclusion that Applicants' financial and managerial resources and future prospects were inconsistent with approval. The Board found also that the loss of competition between Bank and Jackson Bank weighed somewhat against approval of the application. Since the Board's action, Jackson Bank's market share has declined and the area's second largest bank has grown substantially. Moreover, Peter F. Bezanson, Bezanson's president and principal shareholder, has since early 1971 controlled Bank through individual ownership of shares. Accordingly, on the basis of the record presently

[1] Deposit data are as of June 30, 1973.
[2] Approximated by the southwest portion of Jackson County and the northwest portion of Clinton County, Iowa.
[3] 1972 Federal Reserve *Bulletin* 835.

before it the Board finds that consummation of the proposal would not adversely affect competition to a significant extent in any relevant area.

In its previous Order in this case the Board took note of MorAmerica's unfavorable debt-equity ratio and its practice of retiring debt by means of new debt issues; and the Board noted further that MorAmerica had no immediate plans to sell additional capital stock to strengthen its equity position or to reduce debt significantly from earnings or cash reserves. The Board concluded that "[t]he policies of Applicants' management are * * * incompatible with sound banking principles and with an expansion of banking activities".

These debt problems were created by certain of MorAmerica's nonbanking activities, particularly those of a nonfinancial character.[4] In February, 1973, MorAmerica divested itself of all of its shares of Sunnycrest Nursing Facilities, Inc., and thereby significantly improved its debt-equity ratio.[5] Moreover, the record before the Board evdences a significant improvement during 1973 in the financial condition of MorAmerica and its nonbanking subsidiaries and of Jackson Bank. MorAmerica's consolidated net income and Jackson Bank's net income increased in 1973 by 40.7 percent and 30.7 percent, respectively. MorAmerica intends to increase its equity capital accounts by $2.9 million, which would significantly improve its consolidated debt to equity ratio. Moreover, MorAmerica plans to increase Jackson Bank's equity capital through earnings retention or capital injection. It now appears that MorAmerica can properly service its long term debt. The Board has determined that the financial and managerial resources and future prospects of Applicant, their subsidiary bank, and of Bank are favorable and consistent with approval of the instant application. Considerations relating to the convenience and needs of the communities to be served are likewise consistent with approval. It is the Board's judgment that the proposed acquisition is in the public interest and that the application 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 that, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[6] effective February 26, 1974.

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

[FR Doc.74-5082 Filed 3-5-74;8:45 am]

[4] Bezanson has since 1957 engaged in the activities of a general insurance agency. All of Applicants' other nonbanking activities are conducted by subsidiaries of MorAmerica, most of which, it appears, Applicants may permanently retain pursuant to § 4(a)(2) of the Act (12 U.S.C. 1843(a)(2)). MorAmerica's nonbanking activities include Morris Plan financial institutions, a small business investment company, a mortgage company, leasing companies, a travel agency, and companies engaged in real estate development. In considering applications filed pursuant to § 3(a)(3) of the Act, the Board considers whether such nonbanking activities create an adverse situation with respect to the proposed subsidiary bank in terms of any of the standards of § 3(c) of the Act. On the basis of the entire record, the Board has concluded that no significant adverse factors arise in relation to such nonbanking activities and Applicants' banking interests through the instant application.

[5] The Board has not determined that Applicants' divestiture of Sunnycrest would satisfy the standards of § 2(g) of the Act, since a transferee of Sunnycrest shares is indebted to Bezanson, and one MorAmerica officer and one Bezanson director are also directors of Sunnycrest. But the Board is satisfied that the divestiture is sufficient to remove the adverse situations which previously existed between Sunnycrest and Applicants' banking activities in terms of the standards of section 3(c) of the Act. Applicants have also divested their automobile dealership, in September 1972, and have promised to divest their travel agency within two years and also to divest, within 5 years, three subsidiary corporations engaged in the ownership, leasing, and development of real estate. In approving this application, the Board has taken into consideration Applicant's divestiture commitments.

[6] Voting for this action: Vice Chairman Mitchell and Governors Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns and Governor Daane.

## CENTRAL BANCOMPANY

### Acquisition of Bank

Central Bancompany, Jefferson City, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 85 per cent or more of the voting shares of The Boone County National Bank of Columbia, Columbia, Missouri. 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 St. Louis. 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 26, 1974.

Board of Governors of the Federal Reserve System, February 26, 1974.

[SEAL] ELIZABETH L. CARMICHAEL,
*Assistant Secretary of the Board.*

[FR Doc.74-5084 Filed 3-5-74;8:45 am]

## CITIZENS AND SOUTHERN CORP.

### Order Approving Acquisition of Bank Management Advisory Services, Inc.

The Citizens and Southern Corporation, Charleston, South Carolina, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire all of the voting shares of Bank Management Advisory Services, Inc., Charleston, South Carolina ("Company"), a company to be formed to engage in the activity of providing consulting advice to nonaffiliated banks in Applicant's trade area with respect to auditing, investment, operation, personnel training and selection procedures. Such activity has been determined by the Board, by concurrent action of this date, to be closely related to banking (12 CFR 225.4(a)(12)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (38 FR 133). The time for filing comments and views has expired, and none has been timely received.

Applicant controls one bank, The Citizens and Southern National Bank of South Carolina ("Bank"), which is the second largest bank in South Carolina, with total deposits of $418 million representing 12.5 per cent of the total deposits in commercial banks in the State.

Although Bank has performed certain consulting services for nonaffiliated banks as part of its correspondent services, such services have not been provided on an explicit fee basis. Further, bank holding companies have not heretofore been permitted to engage in the activity of providing management consulting advice for nonaffiliated banks. Accordingly, Applicant's entry into this activity through a *de novo* Company would have no adverse effect on either existing or potential competition. In fact, it is expected that Applicant's *de novo* entry into this industry should have a pro-competitive effect by increasing the number of firms offering this specialized consulting advice. Further, by providing this advice on an explicit fee basis instead of as a correspondent banking service, client banks will now be able to more accurately analyze the cost of such services and may be able to more efficiently allocate their funds.

There is no evidence in the record indicating that consummation of the proposed transaction would result in any undue concentration of resources, unfair competition, conflicts of interest, unsound banking practices, or other adverse effects.

Based upon the foregoing and other considerations reflected in the record,[1] the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of

[1] Dissenting Statement of Governor Brimmer filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551 or to the Federal Reserve Bank of Richmond.

its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Richmond.

By order of the Board of Governors,[2] effective February 26, 1974.

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

[FR Doc.74-5083 Filed 3-5-74;8:45 am.]

## DELAND DEVELOPMENT CORP.

### Acquisition of Bank

DeLand Development Corporation, Maitland, 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 approximately 34 per cent (18,554 shares) of the voting shares of DeLand State Bank, DeLand, 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 26, 1974.

Board of Governors of the Federal Reserve System, February 26, 1974.

[SEAL] ELIZABETH L. CARMICHAEL,
*Assistant Secretary of the Board.*

[FR Doc.74-5085 Filed 3-5-74;8:45 am]

## FIRST FINANCIAL CORP.

### Order Approving Acquisition of Bank

First Financial Corporation, Tampa, Florida, 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 90 percent or more of the voting shares of Gadsden State Bank ("Gadsden Bank"), Chattahoochee, Florida.

Notice of the application, affording opportunity for interested persons to submit comments and views has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls 15 banks with aggregate deposits of $878.6 million representing about 4.0 percent of deposits in commercial banks in Florida.[1] Acquisition of Bank (deposits of $6.9 million) by Applicant would not result in a substantial increase in the concentration of banking resources in Florida.

Bank controls approximately 15 per cent of deposits in commercial banks in the relevant market and ranks third among four banking organizations located in the market.[2] There is no substantial existing competition between any of Applicant's subsidiary banks and Bank, nor is a substantial amount of competition likely to develop in the future between any of Applicant's banking subsidiaries and Bank, particularly in view of the distances involved and Florida's branching laws. Applicant is not a likely *de novo* entrant into the relevant banking market; the market is characterized by declining population growth, and deposits and population per banking office ratios are considerably lower there than are such ratios for banks in the State as a whole. Based on these and other facts of record, the Board concludes that competitive considerations relative to this application are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, its subsidiary banks, and Bank are regarded as generally satisfactory; and these factors are consistent with approval of the application. Considerations relating to the convenience and needs of the community to be served lend some weight for approval of the application since acquisition of Bank by Applicant will enable Bank to provide for increased management depth and to become a more aggressive competitor. The Board concludes that consummation of the transaction would be in the public interest.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be executed (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 Atlanta pursuant to delegated authority.

By order of the Board of Governors,[3] effective December 27, 1973.

[SEAL] THEODORE E. ALLISON,
*Assistant Secretary of the Board.*

[FR Doc.74-5086 Filed 3-5-74;8:45 am]

[1] All banking data are as of June 30, 1973, and represent bank holding company formations and acquisitions approved by the Board through November 30, 1973.

[2] The relevant banking market is approximated by Gadsden County and a small portion of Jackson County. The counties are located in the panhandle area of Florida.

[3] Voting for this action: Vice Chairman Mitchell and Governors Daane, Brimmer, and Holland. Absent and not voting: Chairman Burns and Governors Sheehan and Bucher.

[2] Voting for this action: Vice Chairman Mitchell and Governors Sheehan, Bucher, and Holland. Voting against this action: Governor Brimmer. Absent and not voting: Chairman Burns and Governor Daane.

## FIRST NATIONAL BANCORPORATION, INC.

### Order Approving Acquisition of Certain Assets of Steamboat Springs Agency

The First National Bancorporation, Inc., Denver, Colorado, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire through its wholly-owned subsidiary, First Denver Insurance Agency, Inc. ("First Denver"), the insurance related assets of Steamboat Springs Agency, Steamboat Springs, Colorado ("Agency"), and thereafter to act as a general insurance agency in a community with a population of less than 5,000. Such activity has been determined by the Board to be closely related to banking (12 CFR 225.4(a)(9)(iii)(*a*)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (38 FR 34512). The time for filing comments and views has expired, and the Board has considered all comments received in the light of the public interest factors set forth in section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)).

Applicant, the largest banking organization in Colorado, controls ten banks with aggregate deposits of approximately $914 million, representing 15 percent of the State's total bank deposits.[1] First Denver engages in insurance agency activities at each of Applicant's subsidiary banks and at the branch offices of Applicant's mortgage company. As an incident to this proposal, First Denver would assume the future commissions and renewals of Agency (total assets of $74,000 as of August 31, 1973).

Agency, one of four general insurance agencies in Routt County, operates out of the offices of Routt County National Bank ("Bank"),[2] and is presently held by a partnership composed of five officers of Bank. No subsidiary of Applicant derives any amount of insurance agency business from the area serviced by Agency, nor does Agency serve areas served by Applicant's insurance subsidiary. Therefore, consummation of the proposal would not result in the elimination of any existing competition. While Applicant appears to be a potential *de novo* entrant, such entrance into the area would not necessarily add a competitor to the market since Agency, in view of its close relationship to Bank, would probably curtail or even terminate its insurance operations if Applicant were to initiate insurance activities in Routt County. The Board concludes that consummation of the proposed acquisition would have no significant adverse effects on existing or potential competition in any relevant area.

[1] All banking data are as of June 30, 1973, and reflect bank holding company formations and acquisitions approved through December 31, 1973.

[2] Bank was acquired by Applicant on July 6, 1973.

During the course of its review of the proposal, the Board received letters of comment from a local insurance agency and a local merchant to the effect that the close association of Agency with Bank would result in an unfair competitive advantage and further that there would exist a possibility of tie-in arrangements between Bank and Agency. In this connection, it appears that Agency and Bank are already closely associated, and there have been no adverse effects reflected in the record. Moreover, the Board notes the legislative policy in the National Bank Act that national banks in communities of less than 5,000 persons may sell insurance (12 U.S.C. 92) and the provisions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) prohibiting banks from tying an extension of credit to the provision of any other service from the bank, its parent bank holding company, or another subsidiary of such holding company. Furthermore, the Board finds that approval of Applicant's proposal is unlikely to result in any undue concentration of resources, decreased or unfair competition, unsound banking practices, or other adverse effects on the public interest. In addition, in the Board's judgment, the benefits to the public expected to result from approval of this application, namely, an increase in the amount of credit life coverage available to Bank's borrowers up to the full amount of credit extended and the faster processing of claims, lends weight to approval of the application.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in section 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City.

By order of the Board of Governors,[3] effective February 27, 1974.

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

[FR Doc.74-5087 Filed 3-5-74;8:45 am]

[3] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Brimmer, Sheehan, Bucher, and Holland.

## 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 8, 1974, from 9 a.m. to 4 p.m., Room 2219, Regional Headquarters Building, GSA Center, Auburn, Washington. This meeting will be for the purpose of considering architectural and engineering firms to provide design services for the proposed new Federal Building and Parking Facility in Fairbanks, Alaska. The meeting will be closed to the public in accordance with the provisions set forth in section 10(d) of Pub. L. 92-463.

Dated: February 28, 1974.

M. L. BLAYLOCK,
*Acting Regional Administrator.*

[FR Doc.74-5246 Filed 3-5-74;8:45 am]

## INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

### PETITTE BROS. COAL CO., INC.

#### Regarding Applications for Initial Permits Electric Face Equipment Standards; Opportunity for Public Hearing

Applications for Initial Permits for Noncompliance with the Electric Face Equipment Standard have been received for items of equipment in the underground coal mines listed below.

ICP Docket No. 4259-000, Petitte Bros. Coal Co., Inc., Petitte Mine, Mine ID No. 36 00908 0, Dilliner, Pennsylvania.

In accordance with the provisions of section 305(a)(2) (30 U.S.C. 865(a)(2)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for an initial permit may be filed within 15 days after publication of this notice. Requests for public hearing must be filed in accordance with 30 CFR Part 505 (35 FR 11296, July 15, 1970), as amended, copies of which may be obtained from the Panel upon request.

A copy of each application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Room 800, 1730 K Street NW., Washington, D.C. 20006.

C. DONALD NAGLE,
*Vice Chairman,*
*Interim Compliance Panel.*

FEBRUARY 27, 1974.

[FR Doc.74-5113 Filed 3-5-74;8:45 am]

## NATIONAL ENDOWMENT FOR THE HUMANITIES

### RESEARCH GRANTS PANEL

#### Notice of Meeting

FEBRUARY 12, 1974.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the Research Grants Panel will meet at Washington, D.C. on March 11-12, 1974.

The purpose of the meeting is to review research grant applications submitted to the National Endowment for the Humanities for possible grant funding.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer Mr. John W. Jordan, 806 15th Street, NW, Washington, D.C. 20506, or call area code 202 382-2031.

JOHN W. JORDAN,
*Advisory Committee*
*Management Officer.*

[FR Doc.74-5065 Filed 3-5-74;8:45 am]

## OFFICE OF MANAGEMENT AND BUDGET

### REQUESTS FOR CLEARANCE OF REPORTS

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 March 1, 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 Manage-

ment and Budget, Washington, D.C. 20503 (202–395–4529).

NEW FORMS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, National School Lunch and Child Food Service Survey, Form ____, Single time, HRP/Wann, School food service directors.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Application for Federal Assistance (Nonconstruction Programs)—Instructions for Health and Nutrition Programs, Form OE 347, Annual, Lowry (GSA-Marcantonio), LEA's and nonprofit private educational organizations.

Application for Federal Assistance (Nonconstruction Programs) Instructions for Educational Opportunity Centers, Form OE 343, Annual, Lowry (GSA-Marcantonio), Educational community and agencies or organizations.

NATIONAL SCIENCE FOUNDATION

Survey of Scientific Society Members, Form ____, Single time, Wann, Physical and social scientists and engineers.

REVISIONS

None.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration Regulations under the Packers and Stockyards Act, Form ____, Occasional, Evinger (x).

PHILLIP D. LARSEN,
*Budget and Management Officer.*

[FR Doc.74–5356 Filed 3–5–74;8:45 am]

## OFFICE OF TELECOMMUNICATIONS POLICY

### FREQUENCY MANAGEMENT ADVISORY COUNCIL

#### Notice of Public Meeting

Notice is hereby given that the Frequency Management Advisory Council will meet at 10:00 a.m. on Thursday, March 14, 1974, in Room 712, 1800 G Street NW., Washington, D.C.

The principal agenda items will be a continued discussion of the progress of preparation for the 1974 ITU Maritime WARC, the development of an FMAC study program in support of its advisory role to OTP, discussion on electromagnetic compatibility problems (a) among medical devices in hospitals and (b) among airborne terrestrial devices in 7–8 GHz band, and a briefing on the recently completed Geneva, Switzerland, CCIR study group meetings.

The meeting will be open to the public; any member of the public will be permitted to file a written statement with the Council, before or after the meeting.

The names of the members of the Council, a copy of the agenda, a summary of the meeting and other information pertaining to the meeting may be obtained from Mr. L. R. Raish, Office of Telecommunications Policy, Washington, D.C. (telephone: 202–395–5623).

Dated March 1, 1974.

BRYAN M. EAGLE,
*Advisory Committee Management Officer.*

[FR Doc.74–5127 Filed 3–5–74;8:45 am]

## SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0170]

### INTERSTATE VENTURE CAPITAL CORP.

#### Issuance of License To Operate as Small Business Investment Company

On January 30, 1974, a notice was published in the FEDERAL REGISTER (39 FR 3973) stating that Interstate Venture Capital Corporation, 1300 Main Street, Suite 510, Houston, Texas 77002, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 (38 FR 30836 November 7, 1973) of the SBA Rules and Regulations governing small business investment companies for a license to operate as a small business investment company (SBIC).

Interested parties were given to the close of business February 14, 1974, to submit their written comments to SBA.

Notice is hereby given that, having considered the application and all other pertinent information, SBA has issued License No. 06/06–0170 to Interstate Venture Capital Corporation, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

Dated: February 26, 1974.

JAMES THOMAS PHELAN,
*Deputy Associate Administrator for Investment.*

[FR Doc.74–5121 Filed 3–5–74;8:45 am]

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[Delegation of Authority No. 30, Region VI; Rev. 1]

### ASSISTANT REGIONAL DIRECTOR FOR FINANCE AND INVESTMENT, ET AL.

#### Redelegation of Authority

Delegation of Authority No. 30–VI (37 FR 17612), as amended, (37 FR 20288) and (38 FR 7290) is hereby revised in its entirety to reflect realignment of field offices and reads as follows:

Pursuant to the authority delegated to Regional Directors by Delegation of Authority No. 30 (Revision 14), 37 FR 12651, as amended 37 FR 14840, 37 FR 19405, 37 FR 21466, 37 FR 23594, 38 FR 32984, and 39 FR 1898, the following authority is hereby redelegated to the positions within Region VI as indicated herein:

PART I—FINANCING PROGRAM

SECTION A. LOAN APPROVAL AUTHORITY

1. *Small Business Act Section 7(a) Loans.* To approve or decline business loans not exceeding the following amounts (SBA share):

| | |
|---|---|
| a. Assistant Regional Director for Finance and Investment | $350,000 |
| b. District Director | 350,000 |
| c. Assistant District Director for Finance and Investment/Chief, Financing Division | 350,000 |
| d. District Supervisory Loan Specialist (Financing Division) | 50,000 |
| e. Branch Manager | 50,000 |

2. *Economic Opportunity (EO) Loans.* To approve or decline economic opportunity loans not exceeding $50,000 (SBA share):

a. Assistant Regional Director for Finance & Investment

b. District Director

c. Assistant District Director for Finance & Investment/Chief, Financing Division.

d. District Supervisory Loan Specialist (Financing Division)

e. Branch Manager

3. *Handicapped Assistance Loans.* To approve or decline handicapped assistance loans not exceeding the following amounts (SBA share):

| | |
|---|---|
| a. Assistant Regional Director for Finance and Investment | $350,000 |
| b. District Director | 350,000 |
| c. Assistant District Director for Finance and Investment/Chief, Financing Division | 350,000 |
| d. District Supervisory Loan Specialist (Financing Division) | 50,000 |
| e. Branch Manager | 50,000 |

4. *Displaced Business and Other Economic Injury Loans.* a. To decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation economic injury loans and economic injury loans in connection with declarations made by the Secretary of Agriculture for natural disasters in any amount and to approve such loans up to the following amounts (SBA share):

| | |
|---|---|
| 1. Assistant Regional Director for Finance and Investment | $1,000,000 |

b. To approve or decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury loans in connection with declarations made by the Secretary of Agriculture for natural disasters up to the following amounts (SBA share):

| | |
|---|---|
| 1. Assistant Regional Director for Finance and Investment | $1,000,000 |
| 2. District Director | 350,000 |
| 3. Assistant District Director for Finance and Investment/Chief, Financing Division | 350,000 |
| 4. District Supervisory Loan Specialist (Financial Division) | 50,000 |
| 5. Branch Manager | 50,000 |

SECTION B. OTHER FINANCING AUTHORITY

1. a. To enter into business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety and strategic arms limitation economic injury and handicapped assistance loan participation agreements with banks:

1. Assistant Regional Director for Finance & Investment

2. District Director

3. Assistant District Director for Finance & Investment/Chief, Financing Div.

4. District Supervisory Loan Specialist (Financing Division)

5. Branch Manager

b. To enter into blanket loan guarantee agreements with banks:

1. Branch Manager

2. a To execute loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

1. Assistant Regional Director for Finance & Investment

2. District Director
3. Assistant District Director for Finance & Investment/Chief, Finan. Div.
4. District Supervisory Loan Specialist (Financing Division)
5. Branch Manager

3. To cancel, reinstate, modify and amend authorizations: a. For all loans, i.e., business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, strategic arms limitation economic injury and handicapped assistance loans:
1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Fin. Div.
4. District Supervisory Loan Specialist (Financing Division)
5. Branch Manager

b. For *fully undisbursed* or *partially disbursed* business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, coal mine health and safety loans, strategic arms limitation, economic injury loans, and handicapped assistance loans:
1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Fin. Div.
4. District Supervisory Loan Specialist (Financing Division)
5. Branch Manager

c. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational safety and health, strategic arms limitation, economic injury, and handicapped assistance loans personally approved under delegated authority.
1. Branch Manager.

4. To approve minor modifications in fully undisbursed loan authorizations:
1. District Loan Specialist (Financing Division)
2. Branch Loan Specialist (Financing Division)

5. a. To extend the disbursement period on all loan authorizations:
1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Fin. Div.
4. District Supervisory Loan Specialist (Financing Division)
5. Branch Manager

b. To extend the disbursement period on all loan authorizations on loans *fully undisbursed:*
1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Financing Division
4. District Supervisory Loan Specialist (Financing Division)
5. Branch Manager

6. To approve service charges by participating banks not to exceed 2 percent per annum on the outstanding principal balance of construction loans and loans involving accounts receivable and inventory financing:
1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Financing Division
4. District Supervisory Loan Specialist (Financing Division)
5. Branch Manager

## PART II—DISASTER PROGRAM

### SECTION A. DISASTER LOAN AUTHORITY

1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans up to the total SBA funds of: a. $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned for physical loss or damage exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and

b. $500,000 on disaster business loans (excluding displaced business loans, coal mine health and safety loans, occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) except to the extent of refinancing of a previous SBA disaster loan.
1. Assistant Regional Director for Finance & Investment
2. Disaster Program Officer
3. District Director
4. Assistant District Director for for Finance & Investment/Chief, Financing Div.
5. District Supervisory Loan Specialist (Financing Division)
6. Branch Manager
7. Disaster Branch Manager, as assigned.

2. To decline direct disaster and immediate participation disaster loans (excluding displaced business loans, coal mine health and safety, occupational safety and health, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) in any amount and to approve such loans up to the total SBA funds of $50,000:
a. Assistant Regional Director for Finance & Investment
b. Disaster Program Officer
c. District Director
d. Assistant District Director for Finance & Investment/Chief, Financing Div.
e. District Supervisory Loan Specialist (Financing Division)
f. Branch Manager
g. Disaster Branch Manager, as assigned

3. To decline disaster guaranteed loans in any amount and to approve such loans up to the SBA guarantee of the following amounts:

| | |
|---|---|
| a. Assistant Regional Director for Finance and Investment | $1,000,000 |
| b. Disaster Program Officer | 500,000 |
| c. District Director | 500,000 |
| d. Assistant District Director for Finance & Investment/Chief, Financing Division | 500,000 |
| e. District Supervisory Loan Specialist (Financing Division) | 500,000 |
| f. Branch Manager | 500,000 |
| g. Disaster Branch Manager, as assigned | 500,000 |

4. To appoint as a processing representative any bank in the disaster area:
a. Assistant Regional Director for Finance & Investment
b. Disaster Program Officer
c. District Director
d. Branch Manager
e. Disaster Branch Manager, as assigned

5. To approve or reject the request of an applicant to file for a disaster loan after the period for acceptance under the original disaster declaration, or extension thereof, has expired.
None

### SECTION B. ADMINISTRATIVE AUTHORITY

1. Establishment of Disaster Field Offices. a. To establish field offices upon receipt of advice of the designation of a disaster area and to close disaster field offices when no longer advisable to maintain such offices, and (2) to obligate the Small Business Administration to reimburse the General Services Administration for the rental of temporary office space.
1. Assistant Regional Director for Finance & Investment
2. Assistant Regional Director for Administration
3. District Director
4. Disaster Branch Manager, as assigned

2. Purchase and Contract Authority.
a. To contract for local credit bureau services and loss verification services pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in Section 257 (a) and (b) of that Chapter.
1. Assistant Regional Director for Finance & Investment
2. Assistant Regional Director for Administration
3. Regional Office Services Manager
4. District Director
5. District Administrative Assistant
6. Disaster Branch Manager, as assigned

b. Other Administrative Authority. See Part VIII

## PART III—COMMUNITY ECONOMIC DEVELOPMENT (CED) PROGRAM

### SECTION A. SECTION 501 AND 502 LOAN APPROVAL AUTHORITY

1. To approve or decline Section 501 state development company loans: a. Without dollar limitation:
1. Assistant Regional Director for Finance and Investment.

b. Up to the following amounts (SBA share), provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| 1. Assistant Regional Director for Finance and Investment | $350,000 |
| 2. District Director | 350,000 |
| 3. Assistant District Director for Finance and Investment/Chief, Financial Division | 350,000 |
| 4. District Supervisory Loan Specialist (Financing Division) | 50,000 |

2. To approve or decline Section 502 local development company loans: a. Up to the following amount (SBA share):

| | |
|---|---|
| 1. Assistant Regional Director for Finance and Investment | $350,000 |

b. Up to the following amount (SBA share) when project cost *does not exceed $1 million*, provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| 1. Assistant Regional Director for Finance and Investment | $350,000 |
| 2. District Director | 350,000 |
| 3. Assistant District Director for Finance and Investment/Chief, Financing Division | 350,000 |
| 4. District Supervisory Loan Specialist | 50,000 |

c. Up to the following amount (SBA share) when project cost *does not exceed $700,000*, provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| 1. Assistant Regional Director for Finance and Investment | 350,000 |
| 2. District Director | 350,000 |
| 3. Assistant District Director for Finance and Investment/Chief, Financing Division | 350,000 |

SECTION B. OTHER 501 AND 502 AUTHORITY

1. a. To extend the disbursement period on Sections 501 and 502 loan authorizations:

1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Financing Div.
4. District Supervisory Loan Specialist (Financing Division)
5. District Economic Development Specialist

b. To extend the disbursement period on fully undisbursed Sections 501 and 502 loans:

1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Financing Div.
4. District Supervisory Loan Specialist (Financing Division)
5. District Economic Development Specialist

2. a. To execute Sections 501 and 502 loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Financing Div.
4. District Supervisory Loan Specialist (Financing Division)

3. a. To cancel, reinstate, modify, and amend authorizations for Sections 501 and 502 loans:

1. Assistant Regional Director for Financing & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Financing Div.
4. District Supervisory Loan Specialist (Financing Division)

3. b. To cancel, reinstate, modify, and amend authorizations for fully undisbursed or partially disbursed Sections 501 and 502 loans:

1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Financing Div.
4. District Supervisory Loan Specialist (Financing Division)

4. To enter into Section 502 loan participation agreements with banks:

1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Financing Div.
4. District Supervisory Loan Specialist (Financing Division)

SECTION C. LEASE GUARANTEE APPROVAL AUTHORITY

1. To approve or decline applications for the direct guarantee of payment of rent not to exceed the following amounts.

| | |
|---|---|
| a. Assistant Regional Director for Finance and Investment | $1,000,000 |
| b. District Director | 500,000 |
| c. Assistant District Director for Finance and Investment/Chief Financing Division | 500,000 |

2. To guarantee sureties of small businesses against portions of losses resulting from the breach of bid, payment, or performance bonds on contracts not to exceed $500,000:

a. Assistant Regional Director for Finance & Investment
b. Regional Economic Development Specialist

SECTION D. OTHER LEASE GUARANTEE AUTHORITY

1. a. To issue and modify commitment letters:

1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Financing Div.

SECTION E. EDA LOAN DISBURSEMENT AUTHORITY

1. a. To disburse approved EDA loans, as authorized:

1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Financing Division
4. District Supervisory Loan Specialist (Financing Division)
5. District Economic Development Specialist

PART IV—PORTFOLIO MANAGEMENT (PM) PROGRAM

SECTION A. PORTFOLIO MANAGEMENT, SERVICING, COLLECTION AND LIQUIDATION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, collection, and liquidation of all loans, exclusive of matters in litigation, and to do and perform and to assent to the doing and performance of, all and every act and think requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, any any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinates, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; the approval of bank applications for use of liquidity privilege under the loan guaranty plan; and to advertise regarding the public sale of collateral in conneciton with the liquidation of loans, and acquired property.

a. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:

1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Portfolio Mgmt.
4. Branch Manager

b. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate:

1. Assistant District Director for Finance & Investment/Chief, Portfolio Mgmt.

2. District Supervisory Loan Specialist (Portfolio Management)

c. Except: To compromise or sell any primary obligation or other evidence or indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan *other than a disaster home loan* and the cancellation of authority to liquidate any loan *other than a disaster home loan.*—NOT APPLICABLE.

2. To contract for the services of fee appraisers, auctioneers, engineering, marketing and feasibility studies, and other required services, in conjunction with loan processing, servicing, and loan liquidation;

a. Assistant Regional Director for Finance & Investment

b. District Director

c. Assistant District Director for Finance & Investment/Chief, Portfolio Mgmt.

d. District Supervisory Loan Specialist (Portfolio Management)

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans, exclusive of matters in litigation, and acquired collateral, when and as authorized by EDA:

a. Assistant Regional Director for Finance & Investment

b. District Director

c. Assistant District Director for Finance & Investment/Chief, Portfolio, Mgmt.

d. District Supervisory Loan Specialist (Portfolio Management)

SECTION B. LOAN ADMINISTRATION, SERVICING, AND COLLECTION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, and collection of all loans, *other than those accounts classified as "in liquidation,"* and to do and perform and to assent to the doing and performance of all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents, and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; and the approval of bank applications for use of liquidity privilege under the loan guaranty plan:

a. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate. NONE

2. To approve the following actions:

a. Use of such portions of the cash surrender value of assigned life insurance as are required to pay premiums due on the policy.

b. Release of dividends on assigned life insurance or consent to application of dividends against premiums due or to become due.

c. Minor modifications in the authorizations.

d. Extension of disbursement period on loans partially undisbursed.

e. Extension of initial principal payments.

f. Adjustment of interest payment dates.

g. Release of hazard insurance checks not in excess of $500 and endorsement of such checks on behalf of the Agency where SBA is named as joint loss payee.

h. Release of equipment with or without consideration where the value of equipment being released does not exceed $500.

1. Concerning all current direct and participation loans and First Mortgage Plan 502 loans:

a. District Loan Specialist (Portfolio Management)

b. Branch Loan Specialist (Portfolio Management)

2. Concerning all direct and participation loans:

a. District Loan Specialist (Portfolio Management)

b. Branch Loan Specialist (Portfolio Management)

SECTION C. LEASE GUARANTEE ADMINISTRATION AND SERVICING AUTHORITY

1. a. To service claims arising under all lease insurance policies issued in the region, approving the payment, or recommending denial of such claims:

1. Assistant Regional Director for Finance & Investment

2. District Director

3. Assistant District Director for Finance & Investment/Chief, Portfolio Mgmt.

b. To service claims arising under all lease insurance policies issued in the district, approving the payment, or recommending denial of such claims:

1. District Director

2. Assistant District Director for Finance & Investment/Chief, Portfolio Mgmt.

c. To service claims arising under all lease insurance policies issued in the branch office area, approving the payment or recommending denial of such claims:

1. Branch Manager

2. To take all actions necessary to mitigate losses from lease guarantees:

a. Assistant Regional Director for Finance & Investment

b. District Director

c. Assistant District Director for Finance & Investment/Chief, Portfolio Mgmt.

PART V—PROCUREMENT ASSISTANCE (PA) PROGRAM

SECTION A. CERTIFICATE OF COMPETENCY APPROVAL AUTHORITY

1. With the exception of re-referred cases, to approve applications for Certificate of Competency up to but not exceeding $250,000 bid value received from small business concerns located within the geographical jurisdiction of the following:

a. Assistant Regional Director for Finance & Investment

b. Assistant Regional Director for Procurement Assistance

2. To deny an application for a Certificate of Competency when an adverse determination as to capacity or credit is concurred in:

a. Assistant Regional Director for Finance & Investment

b. Assistant Regional Director for Procurement Assistance

SECTION B. SECTION 8(A) CONTRACTING AUTHORITY

1. To enter into contracts, not exceeding the following amounts, on behalf of the Small Business Administration with the U.S. Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies or materials to the Government and agreeing as to the terms and conditions of such contracts:

| | |
|---|---|
| a. Assistant Regional Director for Procurement Assistance | Unlimited |
| b. Chief, Business Development | $350,000 |
| c. District Director | 350,000 |

2. To arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Small Business Administration to perform such contracts:

a. Assistant Regional Director for Procurement Assistance

b. Chief, Business Development

c. District Director

3. To certify to any officer of the Government having procurement powers that the Small Business Administration is competent to perform any specific Government procurement contract, not exceeding the following amounts, to be let by any such officer:

a. Assistant Regional Director for Procurement Assistance..... Unlimited
b. Chief, Business Development.. $350,000
c. District Director..... 350,000

SECTION C. SECTION 406 CONTRACT MANAGEMENT AUTHORITY (MA)

1. To take all necessary actions in connection with the administration and management of contracts, executed by the Associate Administrator for Financial Assistance under the authority granted in Section 406 of the Economic Opportunity Act of 1964, as amended, except changes, amendments, modifications, or termination of the original contract:
a. Assistant Regional Director for Management Assistance

PART VI—LEGAL SERVICE

SECTION A. AUTHORITY TO CONDUCT LITIGATION ACTIVITIES

1. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing.
a. The assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents, and applications therefor, licenses, certificates of deposit and of stock, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.
b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation.
1. Except: to compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:
a. Regional Counsel
b. District Counsel
2. EDA loans—litigation activities. To take all necessary action in liquidating Economic Development Administration (EDA) loans having litigative aspects, when and as authorized by EDA.
a. Regional Counsel
b. District Counsel

SECTION B. LOAN CLOSING AUTHORITY

1. To close and disburse approved SBA loans and rehabilitation loans for Department of Housing and Urban Development:
a. Assistant Regional Director for Finance & Investment
b. Regional Counsel
c. Regional Attorneys
d. District Director
e. District Counsel
f. District Attorneys
g. Branch Manager
h. Branch Counsel
i. Branch Attorneys
2. To close and disburse approved SBA loans:
a. Assistant Regional Director for Finance & Investment
b. Regional Counsel
c. Regional Attorneys
d. District Director
e. District Counsel
f. District Attorneys
g. Branch Manager
h. Branch Counsel
i. Branch Attorneys
3. To close approved EDA loans, as authorized:
a. Assistant Regional Director for Finance & Investment
b. Regional Counsel
c. Regional Attorneys
d. District Director
e. District Counsel
f. District Attorneys
g. Branch Manager
h. Branch Counsel
i. Branch Attorneys
4. Approval and certification of closing documents. To approve when requested, in advance of disbursement, conformed copies of notes and other closing documents; and certify to the participating bank that such documents are in compliance with the participation authorization:
a. Assistant Regional Director for Finance & Investment
b. Regional Counsel
c. Regional Attorneys
d. District Director
e. District Counsel
f. District Attorneys
g. Branch Manager
h. Branch Counsel
i. Branch Attorneys

PART VII—ELIGIBILITY AND SIZE DETERMINATIONS

SECTION A. ELIGIBILITY DETERMINATIONS

1. a. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance *under any program of the Agency*,
1. Except the SBIC program:
a. District Director
2. Except the SBIC and community economic development programs:
a. District Director
b. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance *under the sections 501 and 502 program of the Agency*:.
1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Fin. Div.
4. District Supervisory Loan Specialist (Financing Division)

SECTION B. SIZE DETERMINATIONS

1. a. To make initial size determinations *in all cases* within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions *for financial assistance purposes only:*
1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Fin. Div.
4. District Supervisory Loan Specialist (Financing Division)
b. To make initial size determinations *in all cases* within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions *for financing purposes only:*
1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Fin. Div.
4. District Supervisory Loan Specialist (Financing Division)
c. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, *except sections 501 and 502 loans*, and further, to make product classification decisions *for financing purposes only:*
1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Fin. Div.
4. District Supervisory Loan Specialist (Financing Division)
d. To make initial size determinations *in all sections 501 and 502 loans* within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for sections 501 and 502 loans only:
1. Assistant Regional Director for Finance & Investment
2. District Director
3. Assistant District Director for Finance & Investment/Chief, Fin. Div.
4. District Supervisory Loan Specialist (Financing Division)
e. Product classification decisions for procurement purposes are made by contracting officers.

PART VIII—ADMINISTRATIVE

SECTION A. AUTHORITY TO PURCHASE, RENT OR CONTRACT FOR EQUIPMENT, SERVICES, AND SUPPLIES

1. To purchase reproductions of loan documents, chargeable to the revolving fund, requested by U.S. Attorneys in Foreclosure cases:
a. Assistant Regional Director for Administration
b. Regional Offices Services Supervisor
c. District Director
d. District Administrative Assistant
e. Branch Manager
2. To purchase office supplies and equipment, including office machines and rent regular office equipment and fur-

nishings; contract for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in Section 257 (a) and (b) of that chapter.

a. Assistant Regional Director for Administration
b. Regional Office Services Superior
c. District Director
d. District Administrative Assistant
e. Branch Manager
f. Disaster Branch Manager, as assigned

3. To rent motor vehicles and garage space for the storage of such vehicles when not furnished by this Administration.

a. Assistant Regional Director for Administration
b. Regional Office Services Manager
c. District Director
d. District Administrative Assistant
e. Branch Manager

4. To rent temporarily SBA conference space located within the geographical jurisdiction:

a. Assistant Regional Director for Administration
b. Regional Office Services Supervisor.
c. District Director
d. District Administrative Assistant
e. Branch Manager

5. *Use of Seal of the Small Business Administration*

1. To certify true copies of any books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such material; to certify the nonexistence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications.

a. District Directors
b. Branch Managers

PART IX—EXERCISE OF AUTHORITY BY OFFICIAL IN AN ACTING CAPACITY AND REDELEGATION

The authority delegated herein to a specific position may not be redelegated; however, such authority may be exercised by an SBA employee designated as acting in that position.

PART X—RECISSION OF AUTHORITY

All authority previously delegated by the Regional Director to specific positions in Region VI is hereby rescinded without prejudice to actions taken under all such delegations of authority prior to effective date hereof.

Effective dates:

| | |
|---|---|
| Dallas Regional Office | Oct. 21, 1973. |
| Dallas District Office | Do. |
| Albuquerque District Office | Nov. 18, 1973. |
| Houston District Office | Dec. 2, 1973. |
| Little Rock District Office | Nov. 18, 1973. |
| Lubbock District Office | Nov. 4, 1973. |
| Lower Rio Grande Valley District Office | Dec. 16, 1973. |
| Marshall District Office | Nov. 4, 1973. |
| New Orleans District Office | Dec. 16, 1973. |
| Oklahoma City District Office | Nov. 4, 1973. |
| San Antonio District Office | Dec. 2, 1973. |
| El Paso Branch Office | Nov. 4, 1973. |
| Corpus Christi Branch Office | Dec. 16, 1973. |

FRED S. NEUMANN,
*Regional Director, Region VI.*

[FR Doc.74-5078 Filed 3-5-74;8:45 am]

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[Delegation of Authority No. 30, Region VIII; Revision 1]

## ASSISTANT REGIONAL DIRECTOR FOR FINANCE AND INVESTMENT

### Redelegation of Authority

Delegation of Authority No. 30, Region VIII (37 FR 17620), as amended (38 FR 2358), (38 FR 6321) and (38 FR 20302) is hereby revised in its entirety because of the realignment of field offices.

Pursuant to the authority delegated to Regional Directors by Delegation of Authority No. 30 (Revision 14), 37 FR 12651, as amended, 37 FR 19405, 37 FR 21466, 37 FR 23594, 38 FR 32984, and 39 FR 1898, the following authority is hereby redelegated to the positions within Region VIII as indicated herein:

PART I—FINANCING PROGRAM

SECTION A. LOAN APPROVAL AUTHORITY

1. Small Business Act Section 7(a) loans. To approve or decline business loans not exceeding the following amounts (SBA share):

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |
| (2) District Director | 350,000 |
| (3) Assistant District Director for Finance and Investment | 350,000 |
| (4) District Supervisory Loan Specialist | 100,000 |
| (5) Branch Manager | 100,000 |

2. Economic Opportunity (EO) loans. To approve or decline economic opportunity loans not exceeding $50,000 (SBA share).

(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) Branch Manager

3. *Handicapped Assistance Loans.* To approve or decline handicapped assistance loans not exceeding $350,000 (SBA share).

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |
| (2) District Director | 350,000 |
| (3) Assistant District Director for Finance and Investment | 350,000 |
| (4) District Supervisory Loan Specialist | 100,000 |
| (5) Branch Manager | 100,000 |

4. *Displaced Business and Other Economic Injury Loans.* a. To decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury loans in connection with declarations made by the Secretary of Agriculture for natural disasters in any amount and to approve such loans up to the following amounts (SBA share):

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |

b. To approve or decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury loans in connection with declarations made by the Secretary of Agriculture for natural disasters up to the following amounts (SBA share):

| | |
|---|---|
| (1) District Director | $350,000 |
| (2) Assistant District Director for Finance and Investment | 350,000 |
| (3) District Supervisory Loan Specialist | 100,000 |
| (4) Branch Manager | 100,000 |

SECTION B. OTHER FINANCING AUTHORITY

1. a. To enter into business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational safety and health, handicapped assistance, and strategic arms limitation economic injury loan participation agreements with banks:

(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) Branch Manager

b. To enter into blanket loan guarantee agreements with banks:

(1) None

2. a. To execute loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) Branch Manager

3. To cancel, reinstate, modify and amend authorizations: a. For all loans, i.e., business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational safety and health, handicapped assistance, and strategic arms limitation economic injury loans:

(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) Branch Manager

b. For fully undisbursed or partially disbursed business, economic opportunity disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, coal mine health and safety loans, handicapped assistance, and strategic arms

limitation economic injury loans:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) Branch Manager

c. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational safety and health loans, handicapped assistance personally approved under delegated authority and strategic arms limitation economic injury loans:
(1) None

4. To approve minor modifications in fully undisbursed loan authorizations:
(1) District Loan Specialist
(2) Branch Loan Specialist

5. a. To extend the disbursement period on all loan authorizations:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) District Loan Specialist
(6) Branch Manager
(7) Branch Loan Specialist

b. To extend the disbursement period on all loan authorizations on loans fully undisbursed:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) District Loan Specialist
(6) Branch Manager
(7) Branch Loan Specialist

6. To approve service charges by participating banks not to exceed 2 percent per annum on the outstanding principal balance of construction loans and loans involving accounts receivable and inventory financing:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) Branch Manager

## PART II—DISASTER PROGRAM

### SECTION A. DISASTER LOAN AUTHORITY

1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans up to the total SBA funds of

(1) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned for physical loss or damage exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and

(2) $500,000 on disaster business loans (excluding displaced business loans, coal mine health and safety loans, occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) except to the extent of refinancing of a previous SBA disaster loan.
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) Branch Manager
(6) Disaster Branch Manager, as assigned

2. To decline direct disaster and immediate participation disaster loans (excluding displaced business loans, coal mine health, and safety, occupational safety and health, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) in any amount and to approve such loans up to the total SBA funds of $50,000:
(1) Disaster Branch Supervisory Loan Specialist, as assigned.

3. To decline disaster guaranteed loans in any amount and to approve such loans up to an SBA guarantee of the following amounts:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |
| (2) District Director | 350,000 |
| (3) Assistant District Director for Finance & Investment | 350,000 |
| (4) District Supervisory Loan Specialist | 100,000 |
| (5) Branch Manager | 350,000 |
| (6) Branch Loan Specialist | 50,000 |
| (7) Disaster Branch Manager, as assigned | 350,000 |
| (8) Disaster Branch Loan Specialist, as assigned | 50,000 |

4. To appoint as a processing representative any bank in the disaster area:
(1) District Director
(2) Branch Manager
(3) Disaster Branch Manager, as assigned.

5. To approve or reject the request of an applicant to file for a disaster loan after the period for acceptance under the original disaster declaration, or extension thereof, has expired.
(1) Assistant Regional Director for Finance & Investment
(2) District Director

### SECTION B. ADMINISTRATIVE AUTHORITY

1. Establishment of Disaster Field Offices.

a. To establish field offices upon receipt of advice of the designation of a disaster area and to close disaster field offices when no longer advisable to maintain such offices; and (2) to obligate the Small Business Administration to reimburse the General Services Administration for the rental of temporary office space.
(1) Assistant Regional Director for Administration
(2) District Director
(3) Disaster Branch Manager, as assigned

2. Purchase and Contract Authority.

a. To contract for local credit bureau services and loss verification services pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in Section 257 (a) and (b) of that Chapter.
(1) Assistant Regional Director for Administration
(2) Regional Office Services Manager
(3) District Director
(4) Administrative Assistant
(5) Disaster Branch Manager, as assigned

b. To purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in Section 257 (a) and (b) of that Chapter.
(1) Assistant Regional Director for Administration
(2) Regional Office Services Manager
(3) District Director
(4) Administrative Assistant
(5) Disaster Branch Manager, as assigned

## PART III—COMMUNITY ECONOMIC DEVELOPMENT (CED) PROGRAM

### SECTION A. SECTIONS 501 AND 502 LOAN APPROVAL AUTHORITY

1. To approve or decline Section 501 state development company loans: a. Without dollar limitation:
(1) None

b. Up to the following amount (SBA share), provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |
| (2) District Director | 350,000 |

2. To approve or decline Section 502 local development company loans: a. Up to the following amount (SBA share):
(1) None

b. Up to the following amount (SBA share) when project cost does not exceed $1 million, provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |
| (2) District Director | 350,000 |

c. Up to the following amount (SBA share) when project cost does not exceed $700,000, provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) District Director | $350,000 |
| (2) Assistant District Director for Finance and Investment | 350,000 |

SECTION R. OTHER 501 AND 502 AUTHORITY

1. a. To extend the disbursement period on Sections 501 and 502 loan authorizations:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) District Economic Development Specialist
b. To extend the disbursement period on fully undisbursed Sections 501 and 502 loans:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) District Economic Development Specialist
2. a. To execute Sections 501 and 502 loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
3. a. To cancel, reinstate, modify, and amend authorizations for Sections 501 and 502 loans:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
b. To cancel, reinstate, modify, and amend authorizations for fully undisbursed or partially disbursed Sections 501 and 502 loans:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
4. To enter into Section 502 loan participation agreements with banks:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Suprevisory Loan Specialist
(5) District Economic Development Specialist.

SECTION C.
LEASE GUARANTY APPROVAL AUTHORITY

1. To approve or decline applications for the direct guarantee of payment of rent not to exceed the following amounts:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $500,000 |
| (2) District Director | 500,000 |
| (3) Assistant District Director for Finance and Investment | 500,000 |

2. To guarantee sureties of small businesses against portions of losses resulting from the breach of bid, payment, or performance bonds on contracts not to exceed $500,000:
(1) Assistant Regional Director for F&I

SECTION D.
OTHER LEASE GUARANTEE AUTHORITY

1. a. To issue and modify commitment letters:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I

SECTION E.
EDA LOAN DISBURSEMENT AUTHORITY

1. a. To disburse approved EDA loans, as authorized:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist

PART IV—PORTFOLIO MANAGEMENT (PM) PROGRAM

SECTION A. PORTFOLIO MANAGEMENT, SERVICING, COLLECTION, AND LIQUIDATION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, collection, and liquidation of all loans, exclusive of matters in litigation, and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinates, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; the approval of bank applications for use of liquidity privilege under the loan guaranty plan; and to advertise regarding the public sale of collateral in connection with the liquidation of loans, and acquired property.

a. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) Branch Manager
b. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate: (1) District Supervisory Loan Specialist
c. Except: To compromise or sell any primary obligation or other evidence or indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan other than a disaster home loan and the cancellation of authority to liquidate any loan other than a disaster home loan.
2. To contract for the services of fee appraisers, engineering, marketing, and feasibility studies, and other required services, in conjunction with loan processing, servicing, and loan liquidation:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist
(5) Branch Manager
3. To take all necessary action in liquidating Economic Development Administration (EDA) loans, exclusive of matters in litigation, and acquired collateral, when and as authorized by EDA:
(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I
(4) District Supervisory Loan Specialist

SECTION B. LOAN ADMINISTRATION, SERVICING, AND COLLECTION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, and collection of all loans, other than those accounts classified as "in liquidation," and to do and perform and to assent to the doing and performance of all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims,

bonds, debentures, mortgages, deeds of trust, contracts, patents, and applications therefor, licenses, certificates of stock, and of deposit, and any other kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; and the approval of bank applications for use of liquidity privilege under the loan guaranty plan:

a. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate.

(1) None

2. To approve the following actions:

a. Use of such portions of the cash surrender value of assigned life insurance as are required to pay premiums due on the policy.

b. Release of dividends on assigned life insurance or consent to application of dividends against premiums due or to become due.

c. Minor modifications in the authorizations.

d. Extension of disbursement period on loans partially undisbursed.

e. Extension of initial principal payments.

f. Adjustment of interest payment dates.

g. Release of hazard insurance checks not in excess of $500 and endorsement of such checks on behalf of the Agency where SBA is named as joint loss payee.

h. Release of equipment with or without consideration where the value of equipment being released does not exceed $500.

1. Concerning all current direct and participation loans and First Mortgage Plan 502 loans:

(1) District Loan Specialist

(2) Branch Loan Specialist

2. Concerning all direct and participation loans:

(1) None

SECTION C. LEASE GUARANTEE ADMINISTRATION AND SERVICING AUTHORITY

1. a. To service claims arising under all lease insurance policies issued in the region, approving the payment, or recommending denial of such claims:

(1) Assistant Regional Director for F&I

(2) District Director

(3) Assistant District Director for F&I

(4) Branch Manager

b. To service claims arising under all lease insurance policies issued in the district, approving the payment, or recommending denial of such claims:

(1) District Director

(2) Assistant District Director for F&I

(3) Branch Manager

c. To service claims arising under all lease insurance policies issued in the branch office area, approving the payment or recommending denial of such claims:

(1) Branch Manager

2. To take all Actions necessary to mitigate losses from lease guarantees:

(1) Assistant Regional Director for F&I

(2) District Director

(3) Assistant District Director for F&I

(4) Branch Manager

PART V—PROCUREMENT ASSISTANCE (PA) PROGRAM

SECTION A. CERTIFICATE OF COMPETENCY APPROVAL AUTHORITY

1. With the exception of re-referred cases, to approve applications for Certificates of Competency up to but not exceeding $250,000 bid value received from small business concerns located within the geographical jurisdiction of the following:

(1) None

2. To deny an application for a Certificate of Competency when an adverse determination as to capacity or credit is concurred in:

(1) None

SECTION B. SECTION 8 (A) CONTRACTING AUTHORITY

1. To enter into contracts on behalf of the Small Business Administration with the U.S. Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies or materials to the Government and agreeing as to the terms and conditions of such contracts:

(1) Assistant Regional Director for PA

2. To arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Small Business Administration to perform such contracts:

(1) Assistant Regional Director for PA

3. To certify to any officer of the Government having procurement powers that the Small Business Administration is competent to perform any specific Government procurement contract to be let by any such officer:

(1) Assistant Regional Director for PA

SECTION C. SECTION 406 CONTRACT MANAGEMENT AUTHORITY (MA)

1. To take all necessary actions in connection with the administration and management of contracts, executed by the Associate Administration for Financial Assistance under the authority granted in Section 406 of the Economic Opportunity Act of 1964, as amended, except changes, amendments, modifications, or termination of the original contract:

(1) Assistant Regional Director for MA

PART VI—LEGAL SERVICES

SECTION A. AUTHORITY TO CONDUCT LITIGATION ACTIVITIES

1. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing:

a. The assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents, and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation.

(1) Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:

(1) Regional Counsel

(2) District Director

(3) Branch Manager

(2) Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate:

(1) District Counsel

(2) District Attorneys

(3) Branch Counsel

2. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing:

a. The assignment, endorsement, transfer and delivery of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quit claim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation:

(1) Regional Counsel
(2) District Counsel
(3) District Attorneys
(4) Branch Counsel

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans having litigative aspects, when and as authorized by EDA:

(1) Regional Counsel
(2) District Director
(3) District Counsel
(4) District Attorneys
(5) Branch Manager
(6) Branch Counsel

SECTION B. LOAN CLOSING AUTHORITY

1. To close and disburse approved SBA loans and rehabilitation loans for Department of Housing and Urban Development:

(1) Regional Counsel
(2) District Director
(3) District Counsel
(4) District Attorneys
(5) Branch Manager
(6) Branch Counsel
(7) Loan Closing Assistant, as assigned

2. To close and disburse approved SBA loans:

(1) None

3. To close approved EDA loans, as authorized.

(1) Regional Counsel
(2) District Director
(3) District Counsel
(4) District Attorneys
(5) Branch Manager
(6) Branch Counsel
(7) Loan Closing Assistant, as assigned

4. To approve, when requested, in advance of disbursements, conformed copies of notes and other closing documents; and certify to the participating bank that such documents are in compliance with the participating authorization:

(1) Regional Counsel
(2) District Director
(3) District Counsel
(4) District Attorneys
(5) Branch Counsel

PART VII—ELIGIBILITY AND SIZE DETERMINATIONS

SECTION A. ELIGIBILITY DETERMINATIONS

1. a. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance under any program of the Agency:

1. *Except:* The SBIC program:

(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I

b. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance under the Sections 501 and 502 program of the Agency:

(1) Assistant Regional Director for F&I
(2) Assistant District Director for F&I

SECTION B. SIZE DETERMINATIONS

1. a. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for financial assistance purposes only:

(1) None

b. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for financing purposes only:

(1) Assistant Regional Director for F&I
(2) District Director
(3) Assistant District Director for F&I

c. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, except Sections 501 and 502 loans, and further, to make product classification decisions for financing purposes only:

(1) Assistant Regional Director for F&I
(2) Assistant District Director for F&I

d. To make initial size determinations in Sections 501 and 502 loans within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for Sections 501 and 502 loans only:

(1) Assistant Regional Director for F&I
(2) Assistant District Director for F&I

e. Product classification decisions for procurement purposes are made by contracting officers.

PART VIII—ADMINISTRATIVE

SECTION A. AUTHORITY TO PURCHASE, RENT OR CONTRACT FOR EQUIPMENT, SERVICES, AND SUPPLIES

1. To purchase reproductions of loan documents, chargeable to the revolving fund, requested by U.S. Attorneys in Foreclosure cases:

(1) Assistant Regional Director for Administration
(2) Regional Office Services Manager
(3) District Director
(4) Administrative Assistant
(5) Branch Manager

2. To purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in Section 257 (a) and (b) of that chapter.

(1) Assistant Regional Director for Administration
(2) Regional Office Services Manager
(3) District Director
(4) Administrative Assistant
(5) Branch Manager.

3. To rent motor vehicles and garage space for the storage of such vehicles when not furnished by this Administration.

(1) Assistant Regional Director for Administration
(2) Regional Office Services Manager
(3) District Director
(4) Administrative Assistant
(5) Branch Manager

4. *Use of Seal of the Small Business Administration.* To certify true copies of any books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such material; to certify the non-existence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications.

(1) District Directors
(2) Branch Managers

PART IX—EXERCISE OF AUTHORITY BY OFFICE IN AN ACTING CAPACITY AND REDELEGATION

The authority delegated herein to a specific position may not be redelegated; however, such authority may be exercised by an SBA employee designated as acting in that position.

PART X—RESCISSION OF AUTHORITY

All authority previously delegated by the Regional Director to specific positions in Region VIII is hereby rescinded without prejudice to actions taken under all such delegations of authority prior to effective date hereof.

Effective date: September 16, 1973.

ROBERT G. SHERWOOD,
*Regional Director, Region VIII.*

[FR Doc.74-5079 Filed 3-5-74;8:45 am]

## ASSISTANT REGIONAL DIRECTOR FOR FINANCE AND INVESTMENT

[Delegation of authority No. 30-X; Revision No. 1]

### Redelegation of Authority

Delegation of Authority No. 30, Region X (38 FR 17628) as amended, (38 FR 2246 and 38 FR 13405) is hereby revised in its entirety to reflect new organizational titles and authorities resulting from realignment of functions effective October 14, 1973.

Pursuant to authority delegated to Regional Director by Authority No. 30 (Revision 14) 37 FR 12661, as amended, 37 FR 14840; 37 FR 19405; 37 FR 21466; 37 FR 23594; 38 FR 32984; and 39 FR 1898) there is hereby redelegated to the positions within Region X the following authority:

PART I—FINANCING PROGRAM

SECTION A. LOAN APPROVAL AUTHORITY

1. *Small Business Act Section 7(a) Loans.* To decline business loans in any amount and to approve business loans not exceeding the following amounts (SBA share):

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |
| (2) District Director | 350,000 |
| (3) Assistant District Director for Finance and Investment | 350,000 |
| (4) District Supervisory Loan Officer, Financing Division | 350,000 |
| (5) Branch Manager, Fairbanks | 350,000 |

2. *Economic Opportunity (EO) Loans.* To approve or decline economic opportunity loans not exceeding $50,000 (SBA share).

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) District Supervisory Loan Officer, Financing Division
(5) Branch Manager, Fairbanks

3. *Handicapped Assistance Loans.* To approve or decline handicapped assistance loans not exceeding $350,000 (SBA share).

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |
| (2) District Director | 350,000 |
| (3) Assistant District Director for Finance and Investment | 350,000 |
| (4) District Supervisory Loan Officer, Financing Division | 350,000 |
| (5) Branch Manager, Fairbanks | 350,000 |

4. *Displaced Business and Other Economic Injury Loans.* a. To decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation, economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters in any amount and to approve such loans up to the following amounts (SBA share):

| | |
|---|---|
| (1) Assistance Regional Director for Finance and Investment | $1,000,000 |
| (2) District Director | 1,000,000 |
| (3) Assistant District Director for Finance and Investment | 1,000,000 |
| (4) District Supervisory Loan Specialist | 350,000 |
| (5) Branch Manager, Fairbanks | 350,000 |

b. To approve or decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters up to the following amounts (SBA share): None

SECTION B. OTHER FINANCING AUTHORITY

1. a. To enter into business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational health and safety, handicapped assistance, and strategic arms limitation economic injury loan participation agreements with banks:

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) District Supervisory Loan Specialist, Financing Division
(5) Branch Manager, Fairbanks Branch Office

b. To enter into blanket loan guarantee agreements with banks:

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) District Supervisory Loan Specialist, Financing Division
(5) Branch Manager, Fairbanks Branch Office

2. a. To execute loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) District Supervisory Loan Officer, Financing Division
(5) Branch Manager, Fairbanks Branch Office

3. To cancel, reinstate, modify, and amend authorizations: a. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety loans, occupational health and safety loans, handicapped assistance, and strategic arms limitation economic injury loans:

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) District Supervisory Loan Officer, Financing Division
(5) Branch Manager, Fairbanks Branch Office

b. For fully undisbursed or partially disbursed business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational health and safety, coal mine health and safety, handicapped assistance, and strategic arms limitation economic injury loans:

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) District Supervisory Loan Officer, Financing Division
(5) Branch Manager, Fairbanks Branch Office

c. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational health and safety handicapped assistance, and strategic arms limitation economic injury loans personally approved under delegated authority:

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) District Supervisory Loan Officer, Financing Division
(5) Branch Manager, Fairbanks

4. To approve minor modifications in fully undisbursed loan authorizations:

(1) Loan Officer, District Financing Division

5. a. To extend the disbursement period of all loan authorizations:

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) Branch Manager, Fairbanks Branch Office
(5) District Supervisory Loan Officer, FD

b. To extend the disbursement period on all loan authorizations on loans fully undisbursed:

(1) None

6. To approve service charges by participating banks not to exceed 2 percent per annum of the outstanding principal balance of construction loans and loans involving accounts receivable and inventory financing:

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) District Supervisory Loan Officer, Financing Division
(5) Branch Manager, Fairbanks Branch Office

PART II—DISASTER PROGRAM

SECTION A. DISASTER LOAN AUTHORITY

1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans

up to the total SBA funds of (1) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned for physical loss or damage exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (2) $500,000 on disaster business loans (excluding displaced business loans, coal mine health and safety, occupational health and safety, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) except to the extent of refinancing of a previous SBA disaster loan:

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) District Supervisory Loan Officer, Financing Division
(5) Disaster Branch Managers as assigned

2. To decline direct disaster and immediate participation disaster loans (excluding displaced business loans, coal mine health and safety loans, occupational health and safety loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters), in any amount and to approve such loans up to the total SBA funds of $50,000:

(1) Supervisory Loan Officer, District Financing Division
(2) Supervisory Loan Officer, Disaster Branch Office as assigned

3. To decline disaster guaranteed loans in any amount and to approve such loans up to an SBA guarantee of the following amounts:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $1,000,000 |
| (2) District Director | 1,000,000 |
| (3) District Supervisory Loan Officer, Financing Division | 350,000 |
| (4) Branch Manager, Fairbanks Branch Office | 350,000 |
| (5) Disaster Branch Managers as assigned | 1,000,000 |

4. To appoint as a processing representative any bank in the disaster area:

(1) Assistant Regional Director for Finance & Investment
(2) District Director
(3) Disaster Branch Managers as assigned

5. To approve or reject the request of an applicant to file for a disaster loan after the period for acceptance under the original disaster declaration, or extension thereof, has expired:

(1) Assistant Regional Director for Finance & Investment
(2) District Director
(3) Assistant District Director for Finance & Investment

SECTION B. ADMINISTRATIVE AUTHORITY

1. Establishment of Disaster Field Offices: a. To establish disaster field offices upon receipt of advice of the designation of a disaster area; and to close disaster field offices when no longer advisable to maintain such offices:

(1) Assistant Regional Director for Finance & Investment
(2) District Directors

b. To obligate the Small Business Administration to reimburse the General Services Administration for the rental of temporary office space:

(1) Assistant Regional Director for Administration

2. Purchase and Contract Authority. a. To contract for local credit bureau services and loss verification services pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in Section 257(a) and (b) of that Chapter:

(1) Assistant Regional Director for Administration
(2) District Director
(3) Disaster Branch Manager as assigned

b. Other Administrative Authority—See Part VIII

PART III—COMMUNITY ECONOMIC DEVELOPMENT (CED) PROGRAM

SECTION A. SECTIONS 501 AND 502 LOAN AUTHORITY

1. To approve or decline Section 501 State Development Company loans: a. Without dollar limitation as to project costs:

(1) Assistant Regional Director for Finance & Investment

b. Up to the following amounts (SBA share), provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) District Director | $350,000 |
| (2) Assistant District Director for Finance and Investment | 350,000 |
| (3) District Supervisory CED Specialist | 350,000 |

2. To approve or decline Section 502 Local Development Company Loans: a. Up to the following amounts for each such identifiable small business concern:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |
| (2) District Director | 350,000 |
| (3) Assistant District Director for Finance and Investment | 350,000 |
| (4) District Supervisory CED Specialist | 350,000 |

b. Up to the following amount (SBA share) when project cost does not exceed $1 million, provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |

c. Up to the following amount (SBA share) when project cost does not exceed $700,000, provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) District Director | $350,000 |
| (2) Assistant District Director for Finance and Investment | 350,000 |

SECTION B. OTHER 501 AND 502 AUTHORITY

1. a. To extend the disbursement period on Sections 501 and 502 loan authorizations:

(1) Assistant Regional Director for Finance & Investment
(2) District Directors
(3) Assistant District Director for Finance & Investment
(4) District Supervisory CED Specialist

b. To extend the disbursement period on fully undisbursed Sections 501 and 502 loans:

None

2. a. To executive Sections 501 and 502 loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) Assistant Regional Director for Finance & Investment
(2) District Director
(3) Assistant District Director for Finance & Investment
(4) District Supervisory CED Specialist

3. a. To cancel, reinstate, modify, and amend authorizations for Sections 501 and 502 loans:

(1) Assistant Regional Director for Finance & Investment
(2) District Director
(3) Assistant District Director for Finance & Investment
(4) District Supervisory CED Specialist.

b. To cancel, reinstate, modify, and amend authorizations for fully undisbursed or partially disbursed Sections 501 and 502 loans:

None

4. To enter into Section 502 loan participation agreements with banks:

(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance & Investment
(4) District Supervisory CED Specialist
(5) Economic Development Specialist, District Office

SECTION C. LEASE AND SURETY GUARANTEE APPROVAL AUTHORITY

1. To approve or decline applications for the direct guarantee of payment of rent not to exceed the following amounts:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $500,000 |
| (2) District Director | 500,000 |
| (3) Assistant District Director for Finance and Investment | 500,000 |
| (4) District Supervisory CED Specialist | 500,000 |

2. To guarantee sureties of small businesses against portions of losses resulting from the breach of bid, payment, or performance bonds on contracts not to exceed $500,000:

(1) Assistant Regional Director for Finance & Investment
(2) Regional Surety Bond Officer

SECTION D. OTHER LEASE GUARANTEE AUTHORITY

1. To issue and modify Commitment letters:

(1) Assistant Regional Director for Finance & Investment

(2) District Director

(3) Assistant District Director for Finance & Investment

(4) District Supervisory CED Specialist

SECTION E. EDA LOAN DISBURSEMENT AUTHORITY

1. a. To disburse approved EDA loans, as authorized:

None

PART IV—PORTFOLIO MANAGEMENT (PM) PROGRAM

SECTION A. PORTFOLIO MANAGEMENT, SERVICING, COLLECTION AND LIQUIDATION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, collection, and liquidation of all loans, exclusive of matters in litigation, and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; the approval of bank applications for use in liquidity privilege under the loan guaranty plan; and to advertise regarding the public sale of collateral in connection with the liquidation of loans, and acquired property:

a. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:

(1) Assistant Regional Director for Finance & Investment

(2) District Director

(3) Assistant District Director for Finance & Investment

b. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; *to authorize the liquidation of a loan;* and *the cancellation of authority to liquidate:*

(1) Supervisory Loan Officer, District PM Division

c. EXCEPT: To compromise or sell any primary obligation or other evidence or indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan *other than a disaster home loan* and the cancellation of authority to liquidate any loan *other than a disaster home loan.*

(1) None

2. To contract for the services of fee appraisers, engineering, marketing and feasibility studies, and other required services, in conjunction with loan processing, servicing, and loan liquidation:

(1) Assistant Regional Director for Finance & Investment

(2) District Director

(3) Assistant District Director for Finance & Investment

(4) District Supervisory Loan Officer, Portfolio Management Div.

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans, exclusive of matters of litigation, and acquired collateral, when and as authorized by EDA:

(1) Assistant Regional Director for Finance & Investment

(2) District Director

(3) Assistant District Director for Finance & Investment

(4) District Supervisory Loan Officer, Portfolio Management Div.

SECTION B. PORTFOLIO MANAGEMENT, SERVICING, AND COLLECTION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, and collection of all loans, *other than those accounts classified as "in liquidation,"* and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; and the approval of bank applications for use of liquidity privilege under the loan guaranty plan:

a. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate.

(1) Branch Manager, Fairbanks Branch Office

2. To approve the following actions:

a. Use of such portions of the cash surrender value of assigned life insurance as are required to pay premiums due on the policy.

b. Release of dividends on assigned life insurance or consent to application of dividends against premiums due or to become due.

c. Minor modifications in the authorizations.

d. Extension of disbursement period on loans partially undisbursed.

e. Extension of initial principal payments.

f. Adjustment of interest payment dates.

g. Release of hazard insurance checks not in excess of $500 and endorsement of such checks on behalf of the Agency where SBA is named as joint loss payee.

h. Release of equipment with or without consideration where the value of equipment being released does not exceed $500.

(1) Concerning all current direct and participation loans and First Mortgage Plan 502 loans:

(*1*) Loan Officer, District Portfolio Management Division

(2) Loan Officer, Fairbanks

(2) Concerning all direct and participation loans:

(*1*) Loan Officer, District Portfolio Management Division

(2) Loan Officer, Fairbanks Branch Office

SECTION C. LEASE GUARANTEE ADMINISTRATION AND SERVICING AUTHORITY

1. a. To service claims arising under all lease insurance policies *issued in the region,* approving the payment, or recommending denial of such claims:

(1) Assistant Regional Director for Finance and Investment

(2) District Director

(3) Assistant District Director for Finance and Investment

(4) Supervisory Loan Officer, District Portfolio Management Division

(5) Branch Manager, Fairbanks Branch Office

b. To service claims arising under all lease insurance policies issued in the district office area, approving the payment or recommending denial of such claims:
(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) Supervisory Loan Officer, District Portfolio Management Division
(5) Branch Manager, Fairbanks Branch Office

c. To service claims arising under all lease insurance policies issued in the branch office area, approving the payment or recommending denial of such claims:
None

2. To take all actions necessary to mitigate losses from lease guarantees:
(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment
(4) Supervisory Loan Officer, District Portfolio Management Division

SECTION D. SECTION 406 CONTRACT MANAGEMENT AUTHORITY

[SEE PART V, SECTION C.]

PART V—PROCUREMENT ASSISTANCE AND MANAGEMENT ASSISTANCE

SECTION A. CERTIFICATE OF COMPETENCY APPROVAL AUTHORITY

1. With the exception of re-referred cases, to approve applications for Certificate of Competency up to but not exceeding $250,000 bid value received from small business concerns located within the geographical jurisdiction of the following:
Assistant Regional Director for Procurement Assistance

2. To deny an application for a Certificate of Competency when an adverse determination as to capacity or credit is concurred in:
Assistant Regional Director for Procurement Assistance.

SECTION B. SECTION 8 (a) CONTRACTING AUTHORITY

1. To enter into contracts, not exceeding the following amounts, on behalf of the Small Business Administration with the U.S. Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies, or materials to the Government and agreeing as to the terms and conditions of such contracts:

| | |
|---|---|
| (1) Assistant Regional Director for Procurement Assistance | Unlimited |
| (2) Contract Negotiator, Regional Procurement Assistance Division | $100,000 |

2. To arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Small Business Administration to perform such contracts:

| | |
|---|---|
| (1) Assistant Regional Director for Procurement Assistance. | Unlimited. |
| (2) Contract Negotiator, Regional Procurement Assistance Division. | $100,000. |

3. To certify to any officer of the Government having procurement powers that the Small Business Administration is competent to perform any specific Government procurement contract, not exceeding the following amounts, to be let by any such officer:

| | |
|---|---|
| (1) Assistant Regional Director for Procurement Assistance. | Unlimited. |
| (2) Contract Negotiator, Regional Procurement Assistance Division. | $100,000. |

SECTION C. SECTION 406 CONTRACT MANAGEMENT AUTHORITY

1. To take all necessary actions in connection with the administration and management of contracts, executed by the Associate Administrator for Procurement and Management Assistance under the authority granted in Section 406 of the Economic Opportunity Act of 1964, as amended, except changes, amendments, modifications, or termination of the original contract:
(1) Assistant Regional Director for Management Assistance
(2) District Director, Anchorage District Office

PART VI—LEGAL SERVICES

SECTION A. AUTHORITY TO CONDUCT LITIGATION ACTIVITIES

1. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing:

a. The assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on an interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation.

(1) Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:
(1) Regional Counsel
(2) District Director

(2) EXCEPT: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation of guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate:
a. District Counsel

2. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, with the exception of the following, which are reserved to regional and district counsel:

a. The assignment, endorsement, transfer and delivery of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation:
(1) Regional Counsel
(2) District Counsel

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans having litigative aspects, when and as authorized by EDA:
(1) Regional Counsel
(2) Regional Attorney
(3) District Director
(4) District Counsel
(5) District Attorney

SECTION B. LOAN CLOSING AUTHORITY

1. To close and disburse approved SBA loans and rehabilitation loans for Department of Housing and Urban Development:
(1) Regional Counsel
(2) Regional Attorney
(3) District Director
(4) District Counsel
(5) District Atttorney

2. To close and disburse approved SBA loans:
None

3. To close approved EDA loans, as authorized:
(1) Regional Counsel
(2) Regional Attorney
(3) District Director
(4) District Counsel
(5) District Attorney

4. To approve, when requested, in advance of disbursements, conformed copies of notes and other closing documents; and certify to the participating bank that such documents are in compliance with the participation authorization:
(1) Regional Counsel
(2) Regional Attorney
(3) District Director
(4) District Counsel
(5) District Attorney

PART VII—ELIGIBILITY AND SIZE DETERMINATONS

SECTION A. ELIGIBILITY DETERMINATIONS

1. a. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance *under any program of the Agency,*
(1) *Except.* The SBIC program:
*(1)* Assistant Regional Director for Finance and Investment
(2) District Director
*(3)* Assistant District Director for nance and Investment
(2) *Except.* The SBIC and community economic development programs:
*(1)* Chief, District Financing Division
(2) Branch Manager, Fairbanks Branch Office
*(1)* Supervisory District CED Spe cialist

b. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance *under the sections 501 and 502 program of the agency:*

SECTON B. SIZE DETERMINATIONS

1. a. To make initial size determinations *in all cases* within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions *for financial assistance purposes only:*
Assistant Regional Director for Procurement Assistance

b. To make initial size determinations *in all cases* within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions *for financing purposes* only:
(1) Assistant Regional Director for Finance and Investment
(2) District Director
(3) Assistant District Director for Finance and Investment

c. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, *except sections 501 and 502 loans,* and further, to make product classification decisions for *financing purposes* only:
(1) District Supervisory Loan Officer, Financing Division
(2) Branch Manager, Fairbanks Branch Office

d. To make initial size determinations *in all sections 501 and 502 loans* within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for sections 501 and 502 loans only:
(1) District Supervisory CED Specialist

e. Product classification decisions for procurement purposes are made by contracting officers.

PART VIII—ADMINISTRATIVE

SECTION A. AUTHORITY TO PURCHASE, RENT, OR CONTRACT FOR EQUIPMENT, SERVICES AND SUPPLIES

1. To purchase reproductions of loan documents, chargeable to the revolving fund, requested by U.S. attorneys in foreclosure cases:
(1) Assistant Regional Director for Administration
(2) Regional Office Services Specialist
(3) District Director
(4) Administrative Assistant, District Office
(5) Branch Manager, Fairbanks Branch Office

2. Purchase and Contract Authority to purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in Sections 257 (a) and (b) of that Chapter.
(1) Assistant Regional Director for Administration
(2) Regional Office Services Specialist
(3) District Director
(4) Administrative Assistant, District Office
(5) Branch Manager, Fairbanks Branch Office
(6) Disaster Branch Manager, as assigned.

3. Rental of Motor Vehicles. To rent motor vehicles and garage space for the storage of such vehicles when not furnished by this Administration:
(1) Assistant Regional Director for Administration
(2) Regional Office Services Specialist
(3) District Director
(4) Administrative Assistant, District Office
(5) Branch Manager, Fairbanks Branch Office.
(6) Disaster Branch Manager, as assigned.

4. Rental of Conference Space. To rent temporarily SBA Conference space located within the respective geographical jurisdiction:
(1) Assistant Regional Director for Administration
(2) District Director
(3) Branch Manager, Fairbanks Branch Office

5. *Use of Seal of the Small Business Administration.* To certify true copies of any books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such material; to certify the nonexistence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications.
(1) District Directors
(2) Branch Manager, Fairbanks

PART IX—EXERCISE OF AUTHORITY BY OFFICIAL IN AN ACTING CAPACITY AND REDELEGATION

The authority delegated herein to a specific position may not be redelegated; however, such authority may be exercised by an SBA employee designated as acting in that position.

PART X—RESCISSION OF AUTHORITY

All authority previously delegated by the Administrator to specific positions in Region X is hereby rescinded without prejudice to actions taken under all such delegations of authority prior to effective date hereof.

Effective Date: October 14, 1973.

Reviewed and concurred in:

DULCIE C. YOUNG,
*Regional Counsel,*
October 23, 1973.

DANIEL B. WARD,
*Regional Director, Region X.*

[FR Doc.74-5080 Filed 3-5-74;8:45 am]

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[Delegation of Authority No. 30—Region I; Rev. 1]

## CONDUCT PROGRAM ACTIVITIES IN THE FIELD OFFICES

### Delegation of Authority

Delegation of Authority No. 30—Region I (37 FR 17590), as amended (37 FR 26557, 38 FR 1319, 38 FR 2785) is hereby revised in its entirety to reflect realignment of field offices and reads as follows:

Pursuant to the authority delegated to Regional Directors by Delegation of Authority No. 30 (Revision 14), 37 FR 12651, as amended (37 FR 14840, 37 FR 19405, 37 FR 21466, 37 FR 23594, 38 FR 32984 and 39 FR 1898), the following authority is hereby redelegated to the positions with Region I as indicated herein:

PART I—FINANCING PROGRAM

SECTION A. LOAN APPROVAL AUTHORITY

1. Small Business Act section 7(a) Loans. To approve or decline business loans not exceeding the following amounts (SBA Share):

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment, Regional Office | $350,000 |
| (2) District Director, District Office | 350,000 |
| (3) Assistant District Director for Finance and Investment, District Office | 350,000 |
| (4) Chief, Financing Division, District Office | 350,000 |
| (5) Supervisory Loan Specialist, Financing Division, if assigned | 50,000 |

2. *Economic Opportunity (EO) Loans.* To approve or decline economic opportunity loans not exceeding $50,000 (SBA Share):

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) District Director, District Office

(3) Assistant District Director for Finance and Investment, District Office

(4) Chief, Financing Division, District Office

3. *Displaced Business and Other Economic Injury Loans.* a. To decline displaced business loans, coal mine health and safety, consumer protection (meat, egg, poultry), occupational safety and health, strategic arms limitations economic injury, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters in any amount and to approve such loans up to the following amounts (SBA Share).

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment, Regional Office | $1,000,000 |

b. To approve or decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health, strategic arms limitation, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters up to the following amounts (SBA Share):

| | |
|---|---|
| (1) District Director, District Office | $350,000 |
| (2) Assistant District Director for Finance and Investment, District Office | 350,000 |
| (3) Chief, Financing Division, District Office | 350,000 |
| (4) Supervisory Loan Specialist, District Office if assigned | 50,000 |

4. *Handicapped Assistance Loans.* To approve or decline handicapped assistance loans not exceeding $350,000 (SBA Share):

| | |
|---|---|
| (1) District Director, District Office | $350,000 |
| (2) Assistant District Director for Finance and Investment, District Office | 350,000 |
| (3) Chief, Financing Division, District Office | 350,000 |
| (4) Supervisory Loan Specialist, District Office, if assigned | 50,000 |

SECTION B. OTHER FINANCING AUTHORITY

1. a. To enter into business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, coal mine health and safety, and strategic arms limitation economic injury, and handicapped assistance loan participation agreements with banks:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) District Director, District Office

(3) Assistant District Director for Finance and Investment, District Office

(4) Chief, Financing Division, District Office

(5) Supervisory Loan Specialist, Financing Division, District Office, if assigned

b. To enter into blanket loan guarantee agreements with banks:

(1) Branch Manager, if assigned

2. a. To execute loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) District Director, District Office

(3) Assistant District Director for Finance and Investment, District Office

(4) Chief, Financing Division, District Office

(5) Supervisory Loan Specialist, District Office, if assigned

3. To cancel, reinstate, modify, and amend authorizations:

a. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, coal mine health and safety, and strategic arms limitation economic injury loans, and handicapped assistance loans:

(1) District Director, District Office

b. For *fully undisbursed* or *partially disbursed* business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, strategic arms limitation economic injury, and coal mine health and safety loans, and handicapped assistance loans:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) Assistant District Director for Finance and Investment, District Office

(3) Chief, Financing Division, District Office

(4) Supervisory Loan Specialist, Financing Division, District Office, if assigned

c. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, strategic arms limitation economic injury, and occupational safety and health loans, and handicapped assistance loans personally approved under delegated authority:

(1) Branch Manager, if assigned

4. To approve minor modifications in fully undisbursed loan authorization:

(1) Loan Specialist, Financing Division, District Office

5. a. To extend the disbursement period on all loan authorizations:

(1) District Director, District Office

b. To extend the disbursement period on all loan authorizations on loans fully undisbursed:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) Assistant District Director for Finance and Investment, District Office

(3) Chief, Financing Division, District Office

(4) Supervisory Loan Specialist, Financing Division, District Office, if assigned

(5) Loan Specialist, Financing Division, District Office

6. To approve service charges by participating banks not to exceed 2 percent per annum on the outstanding principal balance of construction loans and loans involving accounts receivable and inventory financing:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) District Director, District Office

(3) Assistant District Director for Finance and Investment, District Office

(4) Chief, Financing Division, District Office

(5) Supervisory Loan Specialist, Financing Division, District Office, if assigned

PART II—DISASTER PROGRAM

SECTION A. DISASTER LOAN AUTHORITY

1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans up to the total SBA funds of (1) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned for physical loss or damage exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (2) $500,000 on disaster business loans (excluding displaced business loans, coal mine health and safety, occupational safety and health, strategic arms limitation economic injury, and economic injury disaster loans in connection with declarations may be the Secretary of Agriculture for natural disasters) except to the extent of refinancing of a previous SBA disaster loan:

(1) District Director, District Office

(2) Disaster Branch Manager (as assigned)

(3) Assistant Regional Director for Finance and Investment, Regional Office

(4) Assistant District Director for Finance and Investment, District Office

(5) Chief, Financing Division, District Office

2. To decline direct disaster and immediate participation disaster loans (excluding displaced business loans, coal mine health and safety, occupational safety and health, strategic arms limitation economic injury, and economic in-

jury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) in any amount and to approve such loans up to the total SBA funds of $50,000:

(1) District Director, District Office

(2) Disaster Branch Manager, as assigned

(3) Assistant Regional Director for Finance and Investment, Regional Office

(4) Assistant District Director for Finance and Investment, District Office

(5) Chief, Financing Division, District Office

(6) Supervisory Loan Specialist, Financing Division District Office, if assigned

3. To decline disaster guaranteed loans in any amount and to approve such loans up to an SBA guarantee of the following amounts:

| | |
|---|---|
| (1) District Director, District Office | $500,000 |
| (2) Disaster Branch Manager, as assigned | 500,000 |
| (3) Assistant Regional Director for Finance and Investment, Regional Office | 500,000 |
| (4) Assistant District Director for Finance and Investment, District Office | 500,000 |
| (5) Chief, Financing Division, District Office | 500,000 |
| (6) Supervisory Loan Specialist, Financing Division, District Office, if assigned | 500,000 |

4. To appoint as a processing representative any bank in the disaster area:

(1) District Director, District Office

(2) Disaster Branch Manager, as assigned

(3) Assistant Regional Director for Finance and Investment, Regional Office

SECTION B. ADMINISTRATIVE AUTHORITY

1. *Establishment of Disaster Field Offices.* (a) To establish field offices upon receipt of advice of the designation of a disaster area and to close disaster field offices when no longer advisable to maintain such offices; and (b) to obligate the Small Business Administration to reimburse the General Services Administration for the rental of temporary office space:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) Disaster Branch Manager, as assigned

(3) District Director, District Office

2. *Purchase and Contract Authority.* a. To contract for local credit bureau services and loss verification services pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of that Chapter:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) Disaster Branch Manager, as assigned

(3) District Director, District Office

b. To purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of that Chapter:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) Disaster Branch Manager, as assigned

(3) District Director

PART III—COMMUNITY ECONOMIC DEVELOPMENT (CED) PROGRAM

SECTION A. SECTION 501 AND 502 LOAN APPROVAL AUTHORITY

1. To approve or decline section 501 state development company loans:

a. Without dollar limitation:

(1) Assistant Regional Director for Finance and Investment, Regional Office

b. Up to the following amounts (SBA Share), provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) District Director, District Office | $350,000 |
| (2) Assistant District Director for Finance and Investment, District Office | 350,000 |
| (3) Chief, Community Economic Development Division, District Office, if assigned | 350,000 |

2. To approve or decline section 502 local development company loans:

a. Up to the following amount (SBA Share):

Not Applicable

b. Up to the following amount (SBA Share) when project cost does not exceed $1,000,000 provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment, Regional Office | $350,000 |

c. Up to the following amount (SBA Share) when project cost does not exceed $700,000 provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) District Director, District Office | $350,000 |
| (2) Chief, Community Economic Development Division, District Office, if assigned | 350,000 |

SECTION B. OTHER 501 AND 502 AUTHORITY

1. a. To extend the disbursement period on sections 501 and 502 loan authorizations:

(1) District Director, District Office

(2) Assistant Regional Director for Finance and Investment, Regional Office

b. To extend the disbursement period on fully undisbursed sections 501 and 502 loans:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) District Director, District Office

(3) Chief, Community Economic Development Division, District Office, if assigned

(4) Assistant District Director for Finance and Investment, District Office

(5) Economic Development Specialist, Community Economic Development Division, District Office

2. a. To execute sections 501 and 502 loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) District Director, District Office

(3) Assistant District Director for Finance and Investment, District Office

(4) Chief, Community Economic Development Division, District Office, if assigned

3. a. To cancel, reinstate, modify, and amend authorizations for sections 501 and 502 loans:

(1) District Director, District Office

(2) Assistant Regional Director for Finance and Investment, Regional Office

b. To cancel, reinstate, modify, and amend authorizations for fully undisbursed or partially disbursed sections 501 and 502 loans:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) District Director, District Office

(3) Chief, Community Economic Development Division, District Office, if assigned

(4) Assistant District Director for Finance and Investment, District Office

(5) Economic Development Specialist, Community Economic Development Division, District Office

4. To enter into section 502 loan participation agreements with banks:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) District Director, District Office

(3) Assistant District Director for Finance and Investment, District Office

(4) Chief, Community Economic Development Division, District Office, if assigned

(5) Economic Development Specialist, Community Economic Development Division, District Office

SECTION C. LEASE GUARANTEE APPROVAL AUTHORITY

1. To approve or decline applications for the direct guarantee of payment of rent not to exceed the following amounts:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment, Regional Office | $500,000 |
| (2) District Director, District Office | 500,000 |
| (3) Assistance District Director for Finance and Investment, District Office | 500,000 |
| (4) Chief, Community Economic Development Division, District Office, if assigned | 500,000 |

2. To guarantee sureties of small businesses against portions of losses resulting from the breach of bid, payment, or performance bonds on contracts not to exceed $500,000:

(1) Assistant Regional Director for Finance and Investment, Regional Office

SECTION D. OTHER LEASE GUARANTEE AUTHORITY

1. a. To issue and modify commitment letters:

(1) Assistant Regional Director for Finance and Investment, Regional Office
(2) District Director, District Office
(3) Assistant District Director for Finance and Investment, District Office
(4) Chief, Community Economic Development Division, District Office, if assigned

SECTION E. EDA LOAN DISBURSEMENT AUTHORITY

1. a. To disburse approved EDA loans, as authorized:
(1) District Director, District Office
(2) Assistant District Director for Finance and Investment, District Office
(3) Chief, Community Economic Development Division, District Office, if assigned
(4) Economic Development Specialist, Community Economic Development Division, District Office

PART IV—PORTFOLIO MANAGEMENT-LOAN ADMINISTRATION (LA) PROGRAM

SECTION A. PORTFOLIO MANAGEMENT-LOAN ADMINISTRATION, SERVICING, COLLECTION, AND LIQUIDATION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, collection, and liquidation of all loans, exclusive of matters in litigation, and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; the approval of bank applications for use of liquidity privilege under the loan guaranty plan; and to advertise regarding the public sale of collateral in connection with the liquidation of loans and acquired property:

a. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:
(1) Assistant Regional Director for Finance and Investment, Regional Office
(2) District Director, District Office
(3) Assistant District Director for Finance and Investment, District Office

b. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate:
(1) Chief, Portfolio Management Division, Finance and Investment, District Office, if assigned
(2) Chief, Loan Administration Division, District Office, if assigned
(3) Supervisory Loan Specialist, Portfolio Management Division, Finance and Investment, District Office, if assigned

c. EXCEPT: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan other than a disaster home loan and the cancellation of authority to liquidate any loan other than a disaster home loan. Not Applicable.

2. To contract for the services of fee appraisers, engineering, marketing and feasibility studies, and other required services, in conjunction with loan processing, servicing, and loan liquidation:
(1) Assistant Regional Director for Finance and Investment, Regional Office
(2) District Director, District Office
(3) Assistant District Director for Finance and Investment, District Office

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans, exclusive of matters in litigation, and acquired collateral, when and as authorized by EDA:
(1) Assistant Regional Director for Finance and Investment, Regional Office
(2) District Director, District Office
(3) Assistant District Director for Finance and Investment, District Office
(4) Chief, Portfolio Management Division, Finance and Investment, District Office, if assigned
(5) Chief, Loan Administration Division, District Office, if assigned
(6) Supervisory Loan Specialist, Portfolio Management Division, Finance and Investment, District Office, if assigned

SECTION B. PORTFOLIO MANAGEMENT—LOAN ADMINISTRATION, SERVICING, AND COLLECTION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, and collection of all loans (other than those accounts classified as "in liquidation", and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations releases (in whole or part) of lien, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; and the approval of bank applications for use of liquidity privilege under the loan guaranty plan:

a. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate:
(1) Branch Manager, if assigned

2. To approve the following actions:
a. Use of such portions of the cash surrender value of assigned life insurance as are required to pay premiums due on the policy.
b. Release of dividends on assigned life insurance or consent to application of dividends against premiums due or to become due.
c. Minor modifications in the authorizations.
d. Extension of disbursement period on loans partially undisbursed.
e. Extension of initial principal payments.
f. Adjustment of interest payment dates.
g. Release of hazard insurance checks not in excess of $500 and endorsement of such checks on behalf of the Agency where SBA is named as joint loss payee.
h. Release of equipment with or without consideration where the value of equipment being released does not exceed $500.

(1) Concerning all current direct and participation loans and First Mortgage Plan 502 loans:
(1) Loan Officer, Loan Administration Division, District Office
(2) Loan Specialist, Portfolio Management Division, Finance and Investment, District Office

(2) Concerning all direct and participation loans:
(1) Loan Specialist, if assigned

SECTION C. LEASE GUARANTEE ADMINISTRATION AND SERVICING AUTHORITY

1. a. To service claims arising under all lease insurance policies issued in the region, approving the payment, or recommending denial of such claims:

(1) Assistant Regional Director for Finance and Investment, Regional Office

b. To service claims arising under all lease insurance policies issued in the district, approving the payment, or recommending denial of such claims:

(1) District Director, District Office

(2) Assistant District Director for Finance and Investment, District Office

(3) Chief, Loan Administration Division, District Office, if assigned

(4) Chief, Portfolio Management Division, Finance and Investment, District Office, if assigned

(5) Supervisory Loan Specialist, Portfolio Management Division Finance and Investment, District Office, if assigned

2. To take all actions necessary to mitigate losses from lease guarantees:

(1) Assistant Regional Director for Finance and Investment, Regional Office

(2) District Director, District Office

(3) Assistant District Director for Finance and Investment, District Office

(4) Chief, Loan Administration Division, District Office

(5) Chief, Portfolio Management Division, Finance and Investment, District Office

(6) Supervisory Loan Specialist, Portfolio Management Division, Finance and Investment, District Office, if assigned

PART V—PROCUREMENT ASSISTANCE AND MANAGEMENT ASSISTANCE

SECTION A. CERTIFICATE OF COMPETENCY APPROVAL AUTHORITY

1. With the exception of re-referred cases, to approve applications for Certificates of Competency up to but not exceeding $250,000 bid value received from small business concerns located within the geographical jurisdiction of the following:

(1) Assistant Regional Director for Procurement Assistance, Regional Office.

2. To deny an application for a Certificate of Competency when an adverse determination as to capacity or credit is concurred in:

(1) Assistant Regional Director for Procurement Assistance, Regional Office

SECTION B. SECTION 8(a) CONTRACTING AUTHORITY

1. To enter into contracts, not exceeding the following amounts, on behalf of the Small Business Administration with the U.S. Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies, or materials to the Government and agreeing as to the terms and conditions of such contracts:

(1) Assistant Regional Director for Procurement Assistance, Regional Office, $100,000

2. To arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Small Business Administration to perform such contracts:

(1) Assistant Regional Director for Procurement Assistance, Regional Office

3. To certify to any officer of the Government having procurement powers that the Small Business Administration is competent to perform any specific Government procurement contract, not exceeding the following amounts, to be let by any such officer:

(1) Assistant Regional Director for Procurement Assistance, Regional Office, $100,000

SECTION C. MANAGEMENT ASSISTANCE—SECTION 406 CONTRACT MANAGEMENT AUTHORITY

1. To take all necessary actions in connection with the Administration and management of contracts, executed by the Associate Administrator for Procurement and Management Assistance under the authority granted in Section 406 of the Economic Opportunity Act of 1964, as amended, except changes, amendments, modifications, or termination of the original contract:

(1) Assistant Regional Director for Management Assistance, Regional Office

(2) District Director, District Office

(3) Assistant District Director for Management Assistance, District Office

PART VI—LEGAL SERVICES

SECTION A. AUTHORITY TO CONDUCT LITIGATION ACTIVITIES

1. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing:

a. The assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation.

(1) EXCEPT: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:

(1) Regional Counsel, Regional Office

(2) Attorneys, Regional Counsel, Regional Office

(3) District Director, District Office

(2) EXCEPT: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate:

(1) District Counsel, District Office

(2) Attorneys, District Counsel, District Office

2. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, with the exception of the following, which are reserved to regional and district counsel:

a. The assignment, endorsement, transfer and delivery of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation:

Not Applicable

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans having litigative aspects, when and as authorized by EDA:

(1) Regional Counsel, Regional Office

(2) Attorneys, Regional Counsel, Regional Office

(3) District Director, District Office

(4) District Counsel, District Office

(5) Attorneys, District Counsel, District Office

SECTION B. LOAN CLOSING AUTHORITY

1. To close and disburse approved SBA loans and rehabilitation loans for Department of Housing and Urban Development:
(1) Regional Counsel, Regional Office
(2) Attorneys, Regional Counsel, Regional Office
(3) District Director, District Office
(4) District Counsel, District Office
(5) Attorneys, District Counsel, District Office

2. To close and disburse approved SBA loans:
(1) Branch Manager, if assigned

3. To close approved EDA loans, as authorized:
(1) Regional Counsel, Regional Office
(2) Attorneys, Regional Counsel, Regional Office
(3) District Director, District Office
(4) District Counsel, District Office
(5) Attorneys, District Counsel, District Office

4. To approve, when requested, in advance of disbursements, conformed copies of notes and other closing documents; and certify to the participating bank that such documents are in compliance with the participation authorization:
(1) Regional Counsel, Regional Office
(2) Attorneys, Regional Counsel, Regional Office
(3) District Director, District Office
(4) District Counsel, District Office
(5) Attorneys, District Counsel, District Office

PART VII—ELIGIBILITY AND SIZE DETERMINATIONS

SECTION A. ELIGIBILITY DETERMINATIONS

1. a. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance under any program of the Agency.
(1) EXCEPT: The SBIC program:
(1) Assistant Regional Director for Finance and Investment, Regional Office
(2) District Director, District Office
(3) Assistant District Director for Finance and Investment, District Office
(2) EXCEPT: The SBIC and Community Economic Development Programs:
Not Applicable

b. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance under the sections 501 and 502 program of the Agency:
Not Applicable

SECTION B. SIZE DETERMINATIONS

1. a. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for financial assistance purposes only:
(1) Assistant Regional Director for Finance and Investment, Regional Office
(2) District Director, District Office
(3) Assistant District Director for Finance and Investment, District Office

b. To make initial size determinations *in all cases* within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for financing purposes only:
(1) Assistant Regional Director for Finance and Investment, Regional Office
(2) District Director, District Office
(3) Assistant District Director for Finance and Investment, District Office

c. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, except sections 501 and 502 loans, and further, to make product classification decisions for financing purposes only:
Not Applicable

d. To make initial size determinations in all sections 501 and 502 loans within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for sections 501 and 502 loans only:
Not Applicable

e. To make initial size determinations in procurement matters:
(1) Assistant Regional Director for Procurement Assistance, Regional Office

Product classification decisions for procurement purposes are made by contracting officers.

PART VIII—ADMINISTRATIVE

SECTION A. AUTHORITY TO PURCHASE, RENT, OR CONTRACT FOR EQUIPMENT, SERVICES, AND SUPPLIES

1. To purchase reproductions of loan documents, chargeable to the revolving fund, requested by U.S. attorneys in foreclosure cases:
(1) Assistant Regional Director for Administration, Regional Office
(2) District Director, District Office

2. To purchase office supplies and equipment, including office machines, and rent regular office equipment and furnishings; contract for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of that Chapter.
(1) Assistant Regional Director for Administration, Regional Office
(2) Office Services Manager, Regional Office
(3) District Director, District Office

3. To rent motor vehicles from the General Services Administration and to rent garage space for the storage of such vehicles when not furnished by this Administration.
(1) Assistant Regional Director for Administration, Regional Office
(2) Office Services Manager, Administration, Regional Office
(3) District Director, District Office

SECTION B. USE OF SEAL OF THE SMALL BUSINESS ADMINISTRATION

1. To certify true copies of any books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such material; to certify the nonexistence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications.
(1) District Director, District Office

PART IX—EXERCISE OF AUTHORITY BY OFFICIAL IN AN ACTING CAPACITY AND REDELEGATION

The authority delegated herein to a specific position may not be redelegated; however, such authority may be exercised by an SBA employee designated as acting in that position.

PART X—RESCISSION OF AUTHORITY

All authority previously delegated by the Administrator to specific positions in Region I is hereby rescinded without prejudice to actions taken under all such delegations of authority prior to effective date hereof.

Effective dates:

| | |
|---|---|
| Boston Regional Office | Sept. 16, 1973 |
| Boston District Office | Do. |
| Hartford District Office | Sept. 30, 1973 |
| Concord District Office | Oct. 28, 1973 |
| Montpelier District Office | Do. |
| Providence District Office | Do. |
| Augusta District Office | Dec. 23, 1973 |

Effective date for Part I, Sec. A, Para. 4, November 7, 1973.

DAVID P. HEILNER,
*Regional Director, Region I.*

[FR Doc.74-5076 Filed 3-5-74;8:45 am]

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[Delegation of Authority No. 30, Region II; Rev 2]

## DISTRICT DIRECTORS ET AL.

### Delegation of Authority To Conduct Program Activities in Region II

Delegation of Authority No. 30, Region II, Revision 1 (38 FR 7292), is hereby revised in its entirety to reflect proper position title responsibiilty for certain program functions as a result of the establishment of a District Office in the Regional Office city.

Pursuant to the authority delegated to Regional Directors by Delegation of Authority No. 30 (Revision 14), 37 FR 12651, as amended, 37 FR 14840, 37 FR 19405, 37 FR 21466, and 37 FR 23594, 38 FR 32984 and 39 FR 1898, the following authority is hereby redelegated to the positions with Region II as indicated herein:

PART I—FINANCING PROGRAM

SECTION A. LOAN APPROVAL AUTHORITY

1. Small Business Act Section 7(a) loans. To approve or decline business loans not exceeding the following amounts (SBA share):

| | |
|---|---|
| (1) District Directors | $350,000 |
| (2) Assistant District Directors for Finance and Investment | 300,000 |
| (3) Chiefs District Financing Divisions | 200,000 |
| (4) District Supervisory Loan Specialists | 200,000 |
| (5) Branch Managers | 100,000 |
| | 100,000 |

2. Economic Opportunity (EO) loans. To approve or decline economic opportunity loans not exceeding $50,000 (SBA share):

| | |
|---|---|
| (1) District Directors | $50,000 |
| (2) Assistant District Directors for Finance and Investment | 50,000 |
| (3) Chiefs District Financing Divisions | 40,000 |
| (4) District Supervisory Loan Specialist | 30,000 |
| (5) Branch Managers | 30,000 |

3. Handicapped Assistance Loans. To approve or decline handicapped assistance loans not exceeding the following amounts (SBA share).

| | |
|---|---|
| (1) District Directors | $350,000 |
| (2) Assistant District Directors for Finance and Investment | 300,000 |
| (3) Chiefs District Financing Divisions | 200,000 |
| (4) District Supervisory Loan Specialists | 100,000 |
| (5) Branch Managers | 100,000 |

4. DISPLACED BUSINESS AND OTHER ECONOMIC INJURY LOANS

a. To approve or decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury loans in connection with declarations made by the Secretary of Agriculture for natural disasters up to the following amounts (SBA share):

| | |
|---|---|
| (1) District Directors | $750,000 |
| (2) Assistant District Directors for Finance and Investment | 500,000 |
| (3) Chiefs District Financing Division | 350,000 |
| (4) District Supervisory Loan Specialists | 100,000 |
| (5) Branch Managers | 100,000 |

SECTION B. OTHER FINANCING AUTHORITY

1. a. To enter into business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, handicapped assistance, and strategic arms limitation economic injury loan participation agreements with banks:

(1) District Directors
(2) Assistant District Directors for Finance and Investment
(3) Chiefs District Financing Divisions
(4) Branch Managers

b. To enter into blanket loan guarantee agreements with banks:

(1) None

2. a. To execute loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) District Directors
(2) Assistant District Directors for F&I
(3) Chiefs District Financing Divisions
(4) District Supervisory Loan Specialists
(5) Branch Managers

3. To cancel, reinstate, modify and amend authorizations:

a. For all loans, i.e., business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety handicapped assistance, and strategic arms limitation economic injury loans:

(1) District Directors
(2) Assistant District Directors for F&I
(3) Chiefs Financing Division
(4) Chiefs District Portfolio Management Division
(5) District Supervisory Loan Specialists
(6) Branch Managers

b. For fully undisbursed or partially disbursed business, economic opportunity disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, coal mine health and safety loans handicapped assistance, and strategic arms limitation economic injury loans:

(1) District Directors
(2) Assistant District Directors for F&I
(3) Chiefs Financing Division
(4) Chiefs Portfolio Management Division
(5) District Supervisory Loan Specialists
(6) Branch Managers

c. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational safety and health loans handicapped assistance, personally approved under delegated authority and strategic arms limitation economic injury loans:

(1) None

4. To approve minor modifications in fully undisbursed loan authorizations:

(1) District Loan Specialists
(2) Branch Loan Specialists

5. a. To extend the disbursement period on all loan authorizations:

(1) District Directors
(2) Assistant District Directors for F&I
(3) Chiefs Financing Division
(4) District Supervisory Loan Specialists
(5) District Loan Specialists
(6) Branch Managers
(7) Branch Loan Specialists

b. To extend the disbursement period on all loan authorizations on loans fully undisbursed:

(1) District Directors
(2) Assistant District Directors for F&I
(3) Chiefs Financing Division
(4) District Supervisory Loan Specialists
(5) District Loan Specialists
(6) Branch Managers
(7) Branch Loan Specialists

6. To approve service charges by participating banks not to exceed 2 percent per annum on the outstanding principal balance of construction loans and loans involving accounts receivable and inventory financing:

(1) District Directors
(2) Assistant District Directors for F&I
(3) Chiefs District Financing Division
(4) Chiefs District Portfolio Management Division
(5) District Supervisory Loan Specialists
(6) Branch Managers

PART II—DISASTER PROGRAM

SECTION A. DISASTER LOAN AUTHORITY

1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans up to the total SBA funds of

(1) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned for physical loss or damage exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and

(2) $50,000 on disaster business loans (excluding displaced business loans, coal mine health and safety loans, occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) except to the extent of refinancing of a previous SBA disaster loan.

(1) Assistant Regional Director for F&I
(2) Regional Disaster Coordinator
(3) Disaster Branch Managers, as assigned

2. To decline direct disaster and immediate participation disaster loans (excluding displaced business loans, coal mine health and safety, occupational safety and health, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) in any amount and to approve such loans up to the total SBA funds of $50,000:

(1) Disaster Branch Supervisory Loan Specialists, as assigned.

3. To decline disaster guaranteed loans in any amount and to approve such loans up to an SBA guarantee of the following amounts:

| | |
|---|---|
| (1) Assistant Regional Director for Finance and Investment | $350,000 |
| (2) Regional Disaster Coordinator | 350,000 |
| (3) Disaster Branch Managers, as assigned | 350,000 |
| (4) Disaster Branch Loan Specalist, as assigned | 50,000 |

4. To appoint as a processing representative any bank in the disaster area:

(1) Disaster Branch Managers, as assigned.

5. To approve or reject the request of an applicant to file for a disaster loan after the period for acceptance under the original disaster declaration, or extension thereof, has expired.

(1) Assistant Regional Director for F&I

(2) Regional Disaster Coordinator
(3) Disaster Branch Manager, as assigned

SECTION B. ADMINISTRATIVE AUTHORITY

1. Establishment of Disaster Field Offices.

a. To establish field offices upon receipt of advice of the designation of a disaster area and to close disaster field offices when no longer advisable to maintain such offices; and (2) to obligate the Small Business Administration to reimburse the General Services Administration for the rental of temporary office space.

(1) Assistant Regional Director for F&I
(2) Assistant Regional Director for Administration
(3) Regional Administrative and/or Management Officer
(4) Regional Disaster Coordinator
(5) Disaster Branch Manager, as assigned

2. Purchase and Contract Authority.

a. To contract for local credit bureau services and loss verification services pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in Section 257 (a) and (b) of that Chapter.

(1) Assistant Regional Director for F&I
(2) Assistant Regional Director for Administration
(3) Regional Administrative and/or Management Officer
(4) Regional Disaster Coordinator
(5) Disaster Branch Manager, as assigned

b. To purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in Section 257 (a) and (b) of that Chapter.

(1) Assistant Regional Director for F&I
(2) Assistant Regional Director for Administration
(3) Regional Administrative and/or Management Officer
(4) Regional Disaster Coordinator
(5) Disaster Branch Manager, as assigned

PART III—COMMUNITY ECONOMIC DEVELOPMENT (CED) PROGRAM

SECTION A. SECTION 501 AND 502 LOAN APPROVAL AUTHORITY

1. To approve or decline Section 501 state development company loans:

a. Without dollar limitation:

(1) District Director—New York District Office

b. Up to the following amounts (SBA share), provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) Assistant District Director for Finance and Investment in New York District Office | $350,000 |
| (2) CED District Chiefs | 350,000 |

2. To approve or decline Section 502 local development company loans:

a. Up to the following amount (SBA share):

(1) None

b. Up to the following amount (SBA share) when project cost does not exceed $1 million, provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) District Directors | $350,000 |

c. Up to the following amount (SBA share) when project cost does not exceed $700,000, provided the official concurs in at least one prior recommendation:

| | |
|---|---|
| (1) Assistant District Director for Finance and Investment in New York District Office | $350,000 |
| (2) Chief CED in New York District Office | 350,000 |

SECTION B. OTHER 501 AND 502 AUTHORITY

1. a. To extend the disbursement period on Sections 501 and 502 loan authorizations:

(1) District Directors
(2) Assistant District Director for F&I
(3) District Chiefs CED
(4) District Economic Development Specialists

b. To extend the disbursement period on fully undisbursed Sections 501 and 502 loans:

(1) District Directors
(2) Assistant District Directors for F&I
(3) District Chiefs CED
(4) District Economic Development Specialist

2. a. To execute Sections 501 and 502 loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) District Directors
(2) Assistant District Director for F&I
(3) District Chiefs CED

3. a. To cancel, reinstate, modify, and amend authorizations for Sections 501 and 502 loans:

(1) District Directors
(2) Assistant District Directors for F&I
(3) District Chiefs CED
(4) District Supervisory Loan Specialist

b. To cancel, reinstate, modify, and amend authorizations for fully undisbursed or partially disbursed Sections 501 and 502 loans:

(1) District Directors
(2) Assistant District Directors for F&I
(3) District Chiefs CED
(4) District Supervisory Loan Specialists

4. To enter into Section 502 loan participation agreements with banks:

(1) District Directors
(2) Assistant District Director for F&I
(3) District Chiefs CED
(4) District Economic Development Specialist

SECTION C. LEASE GUARANTEE APPROVAL AUTHORITY

1. To approve or decline applications for the direct guarantee of payment of rent not to exceed the following amounts:

(1) District Directors, $500,000

2. To guarantee sureties of small businesses against portions of losses resulting from the breach of bid, payment, or performance bonds on contracts not to exceed $500,000:

(1) New York District Director
(2) Asst. District Director for F&I in the N.Y. District Office
(3) CED Chief in the New York District Office

SECTION D. OTHER LEASE GUARANTEE AUTHORITY

1. a. To issue and modify commitment letters:

(1) District Directors
(2) Assistant District Directors for F&I
(3) District Chiefs CED

SECTION E. EDA LOAN DISBURSEMENT AUTHORITY

1. a. To disburse approved EDA loans, as authorized: See Part VI

PART IV—PORTFOLIO MANAGEMENT (PM) PROGRAM

SECTION A. PORTFOLIO MANAGEMENT, SERVICING, COLLECTION, AND LIQUIDATION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, collection, and liquidation of all loans, exclusive of matters in litigation, and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills-of sale, leases, subleases, assignments, subordinates, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; the approval of bank applications for use of liquidity privilege under the loan guaranty plan; and to advertise regarding the public sale of collateral in connection with the liquidation of loans, and acquired property.

a. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due

thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:

(1) District Directors

(2) Assistant District Directors for F&I

(3) Chiefs District Portfolio Management Division

(4) Branch Managers

b. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for covery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate:

(1) District Supervisory Loan Specialist

c. Except: To compromise or sell any primary obligation or other evidence or indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan other than a disaster home loan and the cancellation of authority to liquidate any loan other than a disaster home loan.

2. To contract for the services of fee appraisers, engineering, marketing, and feasibility studies, and other required services, in conjunction with loan processing, servicing, and loan liquidation:

(1) District Directors

(2) Assistant District Directors for F&I

(3) Chiefs District Portfolio Management Division

(4) District Supervisory Loan Specialists

(5) Branch Managers

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans, exclusive of matters in litigation, and acquired collateral, when and as authorized by EDA:

(1) District Directors

(2) Assistant District Directors for F&I

(3) Chiefs District Portfolio Management Division

(4) District Supervisory Loan Specialists

SECTION B. LOAN ADMINISTRATION, SERVICING, AND COLLECTION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, and collection of all loans, other than those accounts classified as "in liquidation," and to do and perform and to assent to the doing and performance of all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents, and applications therefor, licenses, certificates of stock, and of deposit, and any other kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; and the approval of bank applications for use of liquidity privilege under the loan guaranty plan:

a. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate.

(1) District Directors thru Supervisors

2. To approve the following actions:

a. Use of such portions of the cash surrender value of assigned life insurance as are required to pay premiums due on the policy.

b. Release of dividends on assigned life insurance or consent to application of dividends against premiums due or to become due.

c. Minor modifications in the authorizations.

d. Extension of disbursement period on loans partially undisbursed.

e. Extension of initial principal payments.

f. Adjustment of interest payment dates.

g. Release of hazard insurance checks not in excess of $500 and endorsement of such checks on behalf of the Agency where SBA is named as joint loss payee.

h. Release of equipment with or without consideration where the value of equipment being released does not exceed $500.

1. Concerning all current direct and participation loans and First Mortgage Plan 502 loans:

(1) District Loan Specialists

(2) Branch Loan Specialists

2. Concernng all direct and participation loans:

(1) None

SECTION C. LEASE GUARANTEE ADMINISTRATION AND SERVICING AUTHORITY

1. a. To service claims arising under all lease insurance policies issued in the region, approving the payment, or recommending denial of such claims:

(1) District Directors

(2) Assistant District Directors for F&I

(3) Chiefs District Portfolio Management Division

(4) Branch Managers

b. To service claims arising under all lease insurance policies issued in the district, approving the payment, or recommending denial of such claims:

(1) District Directors

(2) Assistant District Directors for F&I

(3) Chiefs District Portfolio Management Division

c. To service claims arising under all lease insurance policies issued in the branch office area, approving the payment or recommending denial of such claims:

(1) Branch Managers

2. To take all actions necessary to mitigate losses from lease guarantees:

(1) District Directors

(2) Assistant District Directors for F&I

(3) Chiefs District Portfolio Management Division

(4) Branch Managers

PART V—PROCUREMENT ASSISTANCE (PA) PROGRAM

SECTION A. CERTIFICATE OF COMPETENCY APPROVAL AUTHORITY

1. With the exception of re-referred cases, to approve applications for Certificates of Competency up to but not exceeding $250,000 bid value received from small business concerns located within the geographical jurisdiction of the following:

(1) None

2. To deny an application for a Certificate of Competency when an adverse determination as to capacity or credit is concurred in:

(1) None

SECTION B. SECTION 8(a) CONTRACTING AUTHORITY

1. To enter into contracts on behalf of the Small Business Administration with the U.S. Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies or materials to the Government and agreeing as to the terms and conditions of such contracts:

(1) Assistant Regional Director for PA, $350,000

2. To arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Small Business Administration to perform such contracts:

| | |
|---|---|
| (1) Assistant Regional Director for PA | $350,000 |

3. To certify to any officer of the Government having procurement powers

that the Small Business Administration is competent to perform any specific Government procurement contract to be let by any such officer:

(1) Assistant Regional Director for PA ---------- $350,000

SECTION C. SECTION 406 CONTRACT MANAGEMENT AUTHORITY (MA)

1. To take all necessary actions in connection with the administration and management of contracts, executed by the Associate Administrator for Procurement and Management Assistance under the Authority granted in Section 406 of the Economic Opportunity Act of 1964, as amended, except changes, amendments, modifications, or termination of the original contract:

(1) Assistant Regional Director for MA

PART VI—LEGAL SERVICES

SECTION A. AUTHORITY TO CONDUCT LITIGATION ACTIVITIES

1. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing:

a. The assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents, and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quit-claim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation.

(1) Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:

(1) Regional Counsel
(2) District Directors
(3) Branch Managers

(2) *Except:* To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a particiption or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate:

(1) District Counsels
(2) District Attorneys
(3) Branch Counsel

2. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, with the exception of the following which are reserved to regional and district counsel:

a. The assignment, endorsement, transfer and delivery of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation:

(1) Regional Counsel
(2) District Counsels
(3) District Attorneys
(4) Branch Counsel

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans having litigative aspects, when and as authorized by EDA:

(1) Regional Counsel
(2) District Directors
(3) District Counsels
(4) District Attorneys
(5) Branch Managers
(6) Branch Counsel

SECTION B. LOAN CLOSING AUTHORITY

1. To close and disburse approved SBA loans and rehabilitation loans for Department of Housing and Urban Development:

(1) Regional Counsel
(2) District Directors
(3) District Counsels
(4) District Attorneys
(5) Branch Managers
(6) Branch Counsel

2. To close and disburse approved SBA loans:

(1) Loan Closing Assistants, as assigned

3. To close approved EDA loans, as authorized.

(1) Regional Counsel
(2) District Directors
(3) District Counsels
(4) District Attorneys
(5) Branch Managers
(6) Branch Counsel

4. To approve, when requested, in advance of disbursements, conformed copies of notes and other closing documents; and certify to the participating bank that such documents are in compliance with the participating authorization:

(1) Regional Counsel
(2) District Directors
(3) District Counsels
(4) District Attorneys
(5) Branch Counsel

PART VII—ELIGIBILITY AND SIZE DETERMINATIONS

SECTION A. ELIGIBILITY DETERMINATIONS

1. a. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance under any program of the Agency:

1. Except: The SBIC program:

(1) Assistant Regional Director for F&I
(2) District Directors
(3) Assistant District Directors for F&I
(4) District Chiefs Financing Division

2. Except: The SBIC and CED programs:

(1) District Chiefs Financing Division
(2) Branch Manager—Buffalo

b. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance under the Sections 501 and 502 program of the Agency:

1. Except: The SBIC program:

(1) Assistant Regional Director for F&I
(2) District Directors
(3) Assistant District Directors for F&I
(4) District Chief CED

SECTION B. SIZE DETERMINATIONS

1. a. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for financial assistance purposes only:

(1) Assistant Regional Director for F&I
(2) District Directors
(3) Assistant District Directors for F&I
(4) District Chiefs Financing Division
(5) Branch Manager, Buffalo

b. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for financing purposes only:

(1) None

c. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, except Sections 501 and 502 loans, and further, to make product classification decisions for financing purposes only:

(1) None

d. To make initial size determinations in Sections 501 and 502 loans within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for Sections 501 and 502 loans only:

(1) Assistant Regional Director for F&I

(2) District Directors

(3) Assistant District Directors for F&I

(4) District Chiefs CED

e. Product classification decisions for procurement purposes are made by contracting officers.

PART VIII—ADMINISTRATIVE

SECTION A. AUTHORITY TO PURCHASE, RENT OR CONTRACT FOR EQUIPMENT, SERVICES, AND SUPPLIES

1. To purchase reproductions of loan documents, chargeable to the revolving fund, requested by U.S. Attorneys in Foreclosure cases:

(1) Assistant Regional Director for Administration

(2) Regional Administrative and/or Management Officer

(3) District Directors

(4) Office Services Supervisor—New York District Office

(5) Office Services Clerk—Newark District Office

(6) Administrative Officers—Syracuse and Puerto Rico

2. Purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contracts for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in Section 257 (a) and (b) of that chapter.

(1) Assistant Regional Director for Administration

(2) Regional Administrative and/or Management Officer

(3) Office Services Supervisor—New York District Office

(4) Office Services Clerk—Newark District Office

(5) Administrative Officers—Syracuse and Puerto Rico

(6) Branch Managers

(7) District Directors

3. To rent motor vehicles and garage space for the storage of such vehicles when not furnished by this Administration.

(1) Assistant Regional Director for Administration

(2) Regional Administrative Officer and/or Management Officer

(3) District Directors

(4) Office Services Supervisor—New York District Office

(5) Office Services Clerk—Newark District Office

(6) Administrative Officers—Syracuse and Puerto Rico

(7) Branch Managers

4. Use of Seal of the Small Business Administration. To certify true copies of any books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such material; to certify the nonexistence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications.

(1) District Directors

(2) Branch Managers

PART IX—EXERCISE OF AUTHORITY BY OFFICE IN AN ACTING CAPACITY AND REDELEGATION

The authority delegated herein to a specific position may not be redelegated; however, such authority may be exercised by an SBA employee designated as acting in that position.

PART X—RESCISSION OF AUTHORITY

All authority previously delegated by the Regional Director to specific positions in Region II is hereby rescinded without prejudice to actions taken under all such delegations of authority prior to effective data hereof.

| | *Effective date* |
|---|---|
| New York Regional Office | Aug. 5, 1973. |
| New Jersey District Office | Sept. 16, 1973. |
| Upstate New York District Office. | Sept. 2, 1973. |
| Puerto Rico District Office | Nov. 4, 1973. |
| New York District Office | Aug. 5, 1973. |

WINDLE B. PRIEM,
*Regional Director, Region II.*

[FR Doc.74-5077 Filed 3-5-74;8:45 am]

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### TEXAS DEVELOPMENTAL PLAN

### Modifications to Texas Developmental Plan

1. *Submission of modifications.* Pursuant to section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) and § 1902.12 of Title 29, Code of Federal Regulations, notice is hereby given that modifications to the Occupational Safety and Health Plan for the State of Texas have been submitted to the Assistant Secretary of Labor for Occupational Safety and Health. The State made these modifications in response to criticism from the reviewing offices and the public comments received pursuant to the notice of submission of the Texas Plan and its availability for public comment which appeared at 38 FR 8024

Substantial modifications to the State's proposed draft legislation have been made. These changes include the following: the requirement that standards for products distributed or used in interstate commerce which are different from federal standards for such products shall not be adopted unless required by compelling local conditions and do not unduly burden interstate commerce; the requirement that each employer within the State is to furnish its employees employment and a place of employment free from recognized hazards; a provision that its Advisory Committee shall act upon all standards presented to it within a period not to exceed two hundred and seventy days from receipt; a provision that temporary variances may be renewed no more than two times with each renewal to be in effect for no longer than 180 days; the addition of a provision that emergency temporary standards shall be granted in cases where employees are exposed to grave danger from new hazards; a provision requiring that State standards shall protect employees by furnishing to them information regarding all hazards and not just recognized hazards as contained in the original bill; deletion of the requirement that an employee present reasonable supporting evidence in order to request an inspection; the addition of a penalty for a repeated violation of the Act; the creation of an Occupational Safety Hearings Commission to provide administrative review of citations, abatement periods and proposed penalties; new definitions of employer and employee; the addition of a procedure for notification of failure to correct violations and assurances of penalties for such failure; and the addition of a provision for on-site consultation which is to meet the requirements of Program Directive 72-27.

Clarifications and additional information were also submitted with respect to the State's occupational health program, its plans for recordkeeping and reporting, its public employee program, and its technical assistance program.

2. *Location of plan for inspection and copying.* A copy of the plan with modifications may be inspected and copied during normal business hours at the following locations: Office of Regional Programs, Occupational Safety and Health Administration, Room 800, 1726 M Street NW., Washington, D.C. 20210; Assistant Regional Director; Occupational Safety and Health Administration, U.S. Department of Labor, Texaco Building, Suite 600, 1512 Commerce Street, Dallas, Texas 75201; and the Division of Occupational Safety, Texas State Department of Health, 3711 North Lamar, 3d Floor, Austin, Texas 78756.

3. *Public participation.* Interested persons are hereby given until April 5, 1974, to submit to the Assistant Secretary written data, views, and arguments concerning the plan, as modified. The submissions are to be addressed to the Associate Assistant Secretary, Office of Regional Programs, Occupational Safety and Health Administration, 1726 M Street NW., Room 800, Washington, D.C. 20210. The written comments will be available for public inspection and copying at the above address.

The Assistant Secretary of Labor for Occupational Safety and Health shall thereafter consider all comments presented pursuant to his review of the Plan.

Signed at Washington, D.C., this 1st day of March 1974.

JOHN STENDER,
*Assistant Secretary of Labor.*

[FR Doc.74-5174 Filed 3-5-74;8:45 am]

## INTERSTATE COMMERCE COMMISSION

[Notice No. 458]

### ASSIGNMENT OF HEARINGS

MARCH 1, 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 32882 Sub 71, Mitchell Bros. Truck Lines, now being assigned hearing April 8, 1974 (1 week), at the Golden Eagle Room, Travel Motor Lodge, 161 West 6th South, Salt Lake City, Utah.

MC 136512 Sub-2, Space Carriers, Inc., now assigned March 11, 1974, at Chicago, Ill., is cancelled and application dismissed.

MC 110563 Sub 118, Coldway Food Express, Inc., now being assigned hearing April 15, 1974 (1 day), at New York, N.Y., in a hearing room to be later designated.

MC 110563 Sub 115, Coldway Food Express, Inc., now being assigned hearing April 16, 1974 (2 days), at New York, N.Y., in a hearing room to be later designated.

MC 101219 Sub 50, Merit Dress Delivery, Inc., now being assigned hearing April 18, 1974 (2 days), at New York, N.Y., in a hearing room to be later designated.

No. 35888, Albemarle Paper Company V. Norfolk and Western Railway Company, Et Al., now assigned April 23, 1974, at Washington, D.C., is postponed to May 21, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

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

[FR Doc.74-5184 Filed 3-5-74;8:45 am]

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[Ex Parte No. 241, Rule 19; 15th Rev. Exemption No. 43; Amdt. 1]

### ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.

#### Exemption From Mandatory Car Service Rules

To: The Atchison, Topeka and Santa Fe Railway Company, Burlington Northern Inc., Chicago and North Western Transportation Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Chicago, Rock Island and Pacific Railroad Company, Illinois Central Gulf Railroad Company, Missouri Pacific Railroad Company, Norfolk and Western Railway Company, St. Louis-San Francisco Railway Company, Soo Line Railroad Company, Union Pacific Railroad Company.

Upon further consideration of Fifteenth Revised Exemption No. 43 issued February 8, 1974.

*It is ordered,* That, under authority vested in me by Car Service Rule 19, Fifteenth Revised Exemption No. 43 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 be, and it is hereby, amended to expire March 31, 1974.

This amendment shall become effective February 25, 1974.

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

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[FR Doc.74-5187 Filed 3-5-74;8:45 am]

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[No. AB-7 (Sub-No. 15)]

### CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

#### Abandonment of Line Between Storm Lake and Rembrandt, Iowa

Upon consideration of the record in the above-entitled proceeding and of a staff-prepared environmental threshold assessment survey which is available for public inspection upon request; and

It appearing, that no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. sections 4321, *et seq.*; and good cause appearing therefore:

*It is ordered,* That applicant be, and is hereby, directed to publish the appended notice in a newspaper of general circulation in Buena Vista County, Iowa within 15 days of the date of service of this order, and certify to this Commission that this has been accomplished.

*And it is further ordered,* That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 22d day of February 1974.

By the Commission, Commissioner Deason.

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY ABANDONMENT OF LINE BETWEEN STORM LAKE AND REMBRANDT, IOWA

The Interstate Commerce Commission hereby gives notice that by order dated Feb. 22, 1974, it has been determined that the proposed abandonment of the line of Chicago, Milwaukee, St. Paul and Pacific Railroad Company between Storm Lake and Rembrandt, Iowa, a distance of approximately 13.20 miles, if approved by the Commission, would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. section 4321, *et seq.*, and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that there has been no traffic over the line in recent months because of the unsafe condition of the track, that traffic over this line has not been substantial and has been decreasing. Nearby alternative rail access is available and motor carrier service in the area is adequate, therefore, there will be a minimal impact on the area's total transportation scheme. The determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available for public inspection upon request at the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-6989.

Interested parties may comment on this matter by the submission of representations to the Interstate Commerce Commission, Washington, D.C. 20423, on or before March 21, 1974.

[FR Doc.74-5186 Filed 3-5-74;8:45 am]

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[No. 35972]

### KANSAS INTRASTATE FREIGHT RATES AND CHARGES, 1974

*Order.* At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 27th day of February 1974.

By joint petition filed February 11, 1974, under the provisions of section 3, 13, and 15a of the Interstate Commerce Act, certain common carriers by railroad[1] operating in the State of Kansas, seek increases in their intrastate rates from and to points in Kansas corresponding to the increases in interstate rates authorized in Ex Partes Nos. 281, 295, 303 (in which an interim 4 percent general increase was permitted by order served February 21, 1974, subject to exceptions and a refund provision pending investigation) and 301 (the latter a cost of fuel increase authorized to be made effective on short notice pursuant to Special Permission No. 74-1825, and under which the instant petitioners added a 2.1 percent surcharge to their interstate rates, effective January 31, 1974);

It appearing, that the current general level of intrastate freight rates and charges maintained by petitioners in Kansas reflect increases authorized by this Commission through Ex Parte No. 267 in *Kansas Intrastate Freight Rates and Charges—1971,* 343 I.C.C. 400 (1973);

It further appearing, that petitioners contend that there is a critical and substantial disparity between the intrastate and interstate rates on movements of freight in Kansas; that petitioners did not first seek approval from the Kansas Corporation Commission because of that Commission's inaction when petitioners previously sought approval in connection with the increases eventually approved in *Kansas Intrastate Freight Rates and Charges—1971, supra;* that interstate rates are currently on a reasonable level and unless the increases here sought to

[1] The Atchison, Topeka and Santa Fe Railway Company; Chicago, Rock Island and Pacific Railroad Company; Union Pacific Railroad; Missouri Pacific Railroad Company; St. Louis-San Francisco Railway Company; Missouri-Kansas-Texas Railroad Company; Burlington Northern Inc.; The Garden City Western Railway Company; and the Kansas City Southern Railway Company.

raise the Kansas intrastate rates to that same level are approved, the said intrastate basis will be unreasonably low for the future; that the sought increases will not cause traffic to be diverted from petitioners to other forms of transportation; and that such increases will, instead, produce substantial increased revenues for petitioners of approximately $2.5 million annually, which are necessary to prevent an undue burden upon interstate revenues and commerce and to enable petitioners to maintain adequate and efficient service at the lowest costs consistent with the furnishing of such service;

It further appearing, that petitioners also contend that interstate and intrastate traffic handled by them in Kansas is commingled and transported in the same trains from and to the same points; that the unit costs, therefore, of handling intrastate traffic is as great as that of interstate traffic; and, consequently, transportation conditions affecting intrastate traffic are no different or are not more favorable than those in connection with the movement of interstate traffic;

It further appearing, that based on the foregoing, petitioners allege that the disparity in rates is not justified, results in unjust discrimination against and an undue burden upon interstate commerce, and causes an undue and unreasonable advantage and preference to exist in favor of persons and localities in intrastate commerce and against persons and localities engaged in interstate or foreign commerce moving to and from points in Kansas;

And it further appearing, that, accordingly, there have been brought in issue by the said petition matters sufficient to require an investigation into the lawfulness of the intrastate rates and charges made or imposed by the State of Kansas to the extent they do not reflect the increases authorized by Ex Parte Nos. 281, 295, 301, and 303;

Wherefore, and good cause appearing therefor:

*It is ordered,* That the petition be, and it is hereby, granted, and that an investigation be, and it is hereby, instituted under sections 13 and 15a of the Interstate Commerce Act to determine whether the said rates and charges of carriers by railroad, or any of them, operating in the State of Kansas cause or will cause, by reason of the failure of such rates and charges to include increases corresponding to the interstate increases authorized in Ex Parte Nos. 281, 295, 301, and 303; any undue or unreasonable advantage, preference or prejudice as between persons or locations in intrastate commerce, on the one hand, and those in interstate or foreign commerce, on the other, or any unjust discrimination against or undue burden on interstate or foreign commerce; and to determine what rates and charges, if any, or what maximum, or minimum, or maximum and minimum rates, and charges shall be prescribed to remove the unlawful advantage, preference, discrimination, or undue burden, if any, that may be found to exist;

*It is further ordered,* That all carriers by railroad operating in Kansas, subject to the jurisdiction of this Commission be, and they are hereby, made respondents in this proceeding.

*It is further ordered,* That all persons who wish actively to participate in this proceeding and to file and receive copies of pleadings shall make known that fact by notifying the Office of Proceedings, Room 5342, Interstate Commerce Commission, in writing on or before April 1, 1974. Although individual participation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentations to the greatest extent possible. The Commission desires participation only of those who intend to take an active part in the proceeding.

*It is further ordered,* That as soon as practicable after the date of indicating a desire to participate in the proceeding has passed, the Commission will serve a list of the names and addresses of all persons upon whom service of all pleadings must be made.

*It is further ordered,* That a copy of this order be served upon each of the said petitioners; that the State of Kansas be notified of the proceeding by sending copies of this order and of said petition by certified mail to the Governor of Kansas and to the Kansas Corporation Commission, Topeka, Kans.; and that further notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register for publication in the FEDERAL REGISTER.

*And it is further ordered,* That this proceeding be assigned for hearing as may hereafter be designated.

This is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

By the Commission, Division 2.

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

[FR Doc.74-5185 Filed 3-5-74;8:45 am]

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[Notice No. 8]

## MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

MARCH 1, 1974.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969 (49 CFR 1042.4(c)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(c)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-2202 (Deviation No. 125), ROADWAY EXPRESS, INC., P.O. Box 471, Akron, Ohio 44309, filed February 20, 1974. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over deviation routes as follow: (1) From Altus, Okla., over U.S. Highway 62 to Lawton, Okla., and (2) From Lawton, Okla., over Oklahoma Highway 7 to junction U.S. Highway 81, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follow: (1) From Altus, Okla., over U.S. Highway 283 to junction Oklahoma Highway 9, thence over Oklahoma Highway 9 to junction U.S. Highway 281, thence over U.S. Highway 281 to Lawton, Okla., and (2) From Lawton, Okla., over U.S. Highway 281 to junction Oklahoma Highway 9, thence over Oklahoma Highway 9 to junction U.S. Highway 81, thence over U.S. Highway 81 to junction Oklahoma Highway 7, and return over the same routes.

No. MC-29555 (Deviation No. 14), BRIGGS TRANSPORTATION CO., 2360 W. County Road C, St. Paul, Minnesota 55113, filed January 4, 1974. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From junction Iowa Highway 149 and Interstate Highway 80 approximately 2 miles north of Williamsburg, Iowa, over Interstate Highway 80 to junction Iowa Highway 21, thence over Iowa Highway 21 to junction Iowa Highway 92, thence over Iowa Highway 92 to junction Iowa Highway 108, thence over Iowa Highway 108 to junction Iowa Highway 149 approximately 1 mile west of Hedrick, Iowa, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From junction Iowa Highway 149 and Interstate Highway 80 over Iowa Highway 149 to junction Iowa Highway 108, and return over the same route.

No. MC-48958 (Deviation No. 55), ILLINOIS-CALIFORNIA EXPRESS, INC., P.O. Box 9050, Amarillo, Texas 79105, filed January 30, 1974. Applicant

proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Oakland, Calif., over Interstate Highway 80 to Omaha, Nebr., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Oakland, Calif., over Interstate Highway 580 to junction Interstate Highway 5, thence over Interstate Highway 5 to Los Angeles, Calif., thence over U.S. Highway 66 to Albuquerque, N. Mex., thence over U.S. Highway 85 to Denver, Colo., thence over U.S. Highway 6 to Sterling, Colo., thence over U.S. Highway 138 to junction U.S. Highway 30, thence over U.S. Highway 30 to Grand Island, Nebr., thence over U.S. Highway 281 to junction U.S. Highway 34, thence over U.S. Highway 34 to Lincoln, Nebr., thence over U.S. Highway 6 to Omaha, Nebr., and return over the same route.

By the Commission.

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

[FR Doc.74-5183 Filed 3-5-74;8:45 am]

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[Notice No. 17]

## MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

MARCH 1, 1974.

The following publications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by the New Special Rule 1100.247 of the Commission's Rules of Practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications *as filed* by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable by the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 27754 (Sub-No. 18) (REPUBLICATION), filed December 15, 1972, and published in the FEDERAL REGISTER issue of February 8, 1973, and republished this issue. Applicant: FRANK J. KUBLY TRANSFER, INC., 1202 18th Street, Monroe, Wis. 53566. Applicant's representative: Rolfe E. Hanson, 121 West Doty Street, Madison, Wis. 53703. An Order of the Commission, Review Board Number 2, dated January 15, 1974, and served January 22, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes (1) of *cheese* from Hopkington, Iowa, to Monroe, Wis., (2) of *metal drums* from Monroe, Wis., to Hopkington, Iowa, and (3) of *cheese* from Monroe, Beloit, and Blanchardville, Wis., to Green Bay, Wis.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 47693 (Sub-No. 13) (REPUBLICATION), filed July 20, 1973, and published in the FEDERAL REGISTER issue of August 30, 1973, and republished this issue. Applicant: JOHN R. CALLAHAN, doing business as CALLAHAN TRANSPORTATION, 857 Dounton Way, Pittsburgh, Pa. 15233. Applicant's representative: Joseph I. Lewis, 907 Plaza Bldg., Pittsburgh, Pa. 15219. An Order of the Commission, Operating Rights Board, dated January 25, 1974, and served February 26, 1974, finds that operation by applicant in interstate or foreign commerce, as a *contract carrier* by motor vehicle, over irregular routes, of *malt beverages* from Cleveland, Ohio, to points in Pennsylvania in and west of McKean, Cameron, Clearfield, Blair, Huntingdon, and Fulton Counties, under a continuing contract or contracts with South Side Beer Distributing Co., of Pittsburgh, Pa., will be consistent with the interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate Cleveland, Ohio, as the correct origin point. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 115840 (Sub-No. 80) (REPUBLICATION), filed October 10, 1972, and published in the FEDERAL REGISTER issue of November 16, 1972, and republished this issue. Applicant: COLONIAL FAST FREIGHT LINES, INC., 1215 Bankhead Highway, P.O. Box 10327, Birmingham, Ala. 35202. Applicant's representative: C. E. Wesley (same address as applicant). An Order of the Commission, Review Board Number 3, dated February 1, 1974, and served February 14, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, (1)(a) of *iron and steel articles, cranes, sand hoppers, elevators, conveyors, dust collectors,* and *meter boxes,* from Anniston, Ala., to points in Tennessee, Georgia, Alabama, Florida, and Mississippi, and those points in Louisiana east of the Mississippi River, (b) of *materials and supplies* (except in bulk) used in the operation, production, processing, or transportation of the commodities enumerated in (1)(a) above, from points in North Carolina, South Carolina, Tennessee, Arkansas, Alabama, Georgia, Florida, and Mississippi, and those points in Louisiana on and east of the Mississippi River, to Anniston, Birmingham, and Bessemer, Ala., and (2) of *insulating materials and supplies* (except in bulk), from the facilities of U.S. Pipe & Foundry Company at Birmingham, Ala., to points in Arkansas, Florida, and Tennessee, those points in Louisiana north and west of a line beginning at the Texas-Louisiana State line at or near Merryville, La., and extending along U.S. Highway 190 to the Mississippi River, and thence northerly along the Mississippi River to the Louisiana-Mississippi State line at or near Angola, La., and those points in Mississippi north of U.S. Highway 80, restricted in part (2) to the transportation of shipments originating at the named shipper facilities; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 134270 (REPUBLICATION), filed July 18, 1973, and published in the FR issue of August 15, 1973, and republished this issue. Petitioner: M. H. C. MESSENGERS, a Corporation, 31 Virginia Avenue, Carteret, N.J. 07008. Petitioner's representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, N.J. 08904. An order of the Commission, Operating Rights Board, dated December 26, 1973, and served

January 30, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier*, by motor vehicle, over irregular routes, (1) of *radioactive materials* (medotopes), from New Brunswick, N.J., to points in the boroughs of Queens, Manhattan, Brooklyn, Bronx, and Staten Island, N.Y., and (2) of *vaccines drugs, and medicines* from Secaucus, New Brunswick, Bound Brook, Teterboro, and South Hackensack, N.J., to points in the boroughs of Queens, Manhattan, Brooklyn, Bronx, and Staten Island, N.Y., restricted in (2) above against the transportation of shipments weighing in the aggregate more than 50 pounds from one consignor to one consignee on any one day; that petitioner is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder and that an appropriate modified certificate should be issued, subject to the condition that the authority authorized in (1) above shall be limited in point of time to a period expiring 5 years from May 19, 1972. The purpose of this republication is to indicate that the restriction "against transportation of shipments weighing in the aggregate more than 3,000 pounds from one consignor to one consignee on any one day," by petition for modification published in the FEDERAL REGISTER of August 15, 1973, has not been imposed in the grant of authority as stated above. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 134404 (Sub-No. 8) (REPUBLICATION), filed May 24, 1973, and published in the FR issue of June 21, 1973, and republished this issue. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 499, South Bound Brook, N.J. 08880. Applicant's representative: Bert Collins, 140 Cedar Street, New York, N.Y. 10006. A Supplemental Order of the Commission:, Operating Rights Board, dated January 25, 1973, and served February 14, 1974, finds that operation by applicant, in interstate or foreign commerce, as a *contract carrier*, by motor vehicle, over irregular routes, of *plastic plumbing fixtures*, (1) from Metter, Ga., to points in Colorado, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Wisconsin, Illinois, Mississippi, Alabama, Georgia, Florida, North Carolina, West Virginia, Virginia, Pennsylvania, Delaware, Maryland, New York, New Jersey, Connecticut, Rhode Island, Maine, Massachusetts, Vermont, New Hampshire, Tennessee, Michigan, Kentucky, Ohio, Indiana, South Carolina, and the District of Columbia (2) from Richmond, Mich., to points in Alabama, Georgia, Florida, Mississippi, South Carolina, North Carolina, and Virginia, under a continuing contract or contracts in all of the above with American Standard, Inc., at New Brunswick, N.J., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate additional origin and destination points. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a permit on this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 138445 (REPUBLICATION), filed February 6, 1973, and published in the FR issue of March 22, 1973, and republished this issue. Applicant: LEE SCHOFIELD AND RONALD SCHOFIELD, doing business as SCHOFIELD WRECKER SERVICE, 1300 South Sylvania, Fort Worth, Tex. 76111. Applicant's representative: Clayte Binion, 1108 Continental Bank Building, Fort Worth, Tex. 76102. An Order of the Commission, Review Board Number 1, dated February 13, 1974, and served February 22, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *wrecked, disabled, repossessed, and replacement motor vehicles* (except trailers designed to be drawn by passenger automobiles), in wrecker service only, between points in Texas, on the one hand, and, on the other, points in Louisiana, Mississippi, Oklahoma, Arkansas, Tennessee, Illinois, Missouri, Kansas, and New Mexico; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate that the applicants have tendered an amendment to the application restricting the proposed operation to "in wrecker service only". Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 136121 (Sub-No. 3) (REPUBLICATION), filed June 4, 1973, published in the FEDERAL REGISTER issue of August 9, 1973, and republished this issue. Applicant: BRISCOE TRUCKING COMPANY, INC., P.O. Box 45388, Tulsa, Okla. 74145. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 N.W. 58th Street, Oklahoma City, Okla. 73112. An Order of the Commission, Operating Rights Board, dated January 25, 1974, and served February 14, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *bedsprings, bedstead rails, cots, and cots frames, unupholstored daybeds, bed frames, springs, and spring assemblies, metal sleeper fixtures, and materials used in the manufacture of the above commodities* (1) from Springfield, Mo., and Hominy, Okla., to Winchester, Ky., Los Angeles, Calif. and to points in Colorado and Arizona, and (2) from Carthage, Mo., to Winchester, Ky., and Los Angeles, Calif.; that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate Colorado as an additional destination state. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 133106 (Sub-Nos. 10, 12, 24 and 30) (NOTICE OF FILING OF PETITION TO MODIFY PERMIT), filed February 12, 1974. Petitioner: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, Kans. 67901. Petitioner's representative: A. J. Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, Nebr. 68501. Petitioner holds motor *contract carrier* permits in No. MC 133106 (Sub-Nos. 10, 12 and 24), issued July 9, 1973, March 14, 1973, and November 7, 1973, respectively, and in Sub-No. 30, by order dated December 26, 1973, and served February 1, 1974, authorizing transportation, over irregular routes, of numerous specified commodities, such as insulated wire, electric plug and power cord sets, general commodities, pipe fittings, connections, fire prevention parts and accessories,

electric lamps, and drugs and medicines, from eastern points back into the midwest. The authority is serviced under a continuing contract with the ITT Grinnell Corporation. By the instant petition, petitioner seeks to delete the contracting shipper ITT Grinnell Corporation, a subsidiary of ITT, and substitute in lieu thereof, the name of International Telephone and Telegraph Corporation. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 133478 (Sub-No. 3) (NOTICE OF FILING OF PETITION TO MODIFY A PERMIT), filed January 25, 1974. Petitioner: HEARIN TRANSPORTATION, INC., P.O. Box 25448, Portland, Oreg. 97225. Petitioner's representative: Nick I. Goyak, 404 Oregon National Building, Six Ten Southwest Alder Street, Portland, Oreg. 97205. Petitioner holds a motor *contract carrier* permit in No. MC 133478 (Sub-No. 3), issued November 6, 1973, in which petitioner provides service to the contracting shipper, D. G. Shelter Products Co. on *prefinished decorative wall paneling* and *various related commodities* from and to the company's two existing plant locations at Beaverton, Oreg., and Jacksonville, Fla. Petitioner seeks to add to this existing authority service to and from the company's newly acquired plant located at Marion, Va. By the instant petition, petitioner specifically seeks authority to transport (1) plastic and wood mouldings, from the plantsite of D. G. Shelter Products Company located at Marion, Va., to points in Minnesota, Nebraska, Wisconsin, Iowa, Kansas, Oklahoma, Texas, Illinois, Missouri, Arkansas, Louisiana, Michigan, Indiana, Ohio, Kentucky, Tennessee, Mississippi, Alabama, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, West Virginia,Virginia, Maryland, North Carolina, South Carolina, Georgia, and Florida; and (2) paint, fibreboard, cardboard cartons, plastic granules and powder, mill machinery and materials used in the manufacturing of wood products, from Greensboro, and Asheboro, N.C., Houston, Tex., Louisville, Ky., Niagara Falls, N.Y., Broken Bow, Okla., and Chicago, Ill., to the plant site of D. G. Shelter Products Company located at Marion, Va., under a continuing contract or contracts with D. G. Shelter Products Company. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 133491 (NOTICE OF FILING OF PETITION TO MODIFY A DESTINATION POINT), filed January 31, 1974. Petitioner: PETRO TRANSPORT, INC., 7200 Inkster, Taylor, Mich. 48180. Petitioner's representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, Mich. 48080. Petitioner holds a motor *contract carrier* permit in No. MC–133491 issued April 30, 1970, authorizing transportation, over irregular routes, of *heavy fuel oil and bunker oil*, in bulk, in tank vehicles, from the port of entry on the International Boundary line between the United States and Canada at or near Port Huron, Mich., to points in that part of the Lower Peninsula of Michigan, on, east, and south of a line beginning at the Michigan-Indiana State Boundary line and extending along U.S. Highway 131 to intersection Interstate Highway 94, thence along Interstate Highway 94 to intersection Michigan Highway 66, thence along Michigan Highway 66 to intersection Michigan Highway 43, thence along Michigan Highway 43 to Lansing, thence along U.S. Highway 27 to Mount Pleasant, thence along Michigan Highway 20 to Midland, thence along U.S. Highway 10 to Bay City, thence along Michigan Highway 13 to intersection Michigan Highway 247, thence along Michigan Highway 247 to the western shore of Saginaw Bay, under a continuing contract or contracts with Petro Products, Inc. of Taylor, Mich. By the instant petition, petitioner seeks to modify its destination point to read: "to those points in the Lower Peninsula of Michigan on, east, and south of a line beginning at the Michigan-Indiana State Boundary line and extending along U.S. Highway 131 to intersection Michigan Highway 21, thence along Michigan Highway 21 to intersection U.S. Highway 27, thence along U.S. Highway 27 to Mt. Pleasant, thence east along Michigan Highway 20 to Midland, thence along U.S. Highway 10 to Bay City, thence along Michigan Highway 13 to intersection Michigan Highway 247, thence along Michigan Highway 247 to the western shore of Saginaw Bay". Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

## APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under Sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 C.F.R. 1.240).

### MOTOR CARRIERS OF PROPERTY

APPLICATION FOR CERTIFICATE WHICH IS TO BE PROCESSED CONCURRENTLY WITH AN APPLICATION UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 32775 (Sub-No. 16), filed January 25, 1974. Applicant: HERMANN FORWARDING COMPANY, P.O. Box 1, North Brunswick, N.J. 08902. Applicant's representative: Maxwell A. Howell, 1100 Investment Building, 1511 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between New Haven and New London, Conn., as follows: From New Haven over U.S. Highway 1 to New London and return over the same route.

NOTE.—The purpose of this application is to convert applicant's irregular route authority to regular route authority so that it may be tacked with regular route authority acquired by applicant in Docket No. MC–F–11715. This is a matter directly related to a Section 5 purchase proceeding in MC–F–12112, published in the FR issue of January 30, 1974. If a hearing is deemed necessary, applicant requests it be held at Providence, R.I.

No. MC–F–12142. Authority sought for purchase by ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Akron, Ohio 44309, of a portion of the operating rights of LONG ISLAND MOTOR HAULAGE CORP., Woodside, New York, and for acquisition by GALEN J. ROUSH, of the Akron, Ohio, address, of control of such rights through the purchase. Applicants' attorney and representative: WILLIAM O. TURNEY, 2001 Massachusetts Ave. NW., Washington, D.C. 20036, DOUGLAS W. FARIS, VICE PRESIDENT, Roadway Express, Inc., P.O. Box 471, Akron, Ohio. Operating rights sought to be transferred: General Commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those injurious or contaminating to other lading, as a *common carrier* over irregular routes, between New York, N.Y., on the one hand, and, on the other, points in Dutchess and Westchester Counties, N.Y., from New York N.Y., to points in Orange County, N.Y., with no transportation for compensation on return except as otherwise authorized. Vendee is authorized to operate as a *common carrier* in Ohio, Texas, Oklahoma, Connecticut, Michigan, Missouri, Indiana, Massachusetts, Pennsylvania, Kansas, Illinois, Kentucky, Rhode Island, Alabama, Georgia, North Carolina, Tennessee, South Carolina, New Jersey, New York, Virginia, Delaware, Maryland, West Virginia, Wisconsin, and the District of Columbia. Application has not been filed for Temporary authority under Section 210a(b).

No. MC–F–12144. Authority sought for control and merger by J. V. McNICHOLAS TRANSFER COMPANY, 555 W. Federal St., Youngstown, OH 44501, of the operating rights and property of THE J. M. BARBE CO., P.O. Box 767, Warren, OH 44482, and for acquisition by HENRY J. McNICHOLAS, also of Youngstown, OH 44501, of control of such rights and property through the transaction. Applicants' attorney: Paul F. Beery, 9th Floor, 8 E. Broad St.,

Columbus, OH 43215. Operating rights sought to be controlled and merged: *Household goods*, as defined by the Commission, as a *common carrier* over irregular routes, between points in Trumbull County, Ohio, on the one hand, and, on the other, points in Pennsylvania, New York, and West Virginia; *iron and steel products*, between Warren, Ohio, on the one hand, and, on the other, points in Ohio, Pennsylvania, New York, and West Virginia; *oxygen*, in bulk, in shipper-owned tube trailers, from Midland, Pa., to Warren, Ohio; and return with *empty shipper-owned tube trailers; empty metal containers, container ends*, and *parts and accessories* for the commodities described above, between Warren and Niles, Ohio, on the one hand, and, on the other, points in Delaware, Indiana, Kentucky, Maryland, Michigan, New York, Pennsylvania, and West Virginia; *containers, container ends*, and *parts and accessories* for the commodities described above, from Petroleum, Ohio, to points in New York, West Virginia (except Charleston and Huntington), Pennsylvania, Kentucky (except Louisville and Ashland), and Michigan; and from points in New York, West Virginia (except Charleston and Huntington), Pennsylvania, Kentucky (except Louisville and Ashland); and Michigan to Petroleum, Ohio, from Warren, Ohio, to points in Delaware, Indiana, Kentucky, Maryland, Michigan, New York, Pennsylvania, and West Virginia; and from points in Delaware, Indiana, Kentucky, Maryland, Michigan, New York, Pennsylvania, and West Virginia, to Warren, Ohio, with restrictions. J. V. McNICHOLAS TRANSFER COMPANY, is authorized to operate as a *common carrier* in Ohio, Pennsylvania, West Virginia, New York, Indiana, Kentucky, Connecticut, Delaware, Maryland, Massachusetts, Michigan, New Jersey, Rhode Island, Virginia, Illinois, Maine, New Hampshire, Vermont, Missouri, Minnesota, Wisconsin, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12145. Authority sought for purchase by DPD, INC., 3600 NW. 82nd Avenue, Miami, Florida 33166, of a portion of the operating rights and property of R. J. (RED) ANDREWS TRUCK LINE, P.O. Box 4, Crosicana, Texas, 75110, and for acquisition by JAMES A RYDER, 3600 NW. 82nd Avenue, Miami, Florida 33166, of control of such rights and property through the purchase. Applicants' attorneys: FRANCIS W. McINERNY, Suite 502, Solar Building, 1000 16th Street NW., and JAMES W. HIGHTOWER, 136 Wynnewood Professional Building, Dallas, Texas 75224. Operating rights sought to be transferred: *Paint and paint materials* (except in bulk), and *empty containers*, as a contract carrier, over irregular routes between Garland, Tex., on the one hand, and, on the other, points in Alabama, Georgia, Illinois, Kansas, Louisiana, Mississippi, Missouri, North Carolina, Ohio, and Tennessee, between Garland, Tex., on the one hand, and, on the other, points in Florida and Oklahoma, and Pennsauken, N.J., *paint and paint materials*, in bulk, from Garland, Tex., to Bessemer and Birmingham, Ala., *new furniture, furniture parts*, and *plastic shutters*, and *equipment, materials*, and *supplies* used in or in connection with the manufacture and distribution of these commodities, between Avon Park, Fla., Butler, Pa., Canton and Jackson, Miss., Coal City, Ill., Conyers, Ga., Dover, N.J., Ft. Smith, Ark., Gainesville and Yoakum, Tex., Roland, Iowa, and Tennant, N.J., on the one hand, and, on the other, points in Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, West Virginia, Wisconsin, Wyoming, and the District of Columbia, *light fixtures, lamps* and *shades, electric heaters, wall decors*, and *fireplace accessories*, and *equipment, materials*, and *supplies* used in or in connection with the manufacture and distribution of these commodities between Brooklyn N.Y., Chattanooga, Tenn., Fall River, Mass., Kansas City, Mo., Nesquehoning, Pottsville, and Schuylkill Haven, Pa., on the one hand, and, on the other, points in Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hamphire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, West Virginia, Wisconsin, Wyoming, and the District of Columbia, *Cleaning compounds, paint* and *paint material, furniture polish, wax and wax remover*, and *sealants* moving in mixed shipments with cleaning compounds and/or paint and paint material, and *equipment, materials*, and supplies used in or in connection with manufacture and distribution of these commodities, between Garland, Tex., on the one hand, and, on the other, points in Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, West Virginia, Wisconsin, Wyoming, and the District of Columbia, *cleaning compounds, paint and paint material, furniture polish, wax and wax remover, and sealants* moving in mixed shipments with cleaning compounds and/or paint and paint material, between Chicago, Chicago Heights, Elgin, and Joliet, Ill., Greensboro, N.C., Pennsauken, N.J., and Columbus, Ohio, with restrictions. Vendee is not a carrier nor is its parent, Ryder System, Inc., a carrier. However, Ryder System, Inc., controls through stock ownership, Complete Auto Transit, Inc., M & G Convoy, Inc., RPD Inc., and Customized Parts, Inc., all of which are carriers holding authority from the Interstate Commerce Commission. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12146. Authority sought for purchase by NOVEL TRUCK LINES, INC., a Florida corporation, to be formed by LESTER C. NEWTON TRUCKING CO., P.O. Box 618, Seaford, Del. 19973, of the operating rights and property of NEW TRUCK LINES, INC., P.O. Box 639, Perry, Fla. 32347, Applicants' attorney: J. Raymond Clark, 1250 Connecticut Ave. NW., Washington, D.C. 20036. Operating rights sought to be transferred: *Lumber*, as a *common carrier* over irregular routes, from Dothan, Eufaula, Montgomery, Samson, and Sanford, Ala., and points in Georgia, to points in Florida; *bottle-carrying crates*, from Perry, Fla., to Charlottesville, Va., and points in that part of Virginia on and south of U.S. Highway 60, and points in North Carolina, South Carolina, and Georgia, from Perry, Fla., to points in a defined area of Alabama, Ohio, Virginia, and West Virginia, and points in Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Oklahoma, Tennessee, and Texas; *raw sugar*, in bags, from the plant and warehouse site of Talisman Sugar Corporation about 16 miles south of South Bay, Fla., to points in Palm Beach County, Fla.; *roof panels*, from Archer, Fla., to points in Alabama, Georgia (except points on and east of U.S. Highway 41), Kentucky, Louisiana, Mississippi, North Carolina (except points on and east of U.S. Highway 1), South Carolina, and Virginia (except points on and east of U.S. Highway 1), from Archer, Fla., to points in Tennessee; *wood chips* (except in bulk), from points in Georgia, to Foley, Fla., from Perry, Fla., to points in Alabama and Georgia; *lumber and lumber products*, from those points in that part of Florida south or east of the eastern boundary of Jefferson County, Fla., to points in Louisiana, Mississippi, Alabama (except Mobile and points in Bibb, Blount, Cullman, Jefferson, St. Clair, Shelby, Talladega, Tuscaloosa, and Walker Counties, Ala.), and those points in that part of South Carolina east of U.S. Highway 21

*Wooden crates, wooden pallets*, and *wooden boxes*, from Tallahasseee, Fla., to points in that part of Alabama (except Mobile and points in Bibb, Blount, Cullman, Jefferson, St. Clair, Shelby, Talladega, Tuscaloosa, and Walker Counties, Ala.), and points in Georgia, North Carolina, South Carolina, Mississippi, and Louisiana; *poles, posts*, and *timbers*, from points in Florida (except Pensacola and points in Columbia County, Fla.), to points in that part of Alabama (except Mobile and points in Bibb, Blount, Cullman, Jefferson, St. Clair, Shelby, Talladega, Tuscaloosa, and

Walker Counties, Ala.), and points in Louisiana, Mississippi, North Carolina, and South Carolina, from points in that part of Alabama (except Mobile and points in Bibb, Blount, Cullman, Jefferson, St. Clair, Shelby, Talladega, Tuscaloosa, and Walker Counties, Ala.), and points in Georgia, North Carolina, and South Carolina, to points in Florida; *wooden fence sections* and *wooden boxes*, from Perry, Fla., to points in Georgia and North Carolina, and those points in that part of South Carolina east of U.S. Highway 21; *wooden pallets* and *wooden chock blocks*, from Perry, Fla., to points in Georgia; *lumber* and *lumber products, posts, poles*, and *timbers*, between points in Florida (except Jacksonville and Tampa), from Chiefland, Fla., to Jacksonville, Fla., from points in Florida, to Tampa, Fla.; *wooden posts, wooden poles*, and *wooden timbers* from points in Florida, to points in Georgia; *explosives, explosive components*, and *explosive products*, except commodities in bulk and commodities because of their size or weight require the use of special equipment, from the plant site of Martin Electronics, Inc., at or near Perry, Fla., to points in Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

*Materials and supplies* used in the manufacture of the above-named commodities, except commodities in bulk and commodities because of their size or weight require the use of special equipment, from points in Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin, to the plant site of Martin Electronics, Inc., at or near Perry, Fla.; *heavy machinery*, which requires special equipment, between points in that part of Florida between the Suwannee and Apalachicola Rivers, on the one hand, and, on the other, points in Alabama, Georgia, and South Carolina; *clay products* and *accessories* used in the installation of clay products, from the plant site and storage facilities of Griffin Pipe Products Co., at or near Milledgeville, Ga., to points in Alabama, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, with restriction. LESTER C. NEWTON TRUCKING CO., is authorized to operate as a *common carrier* in Delaware, Maryland, Virginia, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, New Hampshire, North Carolina, Pennsylvania, Maine, Michigan, Florida, Georgia, South Carolina, Tennessee, Vermont, West Virginia, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-12147. Authority sought for purchase by COMMERCIAL MOTOR FREIGHT, INC., OF INDIANA, 2141 South High School Rd., Indianapolis, IN 46241, of a portion of the operating rights of THE EDWARDS TRANSFER AND STORAGE COMPANY, P.O. Box 205, Lodi, OH 44254, and for acquisition by GLENN GIERHARD, also of Indianapolis, IN 46241, of control of such rights through the purchase. Applicants' attorney: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Operating rights sought to be transferred: *General commodities*, excepting among others, dangerous explosives, household goods and commodities in bulk, as a *common carrier* over irregular routes, from Columbus, Ohio to points and places in Ohio within 60 miles of Columbus, between points and places in Columbus, Ohio. Vendee is authorized to operate as a *common carrier* in Ohio, Indiana, Illinois, and Kentucky. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-12149. Authority sought for purchase by GLENNON TRANSPORTS, INC., 1000 No. 14th St., St. Louis, MO 63106, of the operating rights and property of J. W. WARD TRANSFER, INC., Route 13 East, Murphysboro, IL 62966, and for acquisition by CARL G. HOGAN, also of St. Louis, MO 63106, of control of such rights and property through the purchase. Applicants' attorney: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Operating rights sought to be transferred: General commodities, with the usual exceptions, as a common carrier over regular routes, between Carbondale, Ill., and St. Louis, Mo., serving various intermediate and off-route points, between St. Louis, Mo., and junction Illinois Highway 3 and U.S. Highway 51, between junction Illinois Highways 3 and 149, and junction Illinois Highway 3 and 146, between junction U.S. Highways 51 and 460 and Shawneetown, Ill., between between junction U.S. Highways 51 and 460 and Shawneetown, Ill., between McLeansboro, Ill., and junction Illinois Highways 13 and 1, between Carmi, and Brookport, Ill., between Mound City, Ill., and junction Illinois Highway 37 and U.S. Highway 460, between Ware, Ill., and junction Illinois Highways 1 and 13, between junction Illinois Highways 146 and 34 and Benton, Ill., between Harrisburg, and Carbondale, Ill., between Thompsonville, and Murphysboro, Ill., between Wittington, and Belleville, Ill., between Waltonville, Ill., and junction Illinois Highways 148 and 37, between Eden, Ill., and junction Illinois Highway 153 and U.S. Highway 460, between Ava, Ill., and junction Illinois Highways 151 and 3, between East St. Louis, Ill., and Cairo, Ill., serving various intermediate points, between Carbondale, Ill., and Cape Girardeau, Mo., serving all intermediate points, with restrictions, between St. Louis, Mo., and Mt. Carmel, Ill., between junction U.S. Highway 50 and Illinois Highway 161, and McLeansboro, Ill., serving various intermediate and off-route points, between Carlyle, and Nashville, Ill., serving all intermediate points, between junction U.S. Highways 50 and 45 and Carmi, Ill., serving various intermediate and off-route points, between Albion, and Fairfield, Ill., serving all intermediate points, between junction U.S. Highway 45 and unnumbered highway (near Cisne, Ill.), and junction Illinois Highway 161 and U.S. Highway 50, between Mt. Carmel, and Carmi, Ill., between junction U.S. Highway 45 and 460, and McLeansboro, Ill., between McLeansboro, and Mt. Vernon, Ill., serving all intermediate points, between Mt. Vernon, and Salem, Ill., serving the intermediate point of Rome, Ill., between Fairfield, and Wayne City, Ill., serving no intermediate points, between junction U.S. Highways 51 and 460, and junction U.S. Highways 51 and 50, serving the intermediate points of Richview, Centralia, and Central City, Ill., between Fairfield, Ill., and Evansville, Ind., serving the intermediate points of Albion and Mount Carmel, Ill., with restrictions, between Fairfield, Ill., and St. Louis, Mo., between St. Louis, Mo., and Fairfield, Ill., serving various intermediate and off-route points.

Between Salem, Ill., and St. Louis, Mo., serving the intermediate and off-route points within 15 miles of Salem, between Salem, Ill., and St. Louis, Mo., serving various intermediate and off-route points; *general commodities*, with the usual exceptions, over irregular routes, between the plant site of the Hussmann Refrigerator Company, located at Taussig Road and St. Charles Rock Road, Bridgeton, Mo., on the one hand, and, on the other, Belleville, Ill., points in Illinois in the St. Louis, Mo.-East St. Louis, Ill., commercial zone as defined by the Commission south of U.S. Highway 50, and points in that part of Illinois, south of U.S. Highway 460 between the Indiana-Illinois State line and Mount Vernon, Ill., and Illinois Highway 15 between Mount Vernon, Ill., and the Missouri-Illinois State line, between St. Louis, Mo., on the one hand, and, on the other, points in that part of Illinois south of a line beginning at the Illinois-Indiana State line and extending along unnumbered highway (formerly portion U.S. Highway 50) to certain specified points in Illinois, with restriction; *bined labels*, from Murphysboro, Ill., to *supplies* used or useful in the manufac- New York, N.Y.; *paper* and *paper products*, and *materials, equipment, and supplies* used or useful in the manufacture and distribution of these commodities, between the facilities of the West Virginia Pulp and Paper Company at or near Wickliffe, Ky., on the one hand, and, on the other, St. Louis, Mo., and points in that part of Illinois on and south of U.S. Highway 460; *petroleum*

*products* and *automobile parts and accessories*, from points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, as defined by the Commission, to Centralia, Ill. Vendee is authorized to operate as a common carrier in Illinois, Missouri, New Jersey, and New York. Application has been filed for temporary authority under section 210a(b).

No. MC-F-12150. Authority sought for purchase by MOTOR CARGO, 455 West Fourth South Street, Salt Lake City, Utah 84101, of the operating rights and property of WHOLESALE SERVICES, INC., DBA, R & R TRANSPORTATION COMPANY, 1290 Yuma Lane, Reno, Nev. 89592, and for acquisition by HAROLD R. TATE, 455 West 4th South St., Salt Lake City, Utah 84101, of control of such rights and property through the purchase. Applicants' attorney: WILLIAM S. RICHARDS, 900 Walker Bank Bldg., P.O. Box 2465, Salt Lake City, Utah 84110. Operating rights sought to be transferred: Commodities generally on call as a *common carrier* over regular routes between Reno, Nevada, on the one hand and points and places in Nevada on the other. 1. Except household goods and petroleum products or liquids in bulk in tank vehicles. 2. No service shall be rendered between points in Lyon County, Nevada, on or south of the 39th parallel. 3. No service shall be rendered between Reno on the one hand and any points on U.S. Highway 395 between Gardnerville, Nevada, and Nevada-California State Line north of Reno, and the off-route points of Stead Air Force Base. Vendee is authorized to operate as a *common carrier* in Utah, and, as a *contract carrier* in Utah, Colorado, Wyoming, Idaho, Montana, and Nevada. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

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

[FR Doc.74-5180 Filed 3-5-74;8:45 am]

[Notice No. 38]

## 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 26, 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-74939. By order entered March 22, 1974, the Motor Carrier Board approved the transfer to Alex K. Scherer, Ottawa, Ill., of a portion of the operating rights set forth in Certificate No. MC-21571 and the entire operating rights set forth in Certificate No. MC-21571 (Sub-No. 24), issued December 2, 1947, and January 25, 1962, respectively, to Scherer Freight Lines, Inc., New York, N.Y., authorizing the transportation of building and roofing materials, and materials, supplies, and equipment used or useful in the manufacture of building and roofing materials, between points and places in La Salle County, Ill., on the one hand, and, on the other, points and places in Indiana; glass and glass products, and materials, supplies and equipment, used or useful in the manufacture of glass and glass products, between points and places in La Salle County, Ill., on the one hand, and, on the other, Toledo, Ohio; brick, clay products, silica sand, and glass and glass products, from points and places in La Salle County, Ill., to Davenport, Iowa, and points and places in Wisconsin on and south of U.S. Highway 18; and sand, from points in La Salle County, Ill., to points in Indiana, Kentucky, Michigan, Iowa, Minnesota, Missouri, Ohio, and Wisconsin, with certain restrictions. Jack R. Turney, Jr., 2001 Massachusetts Ave. NW., Washington, D.C. 20036, attorney for applicants.

No. MC-FC-74977. By order of February 26, 1974, the Motor Carrier Board approved the transfer to John Wickam and Ruby Wickam, Doing Business As Wickam Trucking, 94 13th St., Wheatland, Wyo., of Certificate No. MC-105020, issued to James T. Vaudrey, Doing Business As Vaudrey Truck Line, Glendo, Wyo., authorizing the transportation of: Livestock; feed, and wool, between Glendo, Wyo., and 35 miles, and specified points in Colorado.

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

[FR Doc.74-5189 Filed 3-5-74;8:45 am]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

[Notice No. 33]

FEBRUARY 28, 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 100449 (Sub-No. 43 TA), filed February 15, 1974. Applicant: MALLINGER TRUCK LINE, INC., Route 4, Fort Dodge, Iowa 50501. Applicant's representative: Thomas E. Leahy, Jr., 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the plantsites and facilities of the Kitchens of Sara Lee located at or near Deerfield, Ill., to points in Texas, Oklahoma, and Kansas, for 180 days. SUPPORTING SHIPPER: Kitchens of Sara Lee, 500 Waukegan Road, Deerfield, Ill. 60015. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 100666 (Sub-No. 267 TA), filed February 19, 1974. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, La. 71107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 NW. 58th, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulating materials*, from the plantsite of Fibreboard Corporation located at or near Grambling, La., to points in the United States, for 180 days. SUPPORTING SHIPPER: Fibreboard Corporation, 55 Francisco Street, San Francisco, Calif. SEND PROTESTS TO: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Bldg., 701 Loyola Ave, New Orleans, La. 70113.

No. MC 107496 (Sub-No. 938 TA), filed February 15, 1974. Applicant: RUAN TRANSPORT CORPORATION, Third Street and Keosauqua Way, Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer solutions*, in bulk, in tank vehicles, from Washington, Ind., to points in Illinois and Kentucky, for 150 days. SUPPORTING SHIPPER: Swift Chemical Company, 111 West Jackson Blvd., Chicago, Ill. 60604. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate

Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 107496 (Sub-No. 939 TA), filed February 15, 1974. Applicant: RUAN TRANSPORT CORPORATION, Third St. and Keosauqua Way, P.O. Box 855, 50304, Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Latex*, in bulk, in tank vehicles, from Cottage Grove, Minn., to Freeport, Ill., for 150 days. SUPPORTING SHIPPER: Minnesota Mining & Manufacture Company, 3M Center—Transportation—224–1E, St. Paul, Minn. 55101. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 107496 (Sub-No. 940 TA), filed February 15, 1974. Applicant: RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, P.O. Box 855, 50304, Des Moines, Iowa 50309. Applicant's representative: E. Check (Same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vermiculite*, in bulk, in tank vehicles, from Chanute, Kans., to El Reno, Okla., and Maumee, Ohio, for 150 days. SUPPORTING SHIPPER: Super Supplement, Incorporated, 301 West 11th Street, Kansas City, Mo. 64105. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 109689 (Sub-No. 263 TA), filed February 13, 1974. Applicant: W. S. HATCH CO., 643 South 800 West, Woods Cross, Utah 84087. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium chlorate*, dry, in bulk, from Henderson, Nev., to points in Tulare, Fresno, Kern, Kings, Madera, and Merced Counties, Calif., for 180 days. SUPPORTING SHIPPER: Kerr McGee Chemical Corp., 680 South Wilshire Place, Los Angeles, Calif. 90005 (Chapman Reynolds, Transportation Supervisor). SEND PROTESTS TO: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, 125 South State Street, Salt Lake City, Utah 84138.

No. MC 110563 (Sub-No. 128 TA), filed February 14, 1974. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, Ohio Building, Sidney, Ohio 45365. Applicant's representative: John L. Maurer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen vegetables and frozen vegetable products*, from the storage and warehouse facilities utilized by Delicious Foods Co., at or near Omaha, Nebr., to points in Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio, Pennsylvania, New York, New Jersey, Maryland, District of Columbia, Delaware, Connecticut, Massachusetts, Vermont, New Hampshire, Maine, and Rhode Island, for 180 days. SUPPORTING SHIPPER: Delicious Foods Co., Box 730, N. Highway 281, Grand Island, Nebr. 68801. SEND PROTESTS TO: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Bldg., 234 Summit Street, Toledo, Ohio 43604.

No. MC 113410 (Sub-No. 86 TA), filed February 19, 1974. Applicant: DAHLEN TRANSPORT, INC., 1680 Fourth Avenue, Newport, Minn. 55055. Applicant's representative: Joseph A. Eschenbacher, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oils and lecithin*, in bulk, in tank vehicles, from Mankato, Minn., to points in Nebraska, South Dakota, Iowa, Wisconsin, Illinois, and Kansas City, Mo., for 180 days. SUPPORTING SHIPPER: Honeymead Products Co., 720 Minneopa Rd., Mankato, Minn. 56001. SEND PROTESTS TO: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building & U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 114274 (Sub-No. 26 TA), filed February 13, 1974. Applicant: VITALIS TRUCK LINES, INC., 137 NE. 48th St. Place, P.O. Box 1703, Des Moines, Iowa 50306. Applicant's representative: William H. Towle, 127 North Dearborn Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream and articles distributed by distributors of ice cream* from Rochester and St. Paul, Minn., and Kansas City, Mo., to the facilities of Sunrise Dairy, Inc. at Des Moines, Iowa. RESTRICTION: The above authority is restricted to traffic originating at the named origins and destined to the named destination for 180 days. SUPPORTING SHIPPER: Sunrise Dairy, Inc., Box BV, Des Moines, Iowa 50306. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 114897 (Sub-No. 110 TA), filed February 15, 1974. Applicant: WHITFIELD TANK LINES, INC., 300–316 N. Clark Rd., P.O. Drawer 9897, El Paso, Tex. 79989. Applicant's representative: J. P. Rose (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gasoline and diesel fuel*, from Fort Worth, Tex., to Las Cruces and Santa Rosa, N. Mex., for 180 days. SUPPORTING SHIPPER: W. E. Sheriff, Regional Manager, Truckstops Corporation of America, P.O. Box 1600, Las Cruces, N. Mex. 88001. SEND PROTESTS TO: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H–4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 117940 (Sub-No. 106 TA), filed February 19, 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: *Wearing apparel and accessories and commodities* used in the operations of department stores (except wearing apparel, loose on hangers) (1) from North Bergen, N.J., to points in the Los Angeles, Calif., Harbor Commercial Zone and St. Louis, Mo., East St. Louis, Ill., Commercial Zone, and (2) from Secaucus, N.J., to Carson, Calif., and Englewood, Colo., for 180 days. SUPPORTING SHIPPER: Holly Stores, Inc., 7373 West Side Avenue, North Bergen, N.J. 07047. SEND PROTESTS TO: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg. & U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 123048 (Sub-No. 291 TA), filed February 15, 1974. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, Racine, Wis. 53406. Applicant's representative: Carl S. Pope (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Material handling equipment;* and (2) *parts, attachments, and accessories* for the commodities named in (1) above, when moving in mixed loads with the commodities named in (1) above, from the ports of entry on the United States-Canada Boundary line located in Michigan and New York at or near Detroit, Mich., and Buffalo, N.Y., to points in the United States (except Alaska, Hawaii, Alabama, Florida, Georgia, Illinois, Kentucky, New Jersey, and Ohio), for 180 days. SUPPORTING SHIPPER: Badger Dynamics, Inc., P.O. Box 305, Port Washington, Wis. 53074 (Raymond F. Yankunas, Traffic Manager). 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 123067 (Sub-No. 122 TA) filed February 20, 1974. Applicant: M & M TANK LINES, INC., P.O. Box 30006, Washington, D.C. 20014. Applicant's representative: Michael A. Grimm, P.O. Box 30006, Washington, D.C. 20014, and William P. Sullivan, Federal Bar Building West, 1819 H Street NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt* in bulk, from Savannah, Ga., to points in Florida, for 90 days. SUPPORTING SHIPPER: Koppers Company, Inc., 850 Koppers Building, Pittsburgh, Pa. 15219. SEND PROTESTS TO: W. C. Hersman, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 12th Street & Constitution Avenue NW., Washington, D.C. 20423.

No. MC 124078 (Sub-No. 580 TA), filed February 19, 1974. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis. 53215. Applicant's representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, in bulk, from Hanover, Wis., to Bridgman and Benton Harbor, Mich., for 180 days. SUPPORTING SHIPPER: Arrowhead Silica Corp., Chesterton, Ind. 46304 (E. H. Manley, Exec. Vice 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 124153 (Sub-No. 3 TA), filed February 15, 1974. Applicant: ROBERT E. WITTENBRADER, R.D. #4, Lake Ariel, Pa. 18436. Applicant's representative: Thomas J. Jones, 502–5 Brooks Building, Scranton, Pa. 18503. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed and animal feed supplements*, in bags, from Mt. Olive Township, Morris County, N.J., and points within five miles thereof, to points in Monroe, Pike, Wayne, Lackawanna, Luzerne, Wyoming, Susquehanna, Sullivan, and Bradford Counties, Pa., and Broome County, N.Y., for 180 days. SUPPORTING SHIPPER: Agway, Inc., Feed Division, 560 Delaware Avenue, Buffalo, N.Y. 14240. SEND PROTESTS TO: Paul J. Kenworthy, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 309 U.S. Post Office Building, Scranton, Pa. 18503.

No. MC 124309 (Sub-No. 12 TA), filed February 14, 1974. Applicant: ALPHIE J. BOUSLEY, Route 3, Box 61A, Armstrong Creek, Wis. 54103. Applicant's representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, Wis. 53203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hardwood flooring and accessories* used in the installation of flooring, from the plant site of Horner Flooring Company at Dollar Bay, Mich., to points in Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Missouri, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Texas, and Virginia, under a continuing contract with Horner Flooring Company, for 180 days. SUPPORTING SHIPPER: Horner Flooring Company, Dollar Bay, Mich. 49922 (Edward J. Stone, Sales Manager). 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 124813 (Sub-No. 110 TA), filed February 15, 1974. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, P.O. Box 166, Eagle Grove, Iowa 50533. Applicant's representative: Thomas E. Leahy, Jr., 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed*, from Grimes, Iowa, to points in Minnesota, for 180 days. SUPPORTING SHIPPERS: Moorman Manufacturing Company, 1000 North 30th Street, Quincy, Ill. 62301; Squealer Feed Company of Des Moines, Iowa, P.O. Box 3652, Des Moines, Iowa 50322. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 125506 (Sub-No. 19 TA), filed February 19, 1974. Applicant: JOSEPH ELETTO TRANSFER, INC., 31 West St. Marks Place, Valley Stream, N.Y. 11580. Applicant's representative: Morris Honig, 150 Broadway, New York, N.Y. 10038. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail specialty shops, dealing primarily in wearing apparel, store furniture and fixtures not for resale, advertising materials, supplies and displays, between facilities of Bonwit Teller at New York, N.Y., on the one hand, and on the other, facilities of Bonwit Teller located at Palm Beach, Fla., Chicago and Oakbrook, Ill., Troy, Mich., for 180 days. SUPPORTING SHIPPER: Bonwit Teller, 721 Fifth Avenue, New York, N.Y. 10022. SEND PROTESTS TO: Anthony D. Giaimo, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 125506 (Sub-No. 20 TA), filed February 19, 1974. Applicant: JOSEPH ELETTO TRANSFER, INC., 31 West St. Marks Place, Valley Stream, N.Y. 11580. Applicant's representative: Morris Honig, 150 Broadway, New York, N.Y. 10038. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail specialty shops dealing primarily in wearing apparel; store furniture and fixtures not for resale; *Advertising materials, supplies and displays*, between facilities of Saks Fifth Avenue, New York, N.Y., on the one hand, and, on the other facilities of Saks Fifth Avenue, located at New Haven, Conn.; Pittsburgh, Pa.; Detroit, Ann Arbor and Troy, Mich.; Chicago, Ill.; Frontenac, Mo.; Phoenix, Ariz.; Atlanta, Ga.; Palm Beach, Fort Lauderdale, Hallandale, Bal Harbor, Surfside and Boca Raton, Fla.; Dallas and Houston, Tex., for 180 days. SUPPORTING SHIPPER: Saks Fifth Avenue, Fifth Avenue at 49th St., New York, N.Y. SEND PROTESTS TO: Anthony D. Giaimo, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 125785 (Sub-No. 25 TA), filed February 20, 1974. Applicant: SATURN EXPRESS, INC., 7860 F Street, Omaha, Nebr. 68127. Applicant's representative: Patrick E. Quinn, 605 So. 14 St. (P.O. Box 82028), Lincoln, Nebr. 68501. Authority sought to operate a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tile and materials and supplies used in the application thereof*, from Lexington, N.C., to Tampa, Tallahassee, and Jacksonville, Fla., Peoria, Normal, and Chicago, Ill., Omaha, Nebr., Minneapolis, Minn., Des Moines, Iowa; Gary, Ind., Detroit, Mich., Metairie, La., and Mobile, Phenix City, and Birmingham, Ala., Restriction: The operations authorized herein are limited to a transportation service to be performed under a continuing contract or contracts with Mid-State Tile Company, for 180 days. SUPPORTING SHIPPER: Mid-State Tile Company, Jones E. Almond, Jr., Customer Services Manager, P.O. Box 627, Lexington, N.C. 27292. SEND PROTESTS TO: District Supervisor Carroll Russell, Bureau of Operations, Interstate Commerce Commission, Suite 620 Union Pacific Plaza, Omaha, Nebr. 68102.

No. MC 126713 (Sub-No. 2 TA), filed February 20, 1974. Applicant: GRAVES VAN LINES, INC., 411 Lincoln Street, Salina, Kans. 67401. Applicant's representative: Harold H. Chase, 300 Plains Building, Salina, Kans. 67401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods* having a prior or subsequent movement in containers and to pickup and delivery service in connection with packing, crating, containerization and unpacking, uncrating, and decontainerization, between Salina, Kans., and points in Norton, Phillips, Graham, Rooks, Trego, Ness, Rush, Stafford, and Pawnee Counties, Kans., for 180 days.

NOTE.—Applicant does intend to tack the authority here applied for to another authority held by it and does not intend to interline with other carriers.

SUPPORTING SHIPPER: U.S. Department of Defense, Procurement Office, Fort Riley, Kans. 66442. SEND PROTESTS TO: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 234 Federal Building, Topeka, Kans. 66603.

No. MC 133099 (Sub-No. 1 TA), filed February 12, 1974. Applicant: THE GLASGOW & DAVIS CO., a Corporation, Box 1717, Salisbury, Md. 21801. Applicant's representative: Daniel B. Johnson, 716 Perpetual Building, 1111 E Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Waste paper and waste cardboard* for recycling purposes, from points in Delaware and those in Maryland and Virginia east of the Chesapeake Bay and Susquehanna River to West Point, Va., for 180 days. SUPPORTING SHIPPER: Donald P. Rennie, Transportation Manager, The Chesapeake Corporation of Virginia, West Point, Va. 23181. SEND PROTESTS TO: W. C. Hersman, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

No. MC 133115 (Sub-No. 3 TA), filed February 15, 1974. Applicant: ELVIS

SCHREMP, HUBERT J. SCHREMP, HOWARD SCHREMP, AND GLENNON SCHREMP, doing business as SCHREMP BROS., Rt. No. 3, Box 245, Perryville, Mo. 63775. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Expanded polystyrene foam, shapes and/or forms, and expanded plastic products laminated with wood, aluminum or fiber glass, refused or rejected shipments consisting of the foregoing commodities on return*, from McBride, Mo., to points in the United States (except Alaska and Hawaii), for 180 days. SUPPORTING SHIPPER: Pennington & Sons, Inc., P.O. Box 192, Perryville, Mo. 63775. SEND PROTESTS TO: District Supervisor J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th Street, St. Louis, Mo. 63101.

No. MC 134262 (Sub-No. 7 TA), filed February 13, 1974. Applicant: FARMERS FEED & SUPPLY TRANSPORTATION, INC., Boyden, Iowa 51234. Applicant's representative: Patrick E. Quinn, 605 So. 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizers*, except in tank vehicles, from the plantsite of Anvil Mineral Company at or near Bay Springs, Miss., and from the plantsites of International Soil Conditioner Corp. at or near Caldwell, Tex. and Baton Rouge, La., to points in Illinois, Indiana, Ohio, Michigan, and Missouri. RESTRICTION: The operations authorized herein are limited to a transportation service to be performed under a continuing contract or contracts with Farmers Feed & Supply, Inc., for 180 days. SUPPORTING SHIPPER: Farmers Feed & Supply, Inc., H. G. Heusinkveld, President, Boyden, Iowa 51234. SEND PROTESTS TO: District Supervisor Carroll Russell, Suite 620 Union Pacific Plaza, 110 No. 14th Street, Omaha, Nebr. 68102.

No. MC 134645 (Sub-No. 8 TA), filed February 15, 1974. Applicant: LIVESTOCK SERVICE, INC., 1420 Second Avenue South, St. Cloud, Minn. 56301. Applicant's representative: Bruce E. Mitchell, Suite 1600, First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions of Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and warehouse facilities of Flavorland Industries, Inc., at Fargo and West Fargo, N. Dak., to points in Minnesota, Michigan, and Wisconsin, for 180 days. SUPPORTING SHIPPER: Flavorland Industries, Inc., 1911 Cunningham Drive, Sioux City, Iowa 51107. SEND PROTESTS TO: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg. and U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 134648 (Sub-No. 1 TA), filed February 20, 1974. Applicant: MORGAN COUNTY TRUCKING, INC., 1010 E. Nutter St., Martinsville, Ind. 46151. Applicant's representative: Thomas F. Quinn, 715 First Federal Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in truck load lots, (a) from Milwaukee, Wis., Newport, Ky., Louisville, Ky., Columbus, Ohio, and St. Louis, Mo., to Plainfield, Ind. RESTRICTION: All transportation to be performed under a contract or continuing contracts with Rhoades Beverages Co., Inc., Plainfield, Ind.; (b) from Milwaukee, Wis., Peoria, Ill., Newport, Ky., and Louisville, Ky., to Bloomington, Ind. RESTRICTION: All transportation to be performed under a contract or continuing contracts with A–1 Beverages Co., Inc., Bloomington, Ind.; and (c) from Columbus, Ohio to Martinsville, Ind. RESTRICTION: All transportation to be performed under a contract or continuing contracts with Morgan County Beverage, Inc., Martinsville, Ind., for 180 days. SUPPORTING SHIPPERS: Morgan County Beverage, Inc., Martinsville, Ind.; Monroe Beverages Co., Inc., Bloomington, Ind.; Morgan County Beverages, Inc., Martinsville, Ind.; A–1 Beverage Co., Inc., Bloomington, Ind.; Rhoades Beverage Co., Inc., Plainfield, Ind. SEND PROTESTS TO: James W. Habermehl, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 802 Century Bldg., 36 S. Penn St., Indianapolis, Ind. 46204.

No. MC 135034 (Sub-No. 5 TA), filed February 12, 1974. Applicant: KAPE EXPRESS, INC., P.O. Box 486, Bldg. #50, Port Clinton, Ohio 43452. Applicant's representative: Paul F. Beery, 8 East Broad St., Ninth Floor, Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Expanded polystyrene boats and plastic boats*, from the plant site of Snark Products, Inc., at Virginia Beach, Va., to points in the United States east of the Mississippi River; (2) *plastic sheets*, from Frederick, Md., to the plant site of Snark Products, Inc., at Virginia Beach, Va.; (3) *masts, beams, spars, and aluminum components*, from Kearney, N.J., to the plant site of Snark Products, Inc., at Virginia Beach, Va.; (4) *vinyl bumpers*, from Hialeah, Fla., to the plant site of Snark Products, Inc., at Virginia Beach, Va.; (5) *raw polystyrene beads*, from Leominister, Mass., to the plant site at Virginia Beach, Va.; and (6) *corrugated tubes*, from Minerva, Ohio, to the plant site of Snark Products, Inc., at Virginia Beach, Va., for 180 days. SUPPORTING SHIPPER: Snarks Products, Inc., P.O. Box 339, Erie Industrial Park, Port Clinton, Ohio. SEND PROTESTS TO: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Bldg., 234 Summit Street, Toledo, Ohio 43604.

No. MC 135641 (Sub-No. 4 TA), filed February 19, 1974. Applicant: M. B. CUTHBERTSON AND B. G. CUTHBERTSON, doing business as M. B. CUTHBERTSON AND SON, R.R. 2, Box 37, Toledo, Iowa 52342. Applicant's representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural chemicals*, except in bulk, from Webster City, Iowa, to points in Arkansas, Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin, for 180 days. SUPPORTING SHIPPER: Dale Hassman Co., Inc., Cedar Falls, Iowa 50613. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 135874 (Sub-No. 34 TA), filed February 14, 1974. Applicant: LTL PERISHABLES, INC., 132nd & "Q" Streets, Omaha, Nebr. 68137. Applicant's representative: Donald L. Stern, 530 Univac Building, 7111 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen poultry and poultry parts*, from Clinton, Iowa, to points in Kansas, Nebraska, and South Dakota, for 180 days. SUPPORTING SHIPPER: Swift Dairy & Poultry Company, R. W. Retzlaff, Director of Distribution, 115 West Jackson Blvd., Chicago, Ill. 60604. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Suite 620 Union Pacific Plaza, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 135874 (Sub-No. 35 TA), filed February 13, 1974. Applicant: LTL PERISHABLES, INC., 132nd & "Q" Streets, Omaha, Nebr. 68137. 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: *Frozen foods*, from Altoona, Iowa, to Minneapolis, St. Paul, and Fairmont, Minn., Omaha and Lincoln, Nebr., Topeka and Kansas City, Kans., Kansas City, Mo., commercial zone, Wichita and Salina, Kansas., for 180 days. SUPPORTING SHIPPER: Warren Frozen Foods Company, Edwin B. Warren, Owner, 805 8th St., Altoona, Iowa. SEND PROTESTS TO: District Supervisor Carroll Russell, Interstate Commerce Commission, Bureau of Operations, Suite 620 Union Pacific Plaza, 110 No. 14th Street, Omaha, Nebr. 68102.

No. MC 136008 (Sub-No. 25 TA), filed February 20, 1974. Applicant: JOE BROWN COMPANY, INC., 20 Third St. NE., Box 1669, Ardmore, Okla. 73401. Applicant's representative: Dean Williamson, 280 National Foundation Life Bldg., 3535 NW. 58th, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from points in Logan and Johnson Counties, Ark., to points in Morris

County, Tex., for 180 days. SUPPORTING SHIPPER: Lone Star Steel Company, C. L. Williamson, T.M. P.O. Box 35888, 220 W. Mockingbird, Dallas, Tex. 75235. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 240, Old P.O. Bldg., Oklahoma City, Okla. 73102.

No. MC 138438 (Sub-No. 6 TA), filed February 20, 1974. Applicant: DONALD M. BOWMAN, JR., Route 3, Box 26, Hagerstown, Md. 21740. Applicant's representative: Charles E. Creager, P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick* (1) from Martinsburg, W. Va., and Laurel, Md., to points in Fulton, Franklin, Adams, and Cumberland Counties, Pa., and (2) from Martinsburg, W. Va., to Frederick and Washington Counties, Md., for 180 days. SUPPORTING SHIPPERS: Nitterhouse Concrete Products, Inc., Box N, Chambersburg, Pa. 17201; and Steffey & Findlay, Inc., 332 West Church Street, Hagerstown, Md. 21740. SEND PROTESTS TO: W. C. Hersman, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

No. MC 138465 (Sub-No. 1 TA), filed February 19, 1974. Applicant: PHIL TOWNSEND, JR., Route 1, Box 19, Live Oak, Fla. 32060. Applicant's representative: Ronald D. Peterson, 1729 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer*, dry, in bulk or in bags, from Albany, Ga., to points in Alachua, Baker, Bradford, Columbia, Dixie, Gadsden, Gilchrist, Jefferson, Lafayette, Leon, Levy, Madison, Suwannee, Taylor, Union, and Wakulla Counties, Fla., for 180 days. SUPPORTING SHIPPERS: Swift Chemical Company, P.O. Box 1948, Albany, Ga. 31702; Mizell Product Co., Inc., 302 S. Pine Avenue, Live Oak, Fla. 32060. SEND PROTESTS TO: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 W. Bay St., Jacksonville, Fla. 32202.

No. MC 138469 (Sub-No. 2 TA), filed February 19, 1974. Applicant: DONCO CARRIERS, INC., 641 N. Meridian, P.O. Box 75354, Oklahoma City, Okla. 73107. Applicant's representative: Wm. L. Peterson, Jr., 401 N. Hudson, P.O. Box 917, Oklahoma City, Okla. 73101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude synthetic rubber*, in bags, between Lake Charles, La., and Miami, Okla., for 180 days. SUPPORTING SHIPPER: Petro-Tex Chemical Corporation, J. L. Kerr, Traffic Manager, P.O. Box 2584, Houston, Tex. 77001. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 240, Old P.O. Bldg., 215 NW. Third, Oklahoma City, Okla. 73102.

No. MC 138875 (Sub-No. 16 TA), filed February 14, 1974. Applicant: SHOEMAKER TRUCKING COMPANY, 8624 Franklin Rd., Boise, Idaho 83705. Applicant's representative: F. L. Sigloh, P.O. Box 7651, Boise, Idaho 83707. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, including *plywood, builtup woods and gypsum board*, from Washington County, Idaho, to York and Central City, Nebr., Wellington, Kans., Slayton, Minn., and Berthoud, Colo., for 180 days. SUPPORTING SHIPPER: Champion Home Builders, Box 551, Weiser, Idaho. SEND PROTESTS TO: C. W. Campbell, District Supervisor, Bureau of Operations, Interstate Commerce, Commission, 550 West Fort Street, Box 07, Boise, Idaho 83724.

No. MC 139109 (Sub-No. 1 TA), filed February 13, 1974. Applicant: FARMERS SERVICE GIN COMPANY, 900 2nd Street NE., P.O. Box 1018, Moultrie, Ga. 31768. Applicant's representative: Sam J. Gardner, Jr., 104 1st Street SE., P.O. Box 68, Moultrie, Ga. 31768. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilize material*, in bulk, by dump tractors and trailers, between points in Georgia, Florida, and Alabama, for 180 days. SUPPORTING SHIPPERS: Occidental Chemical Company, P.O. Box 1185, Houston, Tex. 77001; International Minerals & Chemical Corp., IMC Plaza, Libertyville, Ill. 60048; C & S Limestone Company, P.O. Box 1236, Albany, Ga. 31701; Swift Chemical Co., P.O. Box 1948, Albany, Ga. 31701; Thompson-Hayward Chemical Co., P.O. Box 403, Camilla, Ga. 31730; Farmers Mutual Exchange of Camilla, P.O. Box 444, Camilla, Ga. 31730; Columbia Nitrogen Corporation, P.O. Box 1483, Augusta, Ga. 30903; and Brownlee Rainbow Service, P.O. Box (U.S. Highway 41, South), Tifton, Ga. 31794. SEND PROTESTS TO: District Supervisor,

No. MC 139512 TA, filed February 19, 1974. Applicant: THE GRAY LINE, INC., 1010 Eye Street NW., Washington, D.C. 20001. Applicant's representative: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Persons*, between Sterling, Va., inclusive of Sterling Park and Sugarland Run residential areas on the one hand, and, on the other, the District of Columbia, for 90 days. SUPPORTING SHIPPER: Sugarland Run Jaycees, Inc., 110 South Fox Road, Sterling, Va. 22170. SEND PROTESTS TO: W. C. Hersman, District Supervisor, Interstate Commerce Commission, Bur Interstate Commerce Commission, Bureau of Operations, 12th Street & Constitution Avenue NW., Washington, D.C. 20423.

No. MC 139514 TA, filed February 14, 1974. Applicant: GRENIER TRANSPORT, INC., C. P. 700 Ste-Marie, de Beauce, Que. GOS-2YO. Applicant's representative: J. P. Vermette, 250 Napoleon-Provost St., Repentigny, Que. GOS-2YO. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Television and radio cabinets*, from Ports of Entry on the International Boundary line between the United States and Canada located at Jackman, Maine, and Derby Line, Vt., to Framingham, Mass.; and (2) *corrugated paper boxes, KD. veneer and material* incidental to the manufacture of television and radio cabinets, from Worcester, Mass., to Ports of Entry between the United States and Canada located at Jackman, Maine, and Derby Line, Vt., restricted to traffic having an immediate prior or subsequent movement in foreign commerce originating at or destined to the Province of Quebec, Canada, for 90 days. SUPPORTING SHIPPER: Valises Scott Ltee, Scott Jct., Quebec. SEND PROTESTS TO: District Supervisor Ross J. Seymour, Bureau of Operations, Interstate Commerce Commission, 424 Federal Building, Concord, N.H. 03301.

No. MC 139520 TA, filed February 19, 1974. Applicant: BERNIE LYNN SNIPES, doing business as FLYING S FEED EXPRESS, Route 4, Box 84 Clovis, N. Mex. 88101. Applicant's representative: James E. Snead, P.O. Box 2228, Santa Fe, N. Mex. 87501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Livestock feed*, between points in Texas, New Mexico, Colorado, Arizona, Kansas, and Oklahoma under contract with Wilbur-Ellis Company, Worley Mills, El Rancho Feed Co., and Farmers Co-op., for 30 days. SUPPORTING SHIPPERS: R. A. Worley, Secretary-Treasurer, Worley Mills, Box 1448, Clovis, N. Mex. 88101; S. E. Self, Manager, Farmers Co-op, P.O. Box 70, Clovis, N. Mex. 88101; Guy L. Cohee, Vice President, El Rancho Feed Co., 100 West Street, Clovis, N. Mex. 88101; and Olin Williams, Traffic Manager, Wilbur Ellis Co., Inc., Box 427, Clovis, N. Mex. 88101. SEND PROTESTS TO: William R. Murdoch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Ave. SW., Albuquerque, N. Mex. 87101.

No. MC 139523 TA, filed February 19, 1974. Applicant: JOHN ARDITO AND HAROLD FLAUM, doing business as J. & H. TRUCKING CO., 439 Bayview Avenue, Inwood, N.Y. 11696. Applicant's representative: Arthur J. Piken, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in, used by and sold by retailers and distributors of carpeting, rugs and padding; (1) from Inwood, N.Y., to Bridgeport, Conn.; (2) from Barrington, R.I., to Inwood, N.Y.; and (3) between

Inwood, N.Y., on the one hand, and, on the other, points in New Jersey, Bucks, Chester, Delaware, and Montgomery Counties, and Philadelphia, Pa., and Dedham, Mass., for 180 days. SUPPORTING SHIPPER: Allen Carpet Shops, Inc., 600 Bayview Avenue, Inwood, N.Y. SEND PROTESTS TO: Anthony D. Giaimo, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

By the Commission.

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

[FR Doc.74-5182 Filed 3-5-74;8:45 am]

## NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

MARCH 1, 1974.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

Arkansas Docket No. M-8104, filed February 15, 1974. Applicant: ATLAS TRANSIT, INC., 6101 Lindsey Road, Little Rock, Ark. 72203. Applicant's representative: James N. Clay III, 2700 Sterick Building, Memphis, Tenn. 38103. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities,* over regular routes, serving the plantsite of DLM, Inc., located approximately 5 miles east of Malvern, Ark., as an off-route point in conjunction with applicant's regular route authority to and from Malvern. Any protest or intervention must be filed with this Commission ten (10) days prior to the date of hearing and such protest or intervention must show service of a copy thereof on the applicant or his attorney by registered mail. Applicant, and protestants, if any, are requested to submit to the Commission verified statements in support of, or in opposition to, the application five (5) days prior to the date of hearing. Interstate and intrastate authority sought.

*HEARING:* April 2, 1974, at the Arkansas Transportation Commission hearing room, Justice Building, Little Rock, Ark., at 10:00 A.M. Requests for procedural information should be addressed to the Arkansas Transportation Commission, Justice Building, Little Rock, Ark. 72201, and should not be directed to the Interstate Commerce Commission.

California Docket No. 54631, filed February 5, 1974. Applicant: PAK MOVING, INC., 1720 Broadway, Vallejo, Calif. 94590. Applicant's representative: Daniel W. Baker, Handler, Baker & Greene, 100 Pine Street Suite 2550, San Francisco, Calif. 94111. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *Baggage* between the following points: (1) Between all points and places in the San Francisco Territory and between all points within 10 miles of any point therein; (2) Between all points on or within 10 miles of points on the following routes: (a) State Highway 65, between Marysville and Interstate Highway 80, inclusive; (b) State Highway 70, between Marysville and Sacramento, inclusive; (c) State Highway 20, between Marysville and Yuba City, inclusive; (d) State Highway 113, between Yuba City and Interstate Highway 80, inclusive; (e) Interstate Highway 80, between San Francisco and junction with State Highway 65, inclusive; (f) U.S. Highway 101, between Santa Rosa and San Francisco, inclusive; (g) State Highway 12, between Santa Rosa and Lodi, inclusive; (h) State Highway 29, between Napa and Vallejo, inclusive; (i) State Highway 37, between U.S. Highway 101 and Interstate Highway 80, inclusive; (j) State Highway 17, between San Rafael and Richmond, inclusive; (k) Interstate Highway 680, between Fremont and Vallejo, inclusive; (l) State Highway 4, between Interstate Highway 80 and Stockton, inclusive; (m) U.S. Highway 50, between Oakland and Sacramento, inclusive; (n) Interstate Highway 580 and 5, between U.S. Highway 50 and State Highway 140, inclusive; (o) State Highway 140, between Interstate Highway 5 and Merced, inclusive; (p) State Highway 99, between Stockton and Merced, inclusive; (q) State Highway 132, between Interstate Highway 5 and Modesto, inclusive. In performing the service herein authorized, applicant may make use of any and all streets, roads, highways, and bridges necessary or convenient for the performance of said service.

SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersecton with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

*HEARING:* Date, time and place not shown. Requests for procedural information should be addressed to the California Public Utilities Commission, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, Calif. 94102, and should *not* be directed to the Interstate Commerce Commission.

Florida Docket No. 74093-CCT (extension), filed February 14, 1974. Applicant: GOLD COAST TRUCKING & EXPRESS, INC., 278 SW. 32nd Court, Fort Lauderdale, Fla. 33315. Applicant's representative: Richard B. Austin, Esquire, 214 Palm Coast II Building, 5255 NW. 87th Ave., Miami, Fla. 33166. Applicant seeks to extend its Certificate No. 742 so as to authorize the transportation of *general commodities,* excluding articles of unusual value, household goods, as defined by the Commis-

sion, commodities in bulk, or which, by reason of their size and weight require specialized handling or equipment on regular routes and schedules as follows: (1) Between Fort Lauderdale, Fla., over U.S. Highway 1 to West Palm Beach, Stuart, Fort Pierce, and Vero Beach, thence over State Road 60 to the Florida Turnpike, thence northerly on the Florida Turnpike to Orlando, Fla., and its commercial zone; (2) From Fort Lauderdale, Fla., over Interstate Highway 95 to the Palmetto Expressway, thence southerly over the Palmetto Expressway to its intersection to U.S. Highway 1, thence to Homestead, Fla., and its commercial zone; and (3) From Fort Lauderdale, Fla., over State Road 84 to Naples, thence northerly over U.S. Highway 41 to Fort Myers, Fla.

NOTE.—Applicant seeks to serve all points not named in Indian River, St. Lucie, Martin, Palm Beach, Broward, Dade, Collier and Lee Counties, Fla., and the Cities of Clewiston and Punta Gorda, and their commercial zones as off route points in connection with the above stated regular routes services. Note two: that the regular route service is between Fort Lauderdale and the specified northerly, southerly and westernly points and return the same routes. Note three: applicant seeks the Florida Turnpike between Orlando and Homestead as an alternate route for operating conveniences. Intrastate, interstate and foreign commerce authority sought.

*HEARING:* Date, time and place not shown. Requests for procedural information should be addressed to the Florida Public Service Commission, 700 South Adams Street, Tallahassee, Fla. 32304, and should *not* be directed to the Interstate Commerce Commission.

North Carolina Docket No. T-681 (Sub-No. 41), filed February 11, 1974. Applicant: BURRIS EXPRESS, INC., 1024-A N. Second Street, Albemarle, N.C. Applicant's representative: J. Ruffin Bailey, Baily, Dixon, Wooten, McDonald & Fountain, P.O. Box 2246, Raleigh, N.C. 27602. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of group 1 *general commodities* in intrastate, interstate, and foreign commerce, for operating convenience only, with no service at intermediate points thereon except as otherwise authorized, over the following routes: (1) Between the junction of Scotland County Road No. 1420 and U.S. Highway No. 401 and Raeford, N.C. over U.S. Highway No. 401; (2) Between Charlotte, N.C. and Greensboro, N.C. over Interstate Highway No. 85; (3) Between Arrowood Industrial Park, Mecklenburg County, N.C. and the junction of Interstate Highway No. 77 and N.C. Highway No. 89, in Surry County, over Interstate Highway No. 77; (4) Between Greensboro, N.C. and Durham, N.C. over Interstate Highway No. 85; (5) Between Durham, N.C. and Raleigh, N.C. over Interstate Highway No. 40; (6) Between Winston-Salem, N.C. and Conover, N.C. over Interstate Highway No. 40; (7) Between Rowland, N.C. and Rocky Mount, N.C. over Interstate Highway No. 95 with the right to traverse U.S. Highway No. 301 between Kenly, N.C. and Wilson, N.C. where Interstate Highway No. 95 has not been completed; (8) From Norwood, N.C. over U.S. Highway No. 52 to its intersection with N.C. Highway No. 731, thence over N.C. Highway No. 731 to Mount Gilead, N.C. and return over the same route; (9) From Mount Gilead, N.C. over N.C. Highway No. 73 to its intersection with U.S. Highway No. 220 and return over the same route; (10) From Norwood, N.C. over U.S. Highway No. 52 to its junction with U.S. Highway No. 74 and return over the same route; (11) Between the junction of U.S. Highway No. 301 and U.S. Highway No. 13 and the junction of U.S. Highway No. 13 and U.S. Highway No. 117 over U.S. Highway No. 13; (12) From Greenville, N.C. over N.C. Highway No. 30 to its junction with N.C. Highway No. 33, thence over N.C. Highway No. 33 to Washington, N.C. and return over the same route; (13) Between Kinston, N.C. and Wilson, N.C. over N.C. Highway No. 58; (14) Between the Junction of N.C. Highway No. 42 and U.S. Highway No. 421 and Fuquay Varina, N.C. over N.C. Highway No. 42; (15) Between Concord, N.C. and Monroe, N.C. over U.S. Highway No. 601; (16) Between Greenville, N.C. and Bethel, N.C. over U.S. Highway No. 13; (17) Between Chocowinity, N.C. and Vanceboro, N.C. over U.S. Highway No. 17; (18) Between Laurel Springs, N.C. and Index, N.C. over N.C. Highway No. 88; (19) Between Lenoir, N.C. and Taylorsville, N.C. over N.C. Highway No. 90; (20) Between Lenior, N.C. and Conover, N.C. over U.S. Highway No. 321; (21) Between Baldwin, N.C. and Deep Gap, N.C. over U.S. Highway No. 221; (22) Between Winston-Salem, N.C. and Reidsville, N.C. over U.S. Highway No. 158; (23) Between Mooresville, N.C. and Rockwell, N.C. over N.C. Highway No. 152; (24) Between Whiteville, N.C. and the junction of U.S. Highway No. 17 and U.S. Highway No. 74, over U.S. Highway No. 74; (25) Between the junction of N.C. Highway No. 111 and U.S. Highway No. 70 and Beulaville, N.C. over N.C. Highway No. 111; (26) Between Warsaw, N.C. and Wilmington, N.C. over U.S. Highway No. 117; (27) Between Dunn, N.C. and Clinton, N.C. over U.S. Highway No. 421; (28) Between Clinton, N.C. and Whiteville, N.C. over U.S. Highway No. 701; (29) Between the intersection of N.C. Highway No. 27 and N.C. Highway No. 705 and the intersection of N.C. Highway No. 211 and N.C. Highway No. 705 over N.C. Highway No. 705; (30) Between Eastwood, N.C. and West End, N.C. over N.C. Highway No. 73; (31) Between the junction of N.C. Highway No. 73 and N.C. Highway No. 27 and the intersection of U.S. Highway No. 29 and N.C. Highway No. 73 over N.C. Highway No. 73; (32) Between Kinston, N.C. and the junction of U.S. Highway No. 117 and N.C. Highway No. 55 over N.C. Highway No. 55; (33) Between Kinston, N.C. and the junction of U.S. Highway No. 258 and N.C. Highway No. 24 over U.S. Highway No. 258; (34) Between Red Springs, N.C. and Lumberton, N.C. over N.C. Highway No. 211; (35) Between Red Springs, N.C. and the junction of N.C. Highway No. 710 and U.S. Highway No. 501 over N.C. Highway No. 72 to the junction of N.C. Highway No. 710, thence over N.C. Highway No. 710; (36) Between Elkin, N.C. and the intersection of N.C. Highway No. 65 and U.S. Highway No. 52 over N.C. Highway No. 67 to its junction with N.C. Highway No. 65 and thence over N.C. Highway No. 65; (37) Between the junction of U.S. Highway No. 401 and N.C. Highway No. 55 and Angier, N.C. over N.C. Highway No. 55; (38) Between Zebulon, N.C. and Selma, N.C. over N.C. Highway No. 96; (39) Between the intersection of Interstate Highway No. 95 and U.S. Highway No. 74 and Whiteville, N.C., over U.S. Highway No. 74; and (40) Between Jacksonville, N.C. and Wilmington, N.C., over U.S. Highway No. 17.

*HEARING:* April 2, 1974, at the North Carolina Utilities Commission hearing room, One West Morgan Street, Raleigh, N.C., at 10:00 a.m. Requests for procedural information should be addressed to the North Carolina Utilities Commission, P.O. Box 991, Raleigh, N.C. 27602, and should *not* be directed to the Interstate Commerce Commission.

By the Commission.

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

[FR Doc.74-5181 Filed 3-5-74;8:45 am]

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[Rev. S.O. 994; ICC Order 121]

## UNION PACIFIC RAILROAD CO.

### Rerouting or Diversion of Traffic

In the opinion of R. D. Pfahler, Agent, the Union Pacific Railroad Company, is unable to transport traffic over its line between Oregon Trunk Junction, Oregon and Bend, Oregon, because of bridge damage.

*It is ordered,* That:

(a) *Rerouting traffic.* The Union Pacific Railroad Company, being unable to transport traffic over its line between Oregon Trunk Junction, Oregon and Bend, Oregon, because of bridge damage, is hereby authorized to reroute or divert such traffic via any available route. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing.

(b) *Concurrence of receiving roads to be obtained.* The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each card is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said

Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 2 p.m., February 21, 1974.

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 22, 1974, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all raidroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 21, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[FR Doc.74-5188 Filed 3-5-74;8:45 am]

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WEDNESDAY, MARCH 6, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 45

PART II

# DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

■

# MILK IN THE RED RIVER VALLEY AND CERTAIN OTHER MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and Orders

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### [7 CFR Parts 1104, 1106, 1120, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1138]

[Docket Nos. AO-298-A19, etc.]

### MILK IN RED RIVER VALLEY AND CERTAIN OTHER MARKETING AREAS

### Decision on Proposed Amendments to Marketing Agreements and Orders

| 7 CFR part | Marketing area | Docket No. |
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| 1106 | Oklahoma Metropolitan | AO-210-A31. |
| 1120 | Lubbock-Plainview, Tex | AO-328-A13. |
| 1126 | North Texas | AO-231-A37. |
| 1127 | San Antonio, Tex | AO-232-A23. |
| 1128 | Central West Tex | AO-238-A26. |
| 1129 | Austin-Waco, Tex | AO-256-A19. |
| 1130 | Corpus Christi, Tex | AO-259-A23. |
| 1131 | Central Arizona | AO-271-A15. |
| 1132 | Texas Panhandle | AO-262-A22. |
| 1138 | Rio Grande Valley | AO-335-A18. |

A public hearing was held upon proposed amendments to the marketing agreements and to the orders regulating the handling of milk in 33 marketing areas. In addition to those listed above, such marketing areas include the following:

GROUP I

| | |
|---|---|
| Georgia | Northern Louisiana |
| Neosho Valley | Memphis, Tenn. |
| Wichita, Kans. | Nashville, Tenn. |
| Chattanooga, Tenn. | Fort Smith, Ark. |
| New Orleans, La. | Central Arkansas |

GROUP III

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|---|---|
| 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 decision 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 classification plan in the 32 markets.*", paragraph 1 is changed.

3. Under the heading "2. *Revision of the present Class I classification.*", paragraph 26 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 15–17 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 organization of cooperative associations of dairy farmers and federations of such coopera-

tive 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 multistate regions from centralized processing facilities. Products frequently mentioned include frozen desserts, yogurt, various cream products, and cottage cheese. Widespread distribution patterns prevail particularly for the processors of specialty products such as yogurt and sterilized cream items. Although the volume of these specialty products is relatively limited, it is probably the distribution of these products more than any others that has precipitated such general interest within the industry for uniform classification provisions among Federal orders.

Although the 32 orders have been revised from time to time to reflect the closer intermarket relationships, the classification plans of these orders continue to differ. The differences relate not only to the products included in each respective class, but also to the attendant class prices and butterfat differentials, the rules for classifying milk moved from one plant to another, the procedure for allocating a handler's receipts to his utilization, the method of classifying end-of-month inventories, and the manner of classifying shrinkage.

Such differences in the classification and pricing of milk are often disruptive to the competitive relationships of handlers and to the marketing of producer milk. Many of these differences, though, have little, if any, foundation under today's marketing conditions. It is thus concluded that a generally uniform classification and pricing plan should be incorporated in each of the 32 orders under consideration.

In conjunction with the development of uniform provisions pertaining to the classification and pricing of milk, it is desirable to also develop a single format of order provisions for use in each of these orders. All orders contain essentially the same categories of provisions, such as those relating to the definition of a pool plant or other source milk, those setting forth the class price formulas, or those describing how the uniform price shall be computed. At present, however, many of the orders are structured in such a way that provisions serving essentially the same purpose under all orders do not appear in each order in the same place or under the same section title.

Coordination of the orders in this respect will be helpful to those in the industry who must work with several orders, a situation that is becoming increasingly common as individual cooperatives and handlers continue to expand their marketing activities into more and more regulated markets. Moreover, the opportunity to effect changes in a relatively large number of orders at the same time makes the adoption of a uniform order format a particularly desirable step at this juncture of the order program.

Each of the orders included in this document is set forth in its entirety at the end of the document. Each order reflects the revised order format as well as the classification and pricing amendments adopted herein. In adapting each order to the new format, no substantive changes have been made in those provisions not under consideration at the hearing. Since the classification and pricing amendments may be less discernible to the reader with the reprinting of the complete order, the sections in each order that encompass the basic changes in classification and pricing are listed below:

Sections 12–16, 30, 40–44, 50, 52–54, 60, 62, 74–76, and 85.

Some of the amendments adopted herein would change certain procedures under the orders that are carried out after the end of the month to which they apply. These include the submission of reports, the classification of milk, and the computation and announcement of certain class prices, butterfat differentials, and producer prices. It is intended, however, that the amendments apply only to that milk handled after the effective date of the changes. Such amendments are not intended to affect the completion of previously existing procedures with respect to milk handled prior to the effectuation of the amendments.

2. *Revision of the present Class I classification.* With certain exceptions noted below, Class I milk under each of the 32 subject orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, Class I milk should include all skim milk and butterfat disposed of in the form of any other fluid or frozen milk product (if not specifically designated as a Class II or Class III use) that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

As a convenience in drafting order provisions, each product designated herein as a Class I product would be defined in the 32 orders as a "fluid milk product." [1]

Class I milk should include also any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

Except for sterilized products, most of the products listed above for inclusion in Class I are now included in the Class I classification under each of the 32 orders. Only in the case of milkshake mixes might there be a higher classification under the adopted amendments than at present. Under some orders, such mixes are now included in the lowest class. This higher classification would be limited, however, to only those milkshake mixes containing less than 20 percent total solids.

The adopted Class I classification would not include eggnog, yogurt, cream or mixtures of cream and milk or skim milk containing 9 percent or more butterfat (such as half and half). A Class I classification now applies to eggnog in 9 of the 32 markets, and to yogurt in 18 of the markets. In all markets, sweet cream (except that in frozen, concentrated, aerated or sterilized form) and half and half are now Class I products. The classification of sour cream and sour cream mixtures, on the other hand, varies considerably among the orders.

Six of the 32 orders now include ending inventories of packaged fluid milk products in Class I. As discussed later, such inventories would not be classified as Class I milk under the revised orders.

The proposals concerning the Class I classification of milk related primarily to the use under all orders of a uniform fluid milk product definition based on product composition, and to the appropriate classification of milkshake and ice milk mixes, sterilized fluid milk products, cream, eggnog, yogurt, fluid milk products to which nonfat milk solids have been added and ending inventory. The classification of cream, eggnog, and yogurt is discussed under Issue 3 which deals with the classification and pricing of milk not needed for Class I use. The method of accounting for nonfat milk solids added to fluid milk products is discussed under Issue 4(b). The classification of ending inventory is dealt with under Issue 4(d). The remaining Class I issues are dealt with at this point.

Milkshake and ice milk mixes containing less than 20 percent total solids should be included in Class I. Such mixes containing a greater percentage of solids should be Class II products.

Cooperatives proposed that milkshake mixes that "are not further processed in a commercial establishment" be in Class I. They proposed that all other milkshake mixes be in Class II. The national organizations of fluid milk and ice cream processors, on the other hand, asked that all milkshake mixes be included in the lowest classification.

Milkshake and ice milk mixes are being marketed generally through two channels. Limited quantities of such mixes are processed for home consumption, with such mixes being distributed to consumers through foodstores and on home delivery routes. The major outlet for milkshake and ice milk mixes, though, is the so-called "soft-serve" trade. Mixes processed by regulated handlers for this use are sold to commercial establishments where the product is run through a special freezer and dispensed to the public in a semisoft form.

Milkshake and ice milk mixes are basically similar in composition and purpose to what might be considered as traditional frozen desserts, such as ice cream. Although such shake mixes are intended to be consumed in a semisoft form, or even in a very thick fluid form, they are being marketed for essentially the same use as the traditional frozen desserts. This is the case whether such mixes are sold through the "soft-serve" trade or for home use. With minor exception, as noted below, milk used in milkshake and ice milk mixes thus should be classified in the same class as milk used in the traditional frozen desserts. As discussed later in this decision, the classification plan adopted herein includes frozen desserts in Class II.

It is possible that a product very similar in composition and form to chocolate milk could be marketed under the label of a milkshake mix for the purpose of having a lower classification apply to the product. Since such a product actually would have the same general form and purpose as other fluid milk products now classified as Class I under these orders, it should be included in the Class I classification. It is necessary, though, to provide some means of distinguishing between such a product and the general category of milkshake mixes that are being sold in competition with frozen desserts. For this purpose, the total solids content of the product should be used. A standard of 20 percent or more total solids should encompass those milkshake and ice milk mixes intended for use as a type of frozen dessert. Mixes with less solids are similar in composition to chocolate milk and other flavored fluid milk products and should be a Class I product.

As proposed by cooperatives and the national organizations of fluid milk and ice cream processors, no exception to the Class I classification of milk should be made for fluid milk products in sterilized form. The sterilization of fluid milk products does not change the form or purpose of such products. As in the case

[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.

of the unsterilized fluid milk products which they resemble, such sterilized products are disposed of in fluid form for consumption as a beverage. They are generally intended for use in place of their unsterilized counterparts and are thus competing for the same consumers.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form are being marketed for the same beverage use. Classifying all such products in Class I will assure that the returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for beverage use.

With the removal of any exception to the Class I classification of milk because of sterilization, specific reference must be made in the "fluid milk product" definition to the exclusion of certain products that otherwise could be construed to fall within such definition. Such products are evaporated or condensed milk or skim milk, formulas in hermetically sealed glass or all-metal containers that are especially prepared for infant feeding or dietary use, and products (such as flavored drinks in "pop" bottles) containing by weight less than 6.5 percent nonfat milk solids. These products, which are being sold in sterilized form, are now excluded from the Class I classification and, as proposed by cooperatives and handlers, such exclusion should be continued, notwithstanding the fact that they are sold to the public in fluid form. Evaporated milk and condensed milk sold for home use are intended primarily for cooking purposes. They are not consumed normally as a beverage. Infant and dietary formulas, which are being sold in hermetically sealed glass or all-metal containers, are specialized food products prepared for a limited use. Such formulas do not compete with other milk beverages consumed by the general public. Similarly, fluid products containing only a minimal amount of nonfat milk solids are not considered as being in the competitive sphere of the traditional milk beverages.

Fluid milk products should not be defined only on the basis of product composition, as was proposed by cooperatives. Contending that the present fluid milk product definition in each order does not clearly identify those products that are intended to be classified as Class I products, cooperatives proposed that a fluid milk product be defined solely in terms of moisture and milk solids content of the product. As proposed by producers, a "fluid milk product" would be any product containing at least 6.5 percent but less than 27 percent nonfat milk solids, less than 9 percent butterfat, and more than 20 percent moisture, all computed on the basis of weight.

In support of their proposal, proponents indicated that such a definition would result in a more uniform application among the 32 orders of the classification provisions. They contended that the listing of products under the current definitions does not accommodate the proper classification of new products or variations of the listed products when they are introduced on the market. Proponents pointed out that as market administrators have had to make order interpretations in response to this situation, variations in interpretation and classification have resulted among the markets. Adoption of the proposed definition, it was contended, would eliminate such problems. Any product meeting the specified composition limits for a fluid milk product would be a fluid milk product regardless of the name under which the product might be marketed.

Proponents recognized, however, that their proposed fluid milk product definition would include some products not intended by them to be in Class I, and, at the same time, would exclude certain products that they wanted in this classification. To overcome this problem, proponents stated that certain products should be listed by name, either as inclusions or exclusions, to assure that the fluid milk product definition would include those products, and only those products, warranting a Class I classification.

Handlers took the position that the fluid milk product definition should continue to list by name those products intended to be included in Class I. They believe that this procedure would result in less confusion within the industry concerning the application of this definition. Also, handlers were concerned that defining a fluid milk product on the basis of product composition would deter the development and marketing of new products. They contended that the proposed composition standards could embrace a new product that was intended by the processor to be marketed in direct competition with products that would be included in Class II or Class III rather than in competition with Class I products.

The primary concern with any fluid milk product definition is that it clearly define the products or types of products that are intended to be included in the definition. The fluid milk product definition adopted herein, which incorporates both the listing of specified products and the use of composition percentages, should meet this requirement. Incorporation of this definition in each of the 32 orders will provide a uniform basis for identifying those products that are to be defined as "fluid milk products."

For simplicity, the fluid milk product definition should continue to list the generic names of those products commonly sold for consumption as beverages. The products listed in the adopted definition encompass most of the forms in which milk for fluid uses is sold. Anyone referring to this fluid milk product definition may easily ascertain in the case of most milk products whether or not a particular product is included in the definition.

A listing of products alone in the fluid milk product definition may not clearly indicate the classification of new milk products developed for fluid consumption. With certain limited exceptions noted, the fluid milk product definition is intended to include all milk products that are distributed for use as beverages. Although a new milk beverage introduced on the market might not be encompassed within the list of named products, it should be treated as a fluid milk product, nevertheless, if its composition is similar to that of the listed products. This will be the result of the standards of product composition for fluid milk products herein adopted.

As indicated, the adopted composition standards would embrace any fluid or frozen milk product not specified as a Class II or Class III product that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids, 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.[2] There is no basis for changing this procedure.

The use of composition standards as a means of defining fluid milk products should not deter the development of new milk products, as handlers contended. Should the Class I classification of a new product appear to be incongruous with the intended use of the product, the hearing process remains as an avenue through which a different classification may be considered. The use of composition standards should result, however, in a more uniform classification among orders of new products developed for fluid consumption.

3. *Classification and pricing of milk not needed for Class I use.*—Two use classes, Class II and Class III, should be provided in each of the 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, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, any concentrated milk product in bulk fluid form (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 11 different prices for milk put to similar uses. Also, four additional prices can result under the five orders that have an intermediate classification and price for milk used to produce cottage cheese.

Cooperatives proposed that each of the 32 orders provide for an intermediate classification (Class II) for skim milk and butterfat disposed of as cream, now a Class I use, and that used to produce several other products now in the lowest-priced class under most of the orders. The proposed Class II uses would include cottage cheese, frozen desserts, milkshake mixes for further processing in commercial establishments, eggnog, yogurt, evaporated or condensed milk or skim milk, dietary and infant formulas, custards, puddings, pancake mixes, any product with 6 percent or more nonmilk fat (or oil), and fluid milk products disposed of to commercial food processors. In addition, their new Class II also would include cream, mixtures of cream and milk or skim milk containing 9 percent or more butterfat, cream in plastic, frozen, aerated or sterilized form, sour cream, sour mixtures and anhydrous milkfat.

Under the cooperatives' proposal, the Class II price in 31 markets would be the Minnesota-Wisconsin price plus 10 to 20 cents (increasing generally from north to south). Eleven markets in the States of Minnesota, Iowa, North Dakota, South Dakota and Tennessee would have a price differential of plus 10 cents. The remainder of the 31 markets would have plus 15 cents, except for a plus 20 cents in the Corpus Christi and Rio Grande Valley markets. A cooperative in the Central Arizona market proposed that the present Class II price, which is 25 cents over the Class III price, be retained in that market.

The Class III uses proposed by the cooperatives would include dried products,

[2] Official notice is taken of the Assistant Secretary's decision issued on October 13, 1969 (34 F.R. 16881), with respect to the Memphis, Tenn., and certain other marketing areas.

cheese (except cottage cheese), butter, condensed whey and buttermilk for animal feed, dumpage, ending inventory, shrinkage, and the non-Class I portion of modified fluid milk products.

The cooperatives' Class III pricing proposals varied by regions. A number of cooperatives operating primarily in the Upper Midwest proposed the adoption of a weighted butter-nonfat dry milk (55 percent) and cheese (45 percent) formula using "the product yield factors and make allowances used by the Department in its CCC Price Support Program." While suggesting that such a pricing formula would be appropriate for all 32 markets, they particularly urged its adoption for 11 upper midwestern markets. For four southern markets, the principal cooperative in such markets proposed the use of the Minnesota-Wisconsin price, but with minus adjustments of 5 cents for Chattanooga, 10 cents for New Orleans, and 15 cents for Georgia. For 15 markets in the Southwest, the principal cooperative there proposed that the Class III price be the higher of the Minnesota-Wisconsin price or the current price for the lowest utilization in the respective order. Under its proposal, milk used in butter, nonfat dry milk and cheddar cheese would be priced, however, at the lower of the Minnesota-Wisconsin price or the current price for the lowest utilization in the respective order. The principal cooperative in the Central Arizona market proposed retention of the Class III price now applicable in that market, which is based on a butter-nonfat dry milk formula.

In support of their proposed Class II and Class III use categories, the several cooperatives contended that there are significant differences in the competitive position of, and demand for, milk so used. They stated that handlers demand quality milk on a regular basis for the proposed Class II products, and that in the various markets alternative supplies of milk for such uses generally cannot be obtained for less than the Class II prices they propose for producer milk. Moreover, they claimed that products in such Class II uses should bear, along with fluid milk products, part of the cost necessary to attract an adequate market supply. With respect to the Class III classification, proponents stated that their proposed Class III products are the residual uses of milk associated with fluid markets. Consequently, the local production of such products is related to the amount of reserve or excess milk in the market. Such products, they claimed, can be stored for long periods and do not need to be made on a regular basis.

Proponent cooperatives pointed out that the present Class I classification of cream and cream mixtures has placed these products in a poor competitive position in the marketplace relative to non-dairy 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 subtracting 48 cents from the sum of the above results. This formula price, when used in conjunction with the Minnesota-Wisconsin price, is commonly referred to in the trade as the "butter-powder snubber."

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 with 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 receipts 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 "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 stor-

able 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 lowfat cottage cheese, the receipts of dry curd would be allocated under the adopted provisions directly to the handler's Class II utilization. No handler obligation would apply under the order to such receipts.

The orders should provide that products manufactured in a pool plant during the month and then reprocessed, converted into, or combined with another product in the same plant during the same month not be defined as other source milk. A typical processing operation would be for a handler to make condensed skim milk from producer milk and then use the condensed product in making ice cream. It is intended under this situation that the producer milk be considered as having been used to produce ice cream. The condensing operation is merely one of the steps performed by the handler in processing ice cream from raw milk.

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 butterfat content. The remaining skim milk equivalent of the nonfat milk solids

[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.

in such product is classified in the lowest class.

The Neosho Valley and Fort Smith orders presently do not set forth a specific procedure for accounting for nonfat milk solids added to milk and milk products. As proposed by producers, such orders should be made uniform in this respect with the other orders under consideration.

Cooperatives proposed that the amount of a modified fluid milk product that is classified as Class I milk be the actual weight of the modified product rather than the weight of a like unmodified product. Proponents stated that the use of the weight of the modified product would accommodate some of the technical problems of laboratory analysis when this procedure is used in verifying the amount of nonfat milk solids added to natural milk or skim milk. They indicated that since the results of laboratory tests are expressed as a percentage of the weight of the product being tested, using the actual product weight factor would simplify the accurate accountability of modified products.

There was no showing of the extent to which laboratory analysis of modified products is used in verification by market administrators in these markets. Also, there is no indication that modified products are not being accounted for in an accurate manner. Thus, it is not clear from this record that the proposed procedure is necessary for more accurate product accounting or that it would result in any net saving in administrative cost.

Proponents did not attempt to demonstrate any economic basis for making the slightly greater charge for nonfat milk solids used to modify fluid milk products that would result from their proposal. Their proposed procedure would increase slightly the quantity of a modified product priced in Class I. A gallon of modified skim milk containing 11 percent nonfat milk solids, for example, would be classified in Class I on an 8.7 pounds weight factor as compared to the present basis of an 8.63 pounds weight factor.

The present method of classifying modified fluid milk products increases total Class I sales only to the extent of the volume of the unmodified product that the added nonfat milk solids replaces. In the absence of evidence that the present procedure is inappropriate, it should be continued. The present procedure is used under Federal orders generally and, therefore, carries out the objective of uniformity in this respect.

Handlers may add nonfat milk solids to several of the proposed Class II products, such as half and half and light cream. Each order should provide in this case that the entire weight of the skim milk equivalent of the solids added be classified in Class II. This procedure would differ from that applicable to modified fluid milk products in that no part of the skim milk equivalent of the added solids would be classified in the lowest class. As described in detail later, nonfat dry milk or condensed milk that is added to a Class II product would be allocated directly to the handler's Class II use. Thus, classification of the entire skim milk equivalent in Class II would not affect adversely the handler's pool obligation under this allocation procedure.

(c) *Classification of milk transferred or diverted to other plants.* Certain changes should be made in the provisions of each order that prescribe the classification of fluid milk products that are transferred or diverted from a pool plant to another plant. Several of the changes become necessary with the adoption of three classes of utilization in place of the present two classes. Other changes are appropriate for purposes of uniformity among orders and clarity in the classification of milk.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk form from a pool plant to another plant be classified in a manner similar to that now used in classifying transfers of bulk fluid milk products.

Each order now prescribes a procedure for classifying transfers of bulk fluid milk products from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant. To determine such classification, the nonpool plant's utilization must be assigned to its receipts of milk from each source. Some amplification of this procedure is appropriate to set forth clearly the priority for assigning the different types of plant use to the different sources of fluid milk products and bulk fluid cream products received at the nonpool plant.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the marketing area of a Federal order, and any transfers of packaged fluid milk products from the nonpool plant to plants fully regulated under such order, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under such order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned, first, to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under that order and, second, to any such remaining receipts from plants fully regulated under other orders.

Additional unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In 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

inventories of fluid milk products in the lowest class suggests that this procedure be used under all orders. Under this procedure, such inventories would be subject in the following month to reclassification in a higher class, as determined through the allocation of a handler's receipts to his utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory. This is the same reclassification procedure that now applies under the orders to inventories of fluid milk products in bulk form.

Fluid cream products in bulk form that are on hand at the end of the month likewise should be classified in Class III. As in the case of bulk milk, the final use of cream being held in bulk form is not necessarily apparent from that form. The cream must be followed to its ultimate use, which may be in any class. Accordingly, it is reasonable to classify any closing inventory of bulk cream in Class III and then apply a reclassification charge should the cream, as beginning inventory the following month, be allocated to a higher class.

Fluid cream products, yogurt and eggnog that are on hand in packaged form at the end of the month should be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the following month, would be allocated in the following month directly to the handler's Class II utilization.

Cooperatives proposed that for classification purposes ending inventory include only those products that are actually on the premises of a pool plant. Under their proposal, the premises of a plant would be limited to a location having equipment for receiving, cooling, processing, and storing milk. However, products being held in trucks parked at that location would not be a part of the handler's closing inventory. Also, a storage facility at a distributing point for packaged products in transit to wholesale and retail outlets would not be considered under their proposal as an extension of the premises of a plant. Cooperatives proposed also that ending inventory include any bulk milk that is in transit from a pool plant to another plant at the end of the month. Proponents claimed that defining ending inventory in this manner would facilitate the administration of the order.

The present orders do not specify at what point in a handler's distribution system fluid milk products shall be or shall not be considered for classification purposes as being in a handler's closing inventory. This is a matter that has been left to the accounting guidelines established by market administrators in their administration of the orders. It is recognized that at the close of the monthly accounting period fluid milk products that have been packaged but not yet delivered to the place of sale may be at any one of several places in a handler's distribution system. Depending on the handler's method of operation, such places could include the cold storage room within his processing plant, trucks parked on or near the plant's premises, distributing points, or trucks in transit to distributing points or places of sale. No significant problems concerning the determination of what constitutes closing inventory were brought to light at the hearing. Therefore, the cooperatives' proposal in this regard need not be adopted at this time.

For the first month that the revised classification plan is effective, certain transitional provisions relating to inventory should apply. Such provisions are necessary to assure that all handlers under an order will be subject to the same pricing for milk used in packaged fluid milk products and fluid cream products whether such products enter into the month's accounting as beginning inventory or are made from current receipts of producer milk.

As indicated, 22 of the orders under consideration presently classify ending inventories of fluid milk products, including cream items, in the lowest class. Thus, in the last month that the present classification plan is effective, handlers under these orders will have paid the corresponding class price for these products. In the first month under the new plan, such inventories that had been held over in the form of a fluid milk product or a bulk fluid cream product would be allocated to the extent possible to the handler's Class III utilization. Should such inventories be allocated to a higher class, the appropriate reclassification charge would apply.

Under the new plan, beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new amendments, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply if a higher classification results.

Under the remaining 10 orders, which now classify ending inventories of packaged fluid milk products in Class I, a pool credit should apply to such inventories in the first month that the revised classification plan is effective. Under the new plan, beginning inventories of fluid milk products and, for the first month, all fluid cream products would be allocated to the extent possible to Class III. Again, this allocation assumes that such inventories were priced at the lowest class price in the preceding month. Since such inventories in packaged form will have been priced at the preceding month's Class I price, handlers under these 11 orders should receive a credit on such packaged inventories equal to the difference between the preceding month's Class I price and lowest class price. If a higher classification results through the allocation procedure, the appropriate reclassification charge would apply.

(e) *Classification of shrinkage, milk dumped and milk disposed of for animal feed.* Each of the orders should provide for generally uniform provisions for classifying skim milk and butterfat dumped, disposed of for animal feed, or in shrinkage.

In the case of shrinkage, the cooperative associations requested that no change be made in the present order provisions, except to classify shrinkage in Class III insofar as it is now classified in the lowest class of each order.

The shrinkage provisions adopted herein are basically similar to the shrinkage provisions now effective under 27 of the 32 orders. The classification of shrinkage in the lowest use class (subject to certain limitations), as now provided in all the orders, would be continued under the adopted three-class system. Modifications of shrinkage provisions in the individual orders are in the nature of certain refinements now applicable under several of the orders.

The amount of shrinkage that may be classified in the lowest class under the 32 orders is presently limited with respect to receipts of producer milk and certain interplant transfers. In 31 of the orders, 2 percent is the maximum shrinkage allowed in the lowest class in the case of such receipts. One and one-half percent is the rate usually applicable to bulk receipts of interplant transfers, but generally no limit applies in the case of receipts of other source milk requested for lowest class use. These allowances are adopted for each order in the new uniform provisions.

Also adopted is the commonly used method of prorating total plant shrinkage to (1) those 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 shrinkage allowance for such milk from producers in the receiving and processing operations.

The provisions adopted herein are designed to carry out the appropriate division of shrinkage whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if he buys the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for the cooperative association delivering the milk.

As provided herein, 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 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 transferor-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 III 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 con-

sidered on the basis of a thorough exploration of the issue at another hearing.

A handler proposal for a single "loss" classification including shrinkage, animal feed and dumped products is not adopted. The proposal was not explored by interested parties on the record as to how it would affect handler and producer equities. There is no substantial basis on which to judge its merit and the proposal therefore is denied.

(f) *Allocation of receipts to utilization.* In adopting a revised classification plan under each of the 32 orders, conforming changes must be made in the provisions that prescribe how a handler's receipts from different sources shall be allocated to his utilization for the purpose of classifying producer milk. Of the 32 orders, all but seven provide for only two classes of utilization. Thus, changes in most of the orders are necessary to provide for the allocation of receipts to three classes of utilization rather than two classes. Also, all orders must be changed with respect to the allocation of beginning inventories, as previously described.

The adoption of three use classes requires a new consideration of how other source milk shall be allocated to a handler's utilization of milk. Under the present orders, other source milk is allocated in most cases to a handler's surplus uses to the extent possible, regardless of how it actually may have been used. The producers who are relied upon for a regular supply of milk for the local fluid market thus receive the highest possible classification of their milk. Depending on the supply conditions, milk from unregulated supply plants and other Federal order plants is permitted to share in varying degrees with local producer milk in the higher value of the handler's Class I sales.

In conjunction with the revised classification plan, however, handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products should be permitted to have such other source milk allocated directly to their Class II uses. Under the plan adopted herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

The national associations of fluid milk and ice cream processors proposed that if a three-class system is adopted handlers should have the option of having other source milk allocated to their Class II utilization rather than allocated to the extent possible to the lowest class. It was their position that the Class II price for producer milk should not be set at a level that is any higher than the cost to handlers of obtaining alternative supplies of milk or milk products for Class II use. These groups contended that with such pricing there is no justification for "down-allocating" to Class III any receipts of other source milk which actually may have been used in Class II.

Handlers indicated further that with optional allocation a handler could choose to use other source milk without the cost impact of down-allocation should the cost of such milk become less than the cost of producer milk for Class II use. Also, these groups stated that down-allocation of other source milk would imply an intent to provide undue protection of the Class II market for producers. They maintained that such protection is not justified, or apparently intended by producers in view of no producer proposal for a compensatory payment on other source milk used in Class II.

Cooperative associations, on the other hand, urged in connection with their proposal for three classes that producers have first claim on a handler's Class II use as well as on his Class I use.

In establishing a new intermediate price class, it is not intended that this outlet for producer milk necessarily be reserved for local producers. This new use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed under the revised classification plan on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk to any greater extent than presently for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use.

No provision should be made for the direct allocation to a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle in his plant any receipts of fluid other source milk with his receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating that he actually used fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk in essentially the same manner as now provided by the orders.

In this connection, it should be noted that under the revised classification plan each order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

An additional proposal concerning the "down-allocation" of other source milk was offered at the hearing by a handler operating distributing plants in several of the markets under consideration. The company's spokesman indicated that in one market the milk supply being furnished to it by the local producer cooperative was withheld by the cooperative in a particular month when the company refused to enter into a "full-supply" contract. The spokesman claimed that because the cooperative controlled about 85 percent of the producer milk on the market, the company was forced to acquire a supply of milk for the remainder of the month from another market. The spokesman indicated that although having purchased the outside milk for Class I use some of the milk was down-allocated to the plant's lowest utilization. This was because of the order provisions that now result in local producers receiving in large part first priority on a handler's Class I utilization. The handler proposed that if local producers refuse to supply a pool plant with sufficient milk for its Class I needs during the month, any supplies acquired from outside the market for Class I use not be down-allocated relative to receipts of producer milk.

The proposal should not be adopted. Any order provision intended to accommodate a handler in this one particular circumstance would be difficult to administer in an equitable manner. Handlers are not required by an order to purchase milk from any particular source. Similarly, producers are not required to supply any particular handler. In negotiating for the purchase, or sale of milk, either party may find the proposed terms unsatisfactory and thus may decide not to consummate the transaction. It would be difficult, if not impossible, for a market administrator to determine, however, which party actually decided not to enter into a purchase-sales agreement. Should a handler be able to acquire outside milk at a lesser cost than would be applicable to local producer milk, such handler would have an incentive to claim that local producers refuse to supply him with milk when, in fact, this was not the case.

Such administrative difficulties could be overcome, of course, through the adoption of provisions that do not down-allocate receipts of outside milk from selected sources, or from any source, for Class I use. This would be a major departure, however, from the allocation procedure now used under the present orders. This procedure, which was based on comprehensive hearings for all Federal order markets, resulted from the "compensatory payment" decisions con-

cerning 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 marketwide pooling should be revised to the extent necessary to remove the possibility of a handler being charged under the order at the Class I price for milk that already has been classified and priced as Class I milk under some Federal order. Certain of these orders already have been revised to remove any "double charge" on Class I milk. The order language previously adopted for this purpose should be made uniform, however, and should be included in the remaining orders not now containing such provisions.

No changes in this respect are necessary under the Memphis, Fort Smith, Austin-Waco and North Central Iowa orders. These orders employ individual-handler pooling and do not provide for any handler obligation on other source milk.

A "double charge" on Class I milk received at a pool plant from an unregulated nonpool plant could result in the following manner. Producer milk could be transferred in bulk from a pool plant under the Wichita order, for example, to an unregulated nonpool plant and be assigned to the nonpool plant's Class I utilization. In determining his pool obligation, the pool plant operator would be charged for this Class I utilization of milk at the Class I price. During the same month, bulk milk could be transferred from the nonpool plant to a pool plant under the Kansas City order and be allocated to such pool plant's Class I utilization. In this case, the operator of the pool plant would be charged under the Kansas City order the difference between the order's Class I price and weighted average price for this receipt of "other source" Class I milk. Thus, to the extent of the Class I milk that was moved to the nonpool plant from the Wichita market as Class I milk, the Class I other source milk received at the Kansas City pool plant from the nonpool plant is, in effect, priced twice as Class I milk under the Federal order system.

More and more, plants are tending to specialize in the processing of certain products, or in the packaging of products in particular types of containers. It is not uncommon for milk to be transferred from a pool plant to an unregulated nonpool plant for special processing and the finished products to be moved back into the regulated market. When the milk is initially priced at the Class I price, the market price structure is in no way undermined if this milk, or its equivalent, is disposed of by the nonpool plant in the regulated market.

The orders therefore should provide that the operator of the Kansas City plant, in this example, will have no obligation to the pool on such other source Class I milk. This is achieved through a revision of the allocation provisions and the procedure for computing the pool obligation of a pool plant operator. Receipts of packaged fluid milk products at a pool plant from an unregulated supply plant would be allocated to the pool plant's Class I utilization to the extent that an equivalent amount of skim milk or butterfat disposed of to the unregulated plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order. This allocation would be made prior to any other allocation of receipts to the plant's Class I utilization, and no order obligation would apply to the milk so allocated to Class I. In the case of fluid milk products received from an unregulated supply plant in bulk form, the provisions setting forth a handler's pool obligation would specify that no payment would apply to any of such milk allocated to Class I if, as just described for packaged milk, an equivalent amount of milk received at the unregulated plant had been priced as Class I milk under some order.

In this same connection, the provisions prescribing the obligation of a partially regulated distributing plant should be changed in each marketwide pool order. When such plant's obligation is computed as though it were a pool plant, proper recognition must be given to any transfers from the plant to a regulated plant that are considered to already have been priced as Class I milk under some Federal order. Also, in computing such plant's pool obligation on route sales in

[4] Official notice is taken of the Assistant Secretary's decisions issued on June 19, 1964 (29 F.R. 9002, 9110, and 9213), with respect to all milk orders then in effect.

a Federal order marketing area, recognition should be given to any receipt of milk at such plant from another unregulated plant if an equivalent amount of milk received at the latter plant already has been priced as Class I milk under an order.

Each order now imposes a handler assessment for administering the order on all other source Class I milk except that received in fluid form from an other order plant. This may include milk that already has been priced as Class I milk under some Federal order as described above. With the removal of a "double" Class I charge on such milk, each order should be changed to likewise remove any assessment on such milk for administrative expenses. It is presumed that such milk was subject to a similar charge under the order that initially priced the milk.

The marketwide pool orders should be changed also with respect to the application of location adjustments to other source Class I milk. As just described, each of the orders provides that a pool plant operator's obligation to the producer-settlement fund shall include a payment for fluid milk products received from an unregulated supply plant if they are allocated to Class I. The handler's payment is determined by charging him at the Class I price for the Class I other source milk and giving him a credit on the milk at the weighted average price (or uniform price in the case of those orders that do not provide for any type of seasonal production incentive plan). Both the Class I and weighted average prices are adjusted for the location of the unregulated supply plant. The adjustment of the weighted average price, though, is so limited as to be not less than the lowest class price. No such limitation is applied currently under most of the 32 orders to the Class I price adjustment.

Providing that any adjusted Class I price applicable to other source milk be not less than the Class III price is appropriate under each order. Otherwise, under certain conditions a handler could receive payment from the producer-settlement fund on Class I milk obtained from an unregulated supply plant. Such payment could result when the location differential for the distant plant is greater than the difference between the Class I and Class III prices. In this circumstance, producers under the order, in effect, would be providing the handler with a credit that reduces his cost for the distant milk below its value for manufacturing use at the point of purchase. From the standpoint of marketing efficiency, the handler should not be provided an incentive, which would be at the expense of local producers, to import such distant milk into the local market.

A similar situation now exists with respect to the obligation of the operator of a partially regulated distributing plant or an other order plant. In certain cases, the handler's obligation includes a payment to the producer-settlement fund at the difference between the Class I price applicable at his plant and either the weighted average price or the Class III price. For the same reasons, each order should provide, in computing the obligation of such a handler also, that the Class I price, as adjusted for location, shall not be less than the Class III price.

(h) *Reports.* The proposed changes in the classification of milk are not expected to require any major change in the amount of information to be submitted by handlers in their monthly reports of receipts and utilization. The reporting provisions of each order must be changed, however, to reflect the new categories of information that each market administrator will need in administering an order. These changes stem largely from the proposed reclassification of cream and the revised accounting methods necessary for implementing a three-class classification scheme.

In revising the reporting provisions of each order, such provisions should be made uniform to the extent possible. Essentially the same information is now required to be reported under each order, basically for the purposes of determining the classification of the milk and its classified value. There is considerable variation among these orders, however, in the manner in which the provisions on reports are expressed.

As proposed herein, the reporting provisions would be stated in some orders in slightly less detail than is now the case. The market administrator would have, nevertheless, no less authority than at present to obtain through handler reports, in the detail and on forms prescribed by the market administrator, any information the latter believes is necessary for administration of the order.

5. *Changing the butterfat differentials.* A single butterfat differential should apply under each order for adjusting prices to the actual butterfat content of the milk being priced. This differential should be the Chicago butter price multiplied by 0.115, rounded to the nearest 0.1 cent.

All 32 orders provide butterfat differentials for adjusting class prices and uniform prices for butterfat content. With two exceptions, each order bases the class butterfat differentials on the Chicago butter price, which would be continued under the revised orders. The Chicago butter price is the simple average of the wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk butter at Chicago as reported for the month by the U.S. Department of Agriculture. Under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, the Class II butterfat differential is based on the price of Grade AA (93-score) butter at New York City.

The handler butterfat differentials for each class are now computed by multiplying the butter price by a specified factor. In the case of the Class I butterfat differential, the factor is 0.120 under 19 orders and 0.125 under 11 orders. One order uses a factor of 0.130 and another a factor of 0.135.

The factor most commonly used in computing the butterfat differentials applicable to the surplus prices is 0.115, as prescribed by 18 orders. Eight orders use 0.110, while the factors 0.120 and 0.108 are used under two other orders. Four orders use a factor of 0.110 during the heavy production months and 0.115 during the remainder of the year.

The butterfat differential used in adjusting the uniform price to producers under 22 of the orders is the average of the butterfat differentials for each class, weighted by the proportion of producer milk in each class. Under six other orders, the butterfat differential to producers is determined by multiplying the Chicago butter price by 0.120. Two other orders use a factor of 0.110 under a similar computation, while another provides that this differential be computed by adding 4 cents to the Chicago butter price and multiplying the sum by 0.1. Under the Memphis order, the producer butterfat differential is determined from a fixed schedule of rates in the order which are related to the Chicago butter price, i.e., for each 5-cent change in the butter price, the butterfat differential changes 0.5 cent per point of butterfat.

Cooperative associations proposed that all class prices and uniform prices be subject to adjustment by a 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]

The impact of this change on a handler's average cost of producer butterfat for Class I use is dependent, of course, upon the average butterfat test of his Class I products and the butterfat differential now applicable to him. Thus, handlers in the 32 markets will be affected differently from lowering the Class I butterfat differential. An analysis of 1970 data for 30 of the 32 markets will serve to illustrate the general change in handlers' costs under the revised classification plan. Data for the Fort Smith

[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.

and Austin-Waco markets are not available.

It is estimated that in 18 of the 19 markets now using a Class I butterfat differential factor of 0.120 the average butterfat test of Class I products distributed by handlers (excluding cream and lowfat items) would have ranged in 1970 from 3.55 percent to 2.53 percent. Using the average test for these markets of 2.98 percent, the Class I price at test would have been increased 1.8 cents per hundredweight. For 10 of the 11 markets now using a Class I butterfat differential factor of 0.125, the average test of Class I milk would have ranged from 3.25 percent to 2.81 percent. Based on an average test 3.01 percent, using a factor of 0.115 in these markets would have increased the Class I price at test by 3.4 cents. The price increases would have been slightly greater in the Duluth-Superior and Central Arizona markets, where factors of 0.130 and 0.135, respectively, are used. Based on estimated Class I butterfat tests of 2.73 percent and 3.10 percent, the Class I price at test would have been increased 8.0 cents per hundredweight in the Duluth-Superior market and 5.6 cents in the Central Arizona market.

Handlers opposed any change in the Class I butterfat differentials on the basis that the relationship of skim milk and butterfat values had already been altered by a change on April 1, 1971, in the purchase prices for dairy products under the Department's price support program. They pointed out that this change, as reflected in order prices, increased handlers' cost of skim milk about 10 cents per hundredweight. Handlers argued that in view of this any further increase in the value of skim milk should be delayed until there has been an opportunity to observe the market response to the effects of the price support change.

There is no evidence to suggest that Class I sales of skim milk and lowfat products were affected adversely by the price support action. Data for 58 Federal order markets indicate that average daily sales of these products in 1971 increased 2.1 million pounds over such sales in 1970. Monthly data show no drop in sales following the support price change in the early part of 1971. Adopting a lower Class I butterfat differential at this time gives recognition to the lower market value now associated with butterfat in Class I products.

Using a single factor of 0.115 for computing Class II and Class III butterfat differentials will result in a uniform adjustment of class prices for butterfat content among the markets under consideration. Continuation of the several butterfat differential factors now in use would offset to some extent the benefits to be gained through the adoption of a uniform classification plan.

A handler proposed that the butterfat differential factor for adjusting surplus prices be 0.110 rather than 0.115 as proposed by cooperatives. Proponent indicated that in disposing of surplus cream handlers usually are not able to recover their cost of such cream under the order. A Class II–Class III butterfat differential factor of 0.110, it was argued, would provide handlers with some price relief in this circumstance.

The record does not indicate that the adoption of 0.115 as the butterfat differential factor for pricing surplus milk will hinder the removal of surplus butterfat from the fluid market. Of the 32 orders, 22 now use a factor of 0.115, and one uses a factor of 0.120, for pricing surplus milk. The handler proposing the 0.110 factor was the only opponent of the 0.115 factor proposed by cooperatives. The great majority of residual butterfat is disposed of by the cooperatives rather than handlers. It must be concluded that the adoption of the handler's proposal under present marketing conditions would return to producers in most cases less than the obtainable market value for butterfat not needed for Class I purposes.

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 butter fat 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 the prices paid for manufacturing grade milk in Minnesota and Wisconsin. These prices are closely related to the market values of cheddar cheese, nonfat dry milk and butter, the principal uses for such milk in the month of delivery of the raw milk. These product prices are established on a regular basis in a market that is national in scope. The manufacturers of ungraded milk are fully aware of the movements of these product prices, which are published weekly, and can adjust their pay prices for milk in response to changes in the prices for the finished products. Regulated handlers who are processing these particular products must compete in the same national market in which the processors of manufacturing grade milk are competing and the same product price information is available to them.

In most of the markets under consideration, substantial quantities of milk are disposed of by regulated handlers in the form of butter, nonfat dry milk or cheese. In 1970 over one billion pounds of milk, or 88 percent of the market's total Class II use, were so disposed of by handlers in the Minneapolis-St. Paul market. In the Minnesota-North Dakota, Southeastern Minnesota-Northern Iowa, Duluth-Superior, Cedar Rapids-Iowa City, Eastern South Dakota, Oklahoma Metropolitan and North Central Iowa markets, over 80 percent of each market's total Class II milk was used that year in manufacturing these products. Although lesser quantities of milk were used in such products in the other markets, only in four markets (Memphis, Fort Smith, Central West Texas and Rio Grande Valley) did such uses represent less than 20 percent of the total Class II use for each market. Thus, handlers in most of the 32 markets have a very definite interest in the relationship of the applicable class price with prices being paid currently for manufacturing grade milk. Accordingly, the prices paid by regulated handlers for Class III milk should correspond very closely with the pay prices during the month of delivery for manufacturing grade milk if these handlers are to be competitive in the sale of the principal surplus products.

The same considerations are involved in the case of an advance announcement of prices for milk used in the proposed Class II products. The influence of the manufacturing milk price level on the competitive relationship of producer milk for Class II uses is similar to that for producer milk used in the proposed Class III products. Therefore, the prices for Class II milk should be announced on the same basis as the price for Class III milk.

In connection with the announcement of surplus prices, a comment should be made concerning the transition from the present pricing provisions to the new ones adopted herein. It is intended that the present surplus prices apply to producer milk delivered to handlers during the last month under the present classification and pricing scheme. Clarification of this point is pertinent since such prices would be announced following the effective date of the new pricing provisions.

7. *Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders.* The Minneapolis-St. Paul, and Southeastern Minnesota-Northern Iowa orders should be changed to provide that the skim milk ingredient of "filled milk" shall be classified and priced as Class I milk.

The provisions provided herein are substantially those which were proposed for consideration at the hearing by a cooperative association operating in these markets.

In 1968, proposals to classify and price the skim milk component of filled milk were considered for most orders at a hearing held in Memphis, Tenn. The decision resulting from the hearing classified the skim milk component of filled milk in the same way as the skim milk component of natural milk. It provided a means of equating the cost of skim milk in filled milk if it originates from sources other than producer milk with the cost if derived from producer milk.

At the time of the 1968 hearing, the Southeastern Minnesota-Northern Iowa order had not been issued, and the Minneapolis-St. Paul order could not be amended in this respect because of a marketing area expansion to which the filled milk hearing did not apply. As a result, these orders do not contain the uniform provisions dealing with filled milk provided in all other Federal milk orders.

Filled milk is a combination of skim milk and vegetable fat or oil in about the same proportions as the skim milk and milk fat in whole milk. Well over 90 percent of the product is skim milk. In most filled milk, the skim milk portion is fresh fluid skim milk separated from whole milk. Some filled milk contains reconstituted fluid skim milk prepared from a concentrated product such as nonfat dry milk. Whether made from vegetable fat and fresh or reconstituted skim milk or any combination of the two, filled milk resembles whole milk in appearance.

Regulated handlers disposing of filled milk make a substantial savings in cost by substituting vegetable fat or oil for butterfat. This is the main incentive for the marketing of filled milk. While the difference in cost between vegetable fat and butterfat is not an issue at this hearing, it is relevant to the extent that it explains the profit motivation for marketing the product relative to the marketing of natural milk.

At the present time, no filled milk is distributed in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas. In those regulated markets where filled milk is distributed, it moves in the same channels as whole milk. It is distributed by the same handlers in the course of their regular business through the same outlets for natural milk and in the same types of containers.

Filled milk, if disposed of in either the Minneapolis-St. Paul or the Southeastern Minnesota-Northern Iowa marketing area, would directly burden, obstruct, or affect interstate commerce in milk and milk products. It previously has been determined (at the time of the promulgation of each of these orders) that all milk marketed in each marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and milk products.

Filled milk is in content substantially a product of milk and competes for the same sales outlets as milk. It follows, therefore, that the marketing of the milk ingredients in filled milk in either of the two markets would burden, obstruct, or affect interstate commerce in milk and milk products. This would be equally true whether the marketing of filled milk were by a fully regulated plant or by a plant not fully regulated because both would compete for similar outlets in the market.

Also, manufactured milk products are sometimes used in the production of filled milk. Manufactured milk products move in interstate commerce and compete in the national market, regardless of where the milk is produced. Therefore, manufactured milk products, if used in the production of filled milk for disposition in either the Minneapolis-St. Paul or Southeastern Minnesota-Northern Iowa market, likewise would burden, obstruct, or affect interstate commerce in milk and its products.

The classification of the dairy ingredients of filled milk is a proper consideration derived from the Agricultural Marketing Agreement Act. As stated in the decision resulting from the filled milk hearing in Memphis, Tenn., the "specific language of the Act with respect to classification is that each order shall contain terms '* * * classifying milk in accordance with the form in which or the purpose for which it is used * * *'. In applying the language of the Act we here consider the form and purpose of use for both filled milk and the milk ingredient content of the filled milk.

"The form of filled milk and the purpose for which it is used are the same as the form and purpose of use of whole milk. Filled milk, just as whole milk, is disposed of in fluid form. It is marketed by handlers in the same types of pack-

ages and in the same trade channels as the whole milk they market, and is mainly intended as a beverage substitute for milk.

"Similarly, the fluid skim milk content of the filled milk is in the same form as skim milk in whole milk and serves the same purpose, providing in each case the main body of the product thereby making it a milk beverage. The addition of the nonmilk ingredients, principally vegetable fat or oil and stabilizers, does not alter the basis for Class I classification. The addition of nonmilk ingredients in fluid milk products is not a new development. The addition of vegetable fat does not involve an essentially different consideration from that for other Class I fluid milk products to which a flavoring ingredient, such as chocolate (which also contains nonmilk fat) has been added.

"For purpose of illustration, a product within the 'fluid milk product' category containing a nonmilk additive is chocolate milk. The additive is not considered as changing the form of this product so that it is no longer a fluid milk product. For the purposes of classification, the flavoring material has never been regarded as significant in determining the form of the product or as a basis for altering its classification.

"The same reasoning applies in the case of filled milk—that the additives do not change significantly the form or the purpose of use and therefore do not constitute a basis for classification other than in Class I.

"The product 'filled milk' therefore should be classified, for the purpose of pricing under the orders, in the same manner as whole milk. As in the case of other fluid milk products containing some nonmilk ingredients, the classification would apply only to the milk ingredients in the product."

No opposition to the filled milk proposal was expressed at the hearing or in briefs submitted by interested parties.

Based on the testimony of proponent, which related specifically to the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, it is found that the above findings from the Memphis decision are equally applicable to this proceeding. Accordingly, they serve as the basis for concluding that the milk ingredients of filled milk should be classified and priced under the two orders as Class I milk.

Proponent testified also that filled milk may be made by combining reconstituted skim milk with vegetable fat and other minor ingredients. Reconstituted skim milk commonly is made from nonfat dry milk to which water is added to return it essentially to a form and consistency similar to fresh skim milk. Its potential as a disruptive influence on the market for producer milk is substantial, however, since the disposition of any Class I product that has been priced at the surplus price level undermines the classified pricing system.

As was found in the filled milk decision referred to earlier, filled milk made from reconstituted skim milk is, from a marketing standpoint, essentially similar to filled milk made from fresh skim milk. It is a competitor of whole milk at the consumer level. Therefore, reconstituted skim milk in filled milk, as in other fluid milk products, should be classified and priced on the same basis as all other fluid milk products to achieve uniformity in the pricing of milk for similar uses.

Federal milk orders, including the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, have contained for some time specific provisions dealing with the disposition by a regulated handler of other fluid milk products reconstituted from nonfluid milk products. The issue of proper classification and charge for such use of nonfluid milk products to produce products for Class I disposition was dealt with for most orders in the compensatory payment decisions referred to earlier in this decision. The findings and conclusions that relate to the reconstitution of milk appeared at 29 F.R. 9010. The regulatory treatment of reconstituted products that is described in the compensatory payment decisions and reiterated in the later filled milk decision is appropriately applicable to any reconstituted skim milk used in filled milk that may be disposed of in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas.

It should be noted that these two orders now provide that a producer-handler would lose his status as such and become a fully regulated handler if he disposes of fluid milk products made from reconstituted skim milk. Since the fluid milk product definition would include filled milk under the amendments adopted herein, loss of producer-handler status would result also from the sale of reconstituted filled milk.

A definition of filled milk should be provided in the two orders to meet the specific needs of order regulation, and for such purpose only. This definition, which would be identical to the filled milk definition in all other orders, should be as follows:

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

The term "filled milk" is not intended to include skim milk marketed in a form or for a purpose specifically excluded from the fluid milk product definition of either order. For example, evaporated milk is a use of skim milk and butterfat not treated as a fluid milk product in either order. If a product containing skim milk and any amount of vegetable fat were marketed in the same form and manner as evaporated milk, it would be excluded from the term "filled milk."

The regulatory treatment of filled milk adopted herein requires numerous conforming changes throughout the order. Accordingly, all the conforming changes found necessary on the basis of the Memphis hearing to implement the filled milk amendments are incorporated herein wherever applicable.

8. *A uniform "equivalent price" provision.* Each of the 32 orders included in this proceeding should be amended to the extent necessary to provide identical language for determining an equivalent price, or price constituent, when a price or price constituent is not available as prescribed by the order.

At present, all of the 32 orders except the Minnesota-North Dakota order provide for computing an equivalent price as needed. Such provisions are not identical, however, among the orders. A dairy division proposal for a uniform equivalent price provision under each order was supported by a witness for the National Milk Producers Federation.

An equivalent price provision is necessary in each of the orders to provide a price, or price constituent, in cases where published prices, indexes, quotations, or other pricing constituents as prescribed by the order are not available. It insures that basic formula prices, class prices, and butterfat differentials can be computed, as prescribed, in emergency situations without interruption.

All the orders now rely on butter price quotations for computing butterfat differentials. All rely on the Minnesota-Wisconsin price series for computing the basic formula price and Class I prices. As proposed herein, this price series would be used also in establishing Class II and Class III prices under each order.

Under unusual circumstances, these published prices and price constituents might not be available for use in computing order prices. If there were insufficient trading during the month in butter, for example, or if the specific butter price quotations were discontinued, the prescribed butterfat differentials could not be computed without an equivalent price provision. By providing for the determination of an equivalent price as needed, the Department is in a position to draw on comprehensive resource data to assure that the computation of the basic formula price, the class prices, or the butterfat differentials is not interrupted by the contingencies cited.

For these reasons, it is concluded that the Minnesota-North Dakota order should provide for the determination of an equivalent price in the same manner as the other orders included in this proceeding.

In providing for a determination of equivalent price, the same objective is sought for each order. It is appropriate, therefore, to provide for identical provisions in each order. Then, if a determination had to be made for more than one order simultaneously, there would be no question as to the applicability of the determination to each order.

Accordingly, the equivalent price provision in each order should be stated as follows:

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing

constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

A corollary change should be made in the Class I price provisions of the Neosho Valley order. This order provides that the Class I price shall be based in part on the Class I price "under Part 1067 of this chapter regulating the handling of milk in the Ozarks marketing area." At the time the Ozarks order was merged with the St. Louis order, a determination of equivalent price was issued for the Neosho Valley order (33 F.R. 15107) which stated in part that:

> For the purpose of computing the Neosho Valley Class I price, the Class I price announced for Zone 1 under the St. Louis-Ozarks milk order (Part 1062) will be equivalent to the price specified in § 1071.51(a) (2) of the Neosho Valley order and should be used in lieu thereof in computation of the Class I price of the Neosho Valley order until such time as the Neosho Valley order may be amended.

This determination of equivalent price, which was issued in October 1968, is still in effect. This proceeding affords an opportunity to amend the Neosho Valley order as prescribed in the determination. Thus, the order language quoted earlier should be revised to read "under Part 1062 of this chapter regulating the handling of milk in the St. Louis-Ozarks marketing area."

### Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

### General Findings

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

### 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 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 area 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 [1] 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 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 whole-

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

some 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 specified 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:

The following sections of each order have been changed: § .12(b); § .14(a); § .15(a)(2); § .40(b)(4) and (c)(1); § .41(a)(2) and (b)(7); § .44(a) (8), (11), and (12); and, except for part 1104, § .50(c).

## PART 1104—MILK IN RED RIVER VALLEY MARKETING AREA

### Subpart—Order Regulating Handling

GENERAL PROVISIONS

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1104.1 General provisions.

DEFINITIONS

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1104.3 Route disposition.
1104.4 [Reserved]
1104.5 Distributing plant.
1104.6 Supply plant.
1104.7 Pool plant.
1104.8 Nonpool plant.
1104.9 Handler.
1104.10 Producer-handler.
1104.11 [Reserved]
1104.12 Producer.
1104.13 Producer milk.
1104.14 Other source milk.
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HANDLER REPORTS

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CLASS PRICES

1104.50 Class prices.
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1104.52 Plant location adjustments for handlers.
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UNIFORM PRICE

Sec.
1104.60 Handler's value of milk for computing uniform price.
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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1104.85 Assessment for order administration.
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ADVERTISING AND PROMOTION PROGRAM

1104.110 Agency.
1104.111 Composition of Agency.
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1104.116 Duties of the Agency.
1104.117 Advertising, Research, Education and Promotion Program.
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1104.120 Procedure for requesting refunds.
1104.121 Duties of the market administrator.
1104.122 Liquidation.

AUTHORITY: The provisions of this Part 1104 issued under Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

### § 1104.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

### § 1104.2 Red River Valley marketing area.

"Red River Valley marketing area", hereinafter called "the marketing area", means all territory within the following counties, including all municipal corporations; Federal reservations, facilities, and installations; and State institutions located therein:

OKLAHOMA COUNTIES

Bryan.
Caddo.
Carter.
Choctaw.
Comanche.
Cotton.
Grady.
Jackson.
Jefferson.
Johnston.
Kiowa.
Love.
Marshall.
Murray.
Pushmataha.
Stephens.
Tillman.

TEXAS COUNTIES

Archer.
Baylor.
Clay.
Hardeman.
Montague.
Wichita.
Wilbarger.

### § 1104.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk, other than a delivery to a milk or filled milk plant.

### § 1104.4 [Reserved]

### § 1104.5 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Approved by a duly constituted health authority for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition of fluid milk products.

### § 1104.6 Supply plant.

"Supply plant" means a plant from which fluid milk products are transferred to a distributing plant(s) during the month.

### § 1104.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Total route disposition of fluid milk products (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operator under the limitations of § 1104.13; and

(2) Route disposition of fluid milk products (except filled milk) in the marketing area in an amount not less than 15 percent of the total route disposition of the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 50 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1104.12 if such plant qualifies pursuant to this paragraph and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under this paragraph during each of the months of September through December shall continue so qualified in each of the following months of January through August until any month of such period in which less than 20 percent of the plant receipts and diverted milk specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January–August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts and diverted milk specified previously herein.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of an other Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institution;

(3) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; or

(4) A supply plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part.

**§ 1104.8 Nonpool plant.**

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant, except an other order plant or a producer-handler plant, from which there is route disposition in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1104.7 and which is not an other order plant or a producer-handler plant.

**§ 1104.9 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of producers diverted for the account of such association pursuant to § 1104.13;

(c) A cooperative association with respect to milk of its member producers picked up at the farm for delivery to the pool plant of another handler in a tank truck owned or operated by such association, or under the control of such association, by contract or otherwise, to the extent that such association supervises and controls the determination of farm weights and tests of the milk of each of such member producers;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1104.7(c)

**§ 1104.10 Producer-handler.**

"Producer-handler" means any person who produces milk and who operates a plant from which the route disposition in the marketing area does not exceed such person's own production and fluid milk products received from a pool plant regulated under either this Part or Part 1106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

**§ 1104.11 [Reserved]**

**§ 1104.12 Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted health authority, which milk is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1104.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1104.44(a)(8)(iii) and the corresponding step of § 1104.44(b); and

(3) Any person with respect to milk produced by him which is 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.

**§ 1104.13 Producer milk.**

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

(a) Received by the operator of a pool plant at such pool plant from producers;

(b) Received by the operator of a pool plant at such pool plant from a handler described in § 1104.9(c);

(c) Diverted by the operator of a pool plant from such pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (f) of this section;

(d) Received from producers by a handler described in § 1104.9(c) in an amount in excess of the quantity delivered by such handler to pool plants pursuant to paragraph (b) of this section; or

(e) Diverted by a cooperative association for its account from the pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (f) of this section;

(f) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert for its account, subject to the conditions of paragraph (f)(3) of this section, a total quantity of milk not in excess of total milk of its member-producers received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association;

(2) The operator of a pool plant other than a cooperative association may divert for his account, subject to the conditions of paragraph (f)(3) of this section, milk of producers not members of a cooperative association diverting milk pursuant to paragraph (f)(1) of this section, in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant; and

(4) Milk qualified as producer milk that is diverted by a handler to a nonpool plant pursuant to this section shall be accounted for as received by the diverting handler at the location of the nonpool plant.

**§ 1104.14 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1104.40(b)(1) from any source other than producers, handlers described in § 1104.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1104.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1104.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1104.40(b)(1)) for which the handler fails to establish a disposition.

**§ 1104.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1104.40 (b) or (c)(1) (i) through (v) if is contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

**§ 1104.16 Fluid cream product.**

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1104.17 Filled milk.**

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

**§ 1104.18 Cooperative association.**

"Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) Has and is exercising full authority in the sale of milk of its members.

HANDLER REPORTS

**§ 1104.30 Reports of receipts and utilization.**

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1104.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1104.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1104.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

**§ 1104.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1104.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1104.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

**§ 1104.32 Other reports.**

(a) Each handler who causes milk to be diverted to a nonpool plant shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which it is to be diverted.

(b) In addition to the reports required pursuant to §§ 1104.30 and 1104.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

**§ 1104.40 Classes of utilization.**

Except as provided in § 1104.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1104.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1104.15; and

(6) In shrinkage assigned pursuant to § 1104.41(a) to the receipts specified in § 1104.41(a)(2) and in shrinkage specified in § 1104.41 (b) and (c).

**§ 1104.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1104.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product 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 § 1104.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1104.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent. If farm weights and tests are not used as the basis for any such milk commingled in a tank truck with milk of producers who are not members of the cooperative association, the milk received from the cooperative association shall be the proportion of the total receipts at the plant that such milk was of the total receipts determined at the respective farms;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 § 1104.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1104.42 Classification of transfers and diversions.**

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1104.44(a)(12) and the corresponding step of § 1104.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1104.44(a)(7) or the corresponding step of § 1104.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1104.44(a) (11) or (12) or the corresponding steps of § 1104.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3), of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1104.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1104.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

### § 1104.43 General classification rules.

In determining the classification of producer milk pursuant to § 1104.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1104.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1104.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1104.40, 1104.41, and 1104.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1104.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

### § 1104.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1104.9(a) for each of his pool plants separately and of each handler described in § 1104.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1104.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1104.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1104.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1104.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1104.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III 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 § 1104.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) 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:

(b) The total pounds of skim milk remilk of all handlers in each class as announced for the month pursuant to § 1104.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (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 § 1104.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

### § 1104.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1104.44(a)(12) and the corresponding step of § 1104.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1104.44 on the basis of such report, and, therafter, any change in such allocation required to correct errors disclosed in the 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 and the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports the milk so received from members of such association shall be prorated to each class in accordance with the same percentage as the total receipts of producer milk bear to such utilization of milk by such handler.

## Class Prices

### § 1104.50 Class prices.

Subject to the provisions of § 1104.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the price for Class I milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area at Oklahoma City, plus 22 cents.

(b) *Class II price.* The Class II price shall be the price for Class II milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

(c) *Class III price.* The Class III price shall be the price for Class III milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

### § 1104.51 [Reserved]

### § 1104.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the State of Texas and more than 40 miles from Wichita Falls, Tex., and classified as Class I milk or assigned a Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1104.50(a) shall be reduced at the rate set forth in the following schedule. The distance shall be based on the shortest highway distance, as determined by the market administrator, that the plant is from the City Hall in Wichita Falls, Tex.

| *Distance (miles)* | *Rate per hundredweight (cents)* |
|---|---|
| 40.1–70 | 12 |
| 70.1–100 | 15 |
| For each additional 10 miles or fraction thereof in excess of 100 miles an additional | 1.5 |

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant in an amount not in excess of that by which such Class I disposition exceeds 95 percent of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

### § 1104.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for

the following month and the Class II and Class III prices for the preceding month.

**§ 1104.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

**§ 1104.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1104.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1104.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1104.44(a)(14) and the corresponding step of § 1104.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1104.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1104.44(a)(9) and the corresponding step of § 1104.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1104.44(a)(7) (i) through (iv) and the corresponding step of § 1104.44(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 § 1104.44(a)(7) (v) and (vi) and the corresponding step of § 1104.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1104.44(a)(11) and the corresponding step of § 1104.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

**§ 1104.61 Computation of uniform price.**

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received as follows:

(a) Combine into one total the values computed pursuant to §1104.60 for all handlers who filed the reports prescribed by §1104.30 for the month and who made the payments pursuant to §§1104.71 and 1104.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to §1104.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1104.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The results shall be the "uniform price" for milk received from producers.

**§ 1104.62 Announcement of uniform price and butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

**§ 1104.70 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1104.71, 1104.76, and 1104.77 subject to the provisions of § 1104.78, and from which he shall make all payments to handlers pursuant to §§ 1104.72 and 1104.77: *Provided*, That any payments due to any handler may be offset by any payments due from such handler.

**§ 1104.71 Payments to the producer-settlement fund.**

(a) On or before the 13th day after the end of the month, each person shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1104.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1104.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1104.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

**§ 1104.72 Payments from the producer-settlement fund.**

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1104.71(a)(2) exceeds the amount computed pursuant to § 1104.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the necessary funds are available.

**§ 1104.73 Payments to producers and to cooperative associations.**

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month, to each producer who did not discontinue shipping milk to such handler during the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such

producer during the first 15 days of the month;

(2) On or before the 15th day of the following month, an amount equal to not less than the applicable uniform price, as adjusted pursuant to §§ 1104.74 and 1104.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to paragraph (a)(1) of this section, (ii) less deductions for marketing services made pursuant to § 1104.86, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment pursuant to § 1104.72, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 27th and 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member-producer (*a*) the total pounds of milk received during the preceding month, (*b*) the total pounds of butterfat contained in such milk, (*c*) the number of days of production included in such receipts, and (*d*) the amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month written information which shows for each such member-producer the total pounds of milk received during the first 15 days of the current month.

The foregoing payment and submission of information shall be made with respect to the milk, of each producer who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a handler described in § 1104.9(c), shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(i) Partial payment for milk received during the first 15 days of the month at the rate specified in paragraph (a) of this section; and

(ii) In making final settlement, the value of such milk at the uniform price, as adjusted pursuant to §§ 1104.74 and 1104.75, less the amount of partial payment made for such milk.

### § 1104.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

### § 1104.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1104.73 for producer milk received at a pool plant, the uniform price computed pursuant to § 1104.61 shall be reduced according to the location of the pool plant at the rate set forth in § 1104.52(a);

(b) For the purpose of computations pursuant to §§1104.71 and 1104.72, the uniform price plus 5 cents shall be adjusted at the rate set forth in § 1104.52 (a) applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price); and

(c) In making payments to producers pursuant to § 1104.73 for producer milk diverted from a pool plant to a nonpool plant, the uniform price computed pursuant to § 1104.61 shall be reduced according to the location of the nonpool plant at which the milk is received at the rate set forth in § 1104.52(a).

### § 1104.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1104.30(b) and 1104.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) 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 § 1104.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant.

Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1104.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1104.60 for such handler shall include, in lieu of the value of other source milk specified in § 1104.60(f) less the value of such other source milk specified in § 1104.71(a)(2)(ii), a value of milk determined pursuant to § 1104.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1104.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1104.30 (b) and 1104.31(b) similar reports for each nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1104.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1104.74, for milk 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 § 1104.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

### § 1104.77 Adjustment of accounts.

(a) Whenever audit by the market administrator or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such errors occurred.

### § 1104.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1104.71, 1104.77, 1104.85, or 1104.86 shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and compounded on the first day of each month thereafter until such obligation is paid.

## Administrative Assessment and Marketing Service Deduction

### § 1104.85 Assessment for order administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1104.13(b) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1104.44(a)(7) and (11) and the corresponding steps of § 1104.44(b), except such other source milk that is excluded from the computations pursuant to § 1104.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1104.76(a)(2).

### § 1104.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1104.73 shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

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## Advertising and Promotion Program

### § 1104.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1104.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

### § 1104.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1104.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1104.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1104.113(b), has a majority of the participating produc-

ers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

**§ 1104.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1104.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1104.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the 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.

**§ 1104.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

**§ 1104.115 Powers of the Agency.**

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1104.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1104.110 and 1104.117.

**§ 1104.116 Duties of the Agency.**

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1104.110 and 1104.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secreetary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

**§ 1104.117 Advertising, Research, Education, and Promotion Program.**

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

**§ 1104.118 Limitation of expenditures by the Agency.**

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1104.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

**§ 1104.119 Personal liability.**

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1104.120 Procedure for requesting refunds.**

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the

remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

**§ 1104.121 Duties of the market administrator.**

Except as specified in § 1104.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1104.113(c).

(b) Set aside the amounts subtracted under § 1104.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1104.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1104.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1104.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1104.110 through 1104.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

**§ 1104.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1104.70.

## PART 1106—MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

### Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1106 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

**§ 1106.1 General provisions.**

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

**§ 1106.2 Oklahoma Metropolitan marketing area.**

"Oklahoma Metropolitan marketing area", hereinafter called the "Marketing Area", means all the territory within Tulsa County, the city of Sapulpa, and the township of Sapulpa in Creek County; that part of Black Dog Township in 20 North. Ranges 10, 11, and 12 East in Osage County; the cities of Muskogee, McAlester, Ponca City, and Tahlequah; Oklahoma County, except Deer Creek, Deep Fork, and Luther Townships; Moore, Taylor, Case, Liberty, Norman, and Noble Townships in Cleveland County; Bales, Davis, Dent, Brinton, Rock Creek, Forest, and Earlsboro Townships in Pottawatomie County; the city and township of Guthrie in Logan County; the city and township of Stillwater and Union Township, including the city of Cushing in Payne County; and the city of Enid and Vance Air Force Base in Garfield County; all in the State of Oklahoma.

**§ 1106.3 Route disposition.**

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery in bulk to a milk or filled milk plant.

**§ 1106.4 [Reserved]**

**§ 1106.5 Distributing plant.**

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Approved by a duly constituted health authority for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition of fluid milk products.

**§ 1106.6 Supply plant.**

"Supply plant" means a plant from which fluid milk products are transferred

to a distributing plant(s) during the month.

**§ 1106.7 Pool plant.**

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operator under the limitations of § 1106.13; and

(2) Route disposition (except filled milk) in the marketing area in an amount not less than 15 percent of the total route disposition of the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 50 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1106.12 if such plant qualifies pursuant to this paragraph and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under this paragraph during each of the months of September through December shall continue so qualified in each of the following months of January through August until any month of such period in which less than 20 percent of the plant receipts and diverted milk specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January–August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts and diverted milk specified previously herein.

(c) A plant(s) operated by a cooperative association and located not more than 50 miles from the City Hall of Tulsa or Oklahoma City, Okla., at which milk is received from dairy farmers producing milk approved by a duly constituted health authority for fluid consumption if the total of fluid milk products described in paragraph (c) (1) and (2) of this section received at plants described pursuant to paragraph (a) of this section is not less than 50 percent of total milk of member producers during the month:

(1) Fluid milk products (except filed milk) transferred from such cooperative association plant(s); and

(2) Milk of member producers received from such producers.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or governmental agency plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; or

(4) A supply plant qualified pursuant to paragraph (b) of this section which meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part.

**§ 1106.8 Nonpool plant.**

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant, a governmental agency plant, nor a producer-handler plant, from which there is route disposition in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant, except an other order plant, a governmental agency plant, or a producer-handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1106.7

(e) "Governmental agency plant" means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

**§ 1106.9 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants: *Provided*, That in the case of recognized divisions of a corporation which are operated as separate business units, each such division shall be deemed to be a handler;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to § 1106.13 for the account of such cooperative association;

(c) A cooperative association with respect to the milk of its member producers delivered to the pool plant of another handler in a tank truck owned or operated by such cooperative association for the account of such cooperative association. Such milk shall be considered to have been received by such cooperative association at the location of the plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1106.7(d).

**§ 1106.10 Producer-handler.**

"Producer-handler" means any person who produces milk and operates a plant which meets the standards in § 1106.5(a) from which there is route disposition in the marketing area, but who receives no milk from producers or other dairy farmers, and whose disposition of Class I milk does not exceed his own production and fluid milk products received from pool plants.

**§ 1106.11 [Reserved]**

**§ 1106.12 Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted health authority, which is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1106.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1106.44(a)(8)(iii) and the corresponding step of § 1106.44(b); and

(3) Any person with respect to milk produced by him which is 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.

§ 1106.13 Producer milk.

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

(a) Received by the operator of a pool plant at such pool plant from producers.

(b) Diverted by the operator of a pool plant from such pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section.

(c) Received from producers by a handler described in § 1106.9(c).

(d) Diverted by a cooperative association for its account from the pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section.

(e) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert for its account, subject to the conditions of paragraph (e)(3) of this section, a total quantity of milk not in excess of total milk of its member-producers received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association;

(2) The operator of a pool plant other than a cooperative association may divert for his account, subject to the conditions of paragraph (e)(3) of this section, milk of producers not members of a cooperative association diverting milk pursuant to paragraph (e)(1) of this section, in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant; and

(4) Milk qualified as producer milk that is diverted by a handler to a nonpool plant pursuant to this section shall be accounted for as received by the diverting handler at the location of the nonpool plant.

§ 1106.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1106.40(b)(1) from any source other than producers, handlers described in §1106.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1106.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1106.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1106.40(b)(1)) for which the handler fails to establish a disposition.

§ 1106.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1106.40 (b) or (c)(1) (i) through (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.

§ 1106.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1106.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk products, and contains less than 6 percent nonmilk fat (or oil).

§ 1106.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales or marketing milk or its products for its members.

§ 1106.19 Accounting period.

"Accounting period" shall mean a calendar month unless the handler during any calendar month makes a request in writing to the market administrator requesting two accounting periods during the month. No accounting period shall be of less than 5 days duration and the request for two accounting periods must be made at least 48 hours prior to the end of the first accounting period in the month.

HANDLER REPORTS

§ 1106.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for each accounting period in the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1106.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the accounting period of fluid milk products and products specified in § 1106.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1106.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk,

and milk products in such manner as the market administrator may prescribe.

**§ 1106.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1106.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1106.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

**§ 1106.32 Other reports.**

(a) Each handler who causes milk to be diverted to a nonpool plant, shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1106.30 and 1106.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

**§ 1106.40 Classes of utilization.**

Except as provided in § 1106.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1106.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1106.15; and

(6) In shrinkage assigned pursuant to § 1106.41 (a) to the receipts specified in § 1106.41 (a) (2) and in shrinkage specified in § 1106.41 (b) and (c).

**§ 1106.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1106.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product 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 § 1106.9 (c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 § 1106.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from

its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1106.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or 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 § 1106.44(a)(12) and the corresponding step of § 1106.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1106.44(a)(7) or the corresponding step of § 1106.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the tranferor-handler received during the month other source milk to be allocated pursuant to § 1106.44(a) (11) or (12) or the corresponding steps of § 1106.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1106.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1106.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool

plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

**§ 1106.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1106.44, the following rules shall apply:

(a) Each accounting period the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1106.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1106.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1106.40, 1106.41, and 1106.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1106.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

**§ 1106.44 Classification of producer milk.**

For each accounting period the market administrator shall determine the classification of producer milk of each handler described in § 1106.9(a) for each of his pool plants separately and of each handler described in § 1106.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1106.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1106.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1106.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III 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 § 1106.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1106.40(b)(1) in inventory at the beginning of the accounting period that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) 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 substracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1106.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (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 protation 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)(i) or (ii) of this section result 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 § 1106.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

### § 1106.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current avavilable data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1106.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so re-

quests the amount and class utilization of milk caused to be delivered by such cooperative association either directly or from producers who are members of such cooperative association, to each handler to whom the cooperative association sells milk. For the purposes of this report, the milk caused to be so delivered by a cooperative association shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

CLASS PRICES

**§ 1106.50 Class prices.**

Subject to the provisions of § 1106.52, the class prices for the month per hundred weight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.98.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

**§ 1106.51 Basic formula price.**

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

**§ 1106.52 Plant location adjustments for handlers.**

(a) At a plant in the State of Oklahoma, north of Beckham, Washita, Caddo, Canadian, Oklahoma, Pottawatomie, and Seminole Counties or east of Seminole, Pontotoc, Johnston, and Marshall Counties, and 50 miles or more from the city hall in Oklahoma City, the price specified in § 1106.50(a) for milk received from producers shall be reduced 10 cents plus 1.5 cents for each 10 miles or fraction thereof that such plant is more than 150 miles from Oklahoma City.

(b) At a plant outside the States of Oklahoma and Texas, the price specified in § 1106.50(a) for milk received from producers shall be the price applicable at Tulsa or Ponca City, Okla., pursuant to paragraph (a) of this section reduced by 1.5 cents for each 10 miles or fraction thereof that such plant is from the nearer of the city halls in Tulsa or Ponca City.

(c) The distances applied pursuant to paragraphs (a) and (b) of this section shall be the shortest hard-surfaced highway distances as determined by the market administrator.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

(e) For purposes of calculating location adjustments, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in an amount not in excess of that by which 105 percent of Class I disposition at the transferee plant exceeds the sum of receipts at such plant from producers and handlers described in § 1106.9(c), and the pounds assigned to Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

**§ 1106.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1106.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

**§ 1106.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1106.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1106.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1106.44(a)(14) and the corresponding step of § 1106.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1106.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1106.44 (a)(9) and the corresponding step of § 1106.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(7) (i) through (iv) and the corresponding step of § 1106.44(b) excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(7) (v) and (vi) and the corresponding step of § 1106.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(11) and the corresponding step of § 1106.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1106.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

**§ 1106.61 Computation of uniform price.**

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1106.60 for all handlers who made the reports prescribed in § 1106.30 and who made the payments pursuant to §§ 1106.71 and 1106.73 for the preceding month.

(b) Add the aggregate of the values of all allowable location adjustments to producers pursuant to § 1106.75.

(c) Add not less than one-half of the cash balance on hand in the producer-settlement fund less the total amount of the contingent obligations to handlers pursuant to § 1106.72.

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents.

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1106.60(f).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

### § 1106.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

## Payments for Milk

### § 1106.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1106.71, 1106.76, and 1106.77 and from which he shall make all payments to handlers pursuant to §§ 1106.72 and 1106.77.

### § 1106.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1106.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1106.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1106.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

### § 1106.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler including a cooperative association which is a handler the amount, if any, by which the amount computed pursuant to § 1106.71(a)(2) exceeds the amount computed pursuant to § 1106.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

### § 1106.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer to whom payment is not made pursuant to paragraph (d) of this section, at not less than the applicable uniform price(s) for such month computed pursuant to § 1106.61, as adjusted pursuant to §§ 1106.74 and 1106.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided,* That if by such date such handler has not received full payment pursuant to § 1106.72, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payment from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator;

(b) On or before the last day of each month, to each producer for whom payment is not made pursuant to paragraph (d) of this section for milk received from him during the first 15 days of the month at not less than the Class III price for the preceding month;

(c) To a cooperative association with respect to milk for which the cooperative association is a handler on or before the 10th day of each month for milk which is caused to be delivered to such handler during the preceding month at not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1106.74, that are applicable at the location of the receiving handler's pool plant; and

(d)(1) Upon receipt of written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 13th and 27th days of each month in lieu of payments pursuant to paragraphs (a) and (b), respectively of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member producer:

(*a*) The total pounds of milk received during the preceding month;

(*b*) The total pounds of butterfat contained in such milk;

(*c*) The number of days on which milk was received; and

(*d*) The amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month, written information which shows for each member producer the total pounds of milk received during the first 15 days of the current month. The foregoing payment and submission of information shall be made with respect to milk of each producer, who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following the receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

### § 1106.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

**§ 1106.75 Plant location adjustments for producers and on nonpool milk.**

(a) In making payments to producers pursuant to § 1106.73 for producer milk received at a pool plant, the uniform price computed pursuant to § 1106.61 shall be reduced according to the location of the pool plant at the rates set forth in § 1106.52;

(b) For the purpose of computations pursuant to §§ 1106.71 and 1106.72, the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1106.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price); and

(c) In making payments to producers pursuant to § 1106.73 for producer milk diverted from a pool plant to a nonpool plant, the uniform price computed pursuant to § 1106.61 shall be reduced according to the location of the nonpool plant at which the milk is received at the rates set forth in § 1106.52.

**§ 1106.76 Payments by handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1106.30(b) and 1106.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) 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 § 1106.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1106.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1106.60 for such handler shall include, in lieu of the value of other source milk specified in § 1106.60(f) less the value of such other source milk specified in § 1106.71(a)(2)(ii), a value of milk determined pursuant to § 1106.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1106.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1106.30(b) and 1106.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1106.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1106.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1106.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

**§ 1106.77 Adjustments of accounts.**

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

**§ 1106.85 Assessment for order administration.**

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk described in paragraphs (a), (b), and (c) of this section. For each handler using two accounting periods in a month, the rate of payment shall be twice the rate for monthly accounting periods, or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting period:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1106.44(a) (7) and (11) and the corresponding steps of § 1106.44(b), except such other source milk that is excluded from the computations pursuant to § 1106.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1106.76(a)(2).

**§ 1106.86 Deduction for marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1106.73 shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such money shall be used by the market administrator to sample, test, and check the weights of milk received from producers and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of the month pay such deduction to the cooperative association rendering such services, identified by a statement showing for each such producer the information required to be reported to the market administrator pursuant to § 1106.31(a). In lieu of such statement a handler may authorize the market administrator to furnish such cooperative association the information with respect to such producers reported pursuant to § 1106.31(a).

ADVERTISING AND PROMOTION PROGRAM

**§ 1106.110 Agency.**

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1106.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1106.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1106.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1106.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1106.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

**§ 1106.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1106.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1106.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1106.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

**§ 1106.115 Powers of the Agency.**

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1106.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1106.110 and 1106.117.

**§ 1106.116 Duties of the Agency.**

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1106.110 and 1106.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

**§ 1106.117 Advertising, Research, Education, and Promotion Program.**

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

**§ 1106.118 Limitation of expenditures by the Agency.**

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1106.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

**§ 1106.119 Personal liability.**

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1106.120 Procedure for requesting refunds.**

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

**§ 1106.121 Duties of the market administrator.**

Except as specified in § 1106.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1106.113(c).

(b) Set aside the amounts subtracted under § 1106.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1106.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1106.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1106.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1106.110 through 1106.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

**§ 1106.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1106.70.

## PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEXAS, MARKETING AREA

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1120.119 Personal liability.
1120.120 Procedure for requesting refunds.
1120.121 Duties of the market administrator.
1120.122 Liquidation.

AUTHORITY: The provisions of this Part 1120 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

**§ 1120.1 General provisions.**

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

**§ 1120.2 Lubbock-Plainview, Tex., marketing area.**

"Lubbock-Plainview, Tex., marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the counties of:

Bailey.
Castro.
Cochran.
Cottle.
Crosby.
Dickens.
Floyd.
Gaines.
Garza.
Hale.
Hockley.
Lamb.
Lubbock.
Lynn.
Motley.
Terry.
Yoakum.

all within the State of Texas, including all territory within such boundaries occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments.

**§ 1120.3 Route disposition.**

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to wholesale or retail outlets (including any disposition by a vendor, from a plant store, or through a vending machine) other than a delivery to a plant.

**§ 1120.4 Plant.**

"Plant" means the land, buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received from dairy farmers or processed or packaged: *Provided,* That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk products in transit on routes shall not be a plant under this definition.

**§ 1120.5 Distributing plant.**

"Distributing plant" means a plant from which there is route disposition of any Grade A fluid milk product during the month in the marketing area.

**§ 1120.6 Supply plant.**

"Supply plant" means a plant from which milk or skim milk acceptable for distribution under a Grade A label is moved during the month to a distributing plant.

**§ 1120.7 Pool plant.**

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which there is total route disposition, except filled milk, in an amount equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a handler described in § 1120.9(c) during the month unless the volume so disposed of in the marketing area is less than 15 percent of such receipts or less than 1,500 pounds on a daily average: *Provided,* That if a portion of such plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be a part of such pool plant pursuant to this paragraph.

(b) A supply plant from which a volume of fluid milk products, except filled milk, equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a handler described in § 1120.9(c) is transferred during the month to a distributing plant from which during the month there is total route disposition, except filled milk, in an amount equal to not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants and the volume to disposed of in the marketing area is at least 15 percent of such receipts or a daily average of 1,500 pounds, whichever is less: *Provided,* That if a portion of such supply plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be part of such pool plant pursuant to this paragraph: *And provided further,* That any plant which was a pool plant pursuant to this paragraph in each of the months of September through November shall be a pool plant for the following months of March through June, unless written application is filed with the market administrator on or before the first day of any such months for designation as a nonpool plant for the remaining months through June.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or a State institution plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area, unless notwithstanding the provisions of this subparagraph it is regulated under such other order; or

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is fully regulated under such other Federal order.

**§ 1120.8 Nonpool plant.**

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant, a state institution plant, nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means any nonpool plant from which fluid milk

products are moved to a pool plant during the month, but which is neither an other order plant, a state institution plant, nor a producer-handler plant.

(e) "State institution plant" means a State owned and operated institution or establishment which processes or packages fluid milk products distributed solely on its premises or those of other State institutions or establishments. Such plant shall be exempt from all provisions of this part.

**§ 1120.9 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to the milk of any producer which it causes to be diverted for its account pursuant to § 1120.12;

(c) A cooperative association with respect to the milk of any producer which it causes to be delivered directly from the farm to the pool plant of another handler in a tank truck owned and operated by, under contract to, or under the control of such association, unless the association notifies the market administrator and the operator of the pool plant in writing prior to the time of delivery that the transferee-handler is to be the responsible handler on such milk;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1120.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

**§ 1120.10 Producer-handler.**

"Producer-handler" means any person who operates a dairy farm and a distributing plant and whose only source of supply for Class I milk is his own farm production and transfers from pool plants: *Provided,* That such person furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprises of and at the personal risks of such person.

**§ 1120.11 [Reserved]**

**§ 1120.12 Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is:

(1) Received at a pool plant either directly or by a handler described in § 1120.9(c); or

(2) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of either the operator of the pool plant or a cooperative association:

(i) Any day during the months of March through June; and

(ii) Not more than 15 days production during any month of July through February: *Provided,* That milk so diverted shall be deemed to have been received at the location of the pool plant from which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1120.44(a)(8)(iii) and the corresponding step of § 1120.44(b); and

(3) Any person with respect to milk produced by him which is 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.

**§ 1120.13 Producer milk.**

"Producer milk" means only that skim milk and butterfat contained in:

(a) Milk received at a pool plant directly from producers;

(b) Milk from producers diverted in accordance with the conditions set forth in § 1120.12; or

(c) Milk received by a handler described in § 1120.9(c): *Provided,* That such milk shall be deemed to have been received by such cooperative association at a pool plant at the location of the pool plant to which it was delivered.

**§ 1120.14 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1120.40(b)(1) from any source other than producers, handlers described in § 1120.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1120.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1120.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1120.40(b)(1)) for which the handler fails to establish a disposition.

**§ 1120.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1120.40 (b) or (c)(1) (i) through (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.

**§ 1120.16 Fluid cream product.**

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1120.17 Filled milk.**

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

**§ 1120.18 Cooperative association.**

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

**§ 1120.19 Accounting periods.**

A handler may account for receipts, utilization, and classification of skim milk and butterfat at any of his pool plants for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

HANDLER REPORTS

**§ 1120.30 Reports of receipts and utilization.**

On or before the eighth day after the end of each month, each handler shall report for each accounting period in the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1120.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1120.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1120.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

**§ 1120.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1120.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1120.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

**§ 1120.32 Other reports.**

(a) Each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) On or before the first day other source milk is received in the form of any fluid milk product at any of his pool plants his intention to receive such product, and on or before the last day such product is received his intention to discontinue receipt of such product; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1120.30 and 1120.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

**§ 1120.40 Classes of utilization.**

Except as provided in § 1120.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1120.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1120.15; and

(6) In shrinkage assigned pursuant to § 1120.41(a) to the receipts specified in § 1120.41(a)(2) and in shrinkage specified in § 1120.41 (b) and (c).

**§ 1120.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1120.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product 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 § 1120.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 § 1120.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1120.42 Classification of transfers and diversions.**

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1120.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1120.44(a)(12) and the corresponding step of § 1120.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1120.44(a)(7) or the corresponding step of § 1120.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1120.44(a) (11) or (12) or the corresponding steps of § 1120.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1120.40.

(c) *Transfers to producer-handlers and to State institution plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or a State institution plant shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a State institution plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1120.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

### § 1120.43 General classification rules.

In determining the classification of producer milk pursuant to § 1120.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1120.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1120.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1120.40, 1120.41, and 1120.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1120.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

### § 1120.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1120.9(a) for each of his pool plants separately and of each handler described in § 1120.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1120.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1120.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds in skim milk in Class II the pounds of skim milk in products specified in § 1120.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1120.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1120.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a State institution plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III

combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III 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 § 1120.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1120.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) 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 § 1120.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (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 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 § 1120.9(c) according to the classification of such products pursuant to § 1120.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

**§ 1120.45 Market administrator's reports and announcements concerning classification.**

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1120.44(a) (12) and the corresponding step of § 1120.44 (b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1120.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 10th day after the end of each month report to each cooperative association, upon request by such association, the percentage of producer milk caused to be delivered by such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

CLASS PRICES

**§ 1120.50 Class prices.**

Subject to the provisions of § 1120.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.42.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

**§ 1120.51 Basic formula price.**

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

**§ 1120.52 Plant location adjustments for handlers.**

(a) For producer milk which is received at a pool plant located either outside of the State of Texas, or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall, Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is assigned to Class I pursuant to paragraph (b) of this section or otherwise classified as Class I milk, the price specified in § 1120.50(a) shall be reduced at the rate set forth in the following table according to the location of the plant where such milk is received:

| Miles from Lubbock City Hall: | *Rate per hundredweight (cents)* |
|---|---|
| 100 miles but less than 110 miles | 10 |
| For each additional 10 miles or fraction thereof an additional | 1.5 |

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1120.9(c) and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

**§ 1120.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1120.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

**§ 1120.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1120.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1120.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1120.44(a)(14) and the corresponding step of § 1120.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1120.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1120.44 (a)(9) and the corresponding step of § 1120.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(7) (i) through (iv) and the corresponding step of § 1120.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(7) (v) and (vi) and the corresponding step of § 1120.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a) (11) and the corresponding step of § 1120.44(b), excluding such skim milk and butterfat in receipts of bulk fluid

milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

**§ 1120.61 Computation of uniform price.**

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1120.60 for all pool handlers who made the reports prescribed in § 1120.30 for the month and who have made the payments required pursuant to § 1120.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1120.75;

(c) Add an amount equal to not less than one-half the unobligated balance on hand in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in such computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1120.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "uniform price" for producer milk.

**§ 1120.62 Announcement of uniform price and butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

**§ 1120.70 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-setlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1120.71, 1120.76, and 1120.77, subject to the provision of § 1120.78, and from which he shall make all payments pursuant to §§ 1120.72 and 1120.77: *Provided,* That payments due to any handler shall be offset by any payment due from such handler.

**§ 1120.71 Payments to the producer-settlement fund.**

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1120.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1120.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1120.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

**§ 1120.72 Payments from the producer-settlement fund.**

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1120.71(a)(2) exceeds the amount computed pursuant to § 1120.-71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments due pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

**§ 1120.73 Payments to producers and to cooperative associations.**

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the last day of each month, to each producer from whom milk is currently being received, for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month;

(2) On or before the 15th day after the end of each month for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1120.61 as adjusted pursuant to § 1120.74; and less

(i) Payments made pursuant to paragraph (a)(1) of this section;

(ii) Location adjustments pursuant to § 1120.75;

(iii) Deduction for marketing services pursuant to § 1120.86: and

(iv) Proper deductions authorized by such producer;

*Provided,* That if by the date specified, such handler has not received full payment for such month pursuant to § 1120.72, he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator, and payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) Each handler shall pay to a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk on or before the 26th day of the month and the 13th day of the month following, respectively, the amounts otherwise payable pursuant to paragraph (a) of this section, for milk received from producers whom such association certifies are its members: *Provided,* That such cooperative association submits to the handler and to the market administrator before the first day of the month for which it is to receive such payment, a written request for such payment for milk received from such certified members who are producers together with a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of such association. Such request shall be honored with respect to milk received until the first day of the month in which it receives from such association, in writing, notice either of termination of membership, or of withdrawal of the original request. Exceptions, if any, to the accuracy of certification of membership by the cooperative association, by a producer who is claimed to be a member or by a handler shall be made in writing to the market administrator and shall be subject to his determination;

(c) Each handler shall make payment to a cooperative association for each hundredweight of milk received from such association as a handler pursuant to § 1120.9(c) as follows:

(1) On or before the 26th day of each month for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 13th day after the end of each month an amount equal to not less than the class prices, as adjusted by the butterfat differential specified in § 1120.74, that are applicable at the location of the receiving handler's pool plant, less the amounts paid

pursuant to paragraph (c)(1) of this section; and

(d) In making payments to producers pursuant to paragraph (a)(2) of this section and to a cooperative association pursuant to paragraph (b) of this section each handler shall furnish each producer from whom he has received milk, or each such cooperative association with respect to each producer member, whichever is applicable, with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The applicable month;

(2) The identity of the handler, the Federal milk order under which the producer's milk was priced, and the producer;

(3) The daily and total pounds and the average butterfat content of milk received from such producer;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this part;

(5) The rate which is used in making the payment;

(6) The amount or the rate per hundredweight, and the nature of each deduction made by the handler; and

(7) The net amount of payment to such producer or cooperative association.

**§ 1120.74 Butterfat differential.**

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

**§ 1120.75 Plant location adjustments for producers and on nonpool milk.**

(a) The uniform price determined pursuant to § 1120.61 to be paid for milk which is received from producers at pool plants located either outside the State of Texas or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall of Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the table contained in § 1120.52 according to the location of the pool plant at which such milk was received from producers; and

(b) For purposes of computations pursuant to §§ 1120.71 and 1120.72 the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1120.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

**§ 1120.76 Payments by handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1120.30(b) and 1120.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1120.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1120.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1120.60 for such handler shall include, in lieu of the value of other source milk specified in § 1120.60(f) less the value of such other source milk specified in § 1120.71(a)(2)(ii), a value of milk determined pursuant to § 1120.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1120.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1120.30(b) and 1120.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1120.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1120.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1120.74, for milk received at the

plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

**§ 1120.77 Adjustment of accounts.**

Whenever audit by the market administrator of any handler's reports, books, records, or account discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provision under which such error occurred.

**§ 1120.78 Charges on overdue accounts.**

There shall be added to any balance due to the market administrator pursuant to §§ 1120.71, 1120.76, 1120.77, 1120.85, and 1120.86 an amount equal to one-half of 1 percent of such balance for each month or portion thereof that payment of such balance is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

**§ 1120.85 Assessment for order administration.**

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1120.9(c), shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk specified in paragraphs (a), (b), and (c) of this section: *Provided*, That if a handler elects pursuant to § 1120.19 to use two accounting periods in any month the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1120.9(c);

(b) Other source milk allocated to Class I pursuant to § 1120.44(a) (7) and (11) and the corresponding steps of § 1120.44(b), except such other source milk that is excluded from the computations pursuant to § 1120.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1120.76(a)(2).

**§ 1120.86 Deduction for marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1120.73(a)(2) shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator no later than the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to verify the weights, samples and tests of milk received by handlers from such producers during the month. Such services shall be performed by the market administrator or by an agent engaged by or responsible to him.

(b) In the case of a producer for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make in lieu of the deductions specified in said paragraph (a) of this section, such deductions from payments to be made directly to such producers pursuant to § 1120.73(a)(2) as are authorized by such producers and on or before the 15th day after the end of each month pay such deductions to the cooperative association rendering such services.

ADVERTISING AND PROMOTION PROGRAM

**§ 1120.110 Agency.**

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1120.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1120.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1120.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1120.113 (b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1120.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

**§ 1120.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1120.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative, who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1120.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1120.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

**§ 1120.115 Powers of the Agency.**

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of agency authority pursuant to § 1120.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1120.110 and 1120.117.

**§ 1120.116 Duties of the Agency.**

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1120.110 and 1120.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

**§ 1120.117 Advertising, Research, Education, and Promotion Program.**

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

**§ 1120.118 Limitation of expenditures by the Agency.**

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1120.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

**§ 1120.119 Personal liability.**

No member of the Agency shall be held personally responsible, either individually or jointy with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1120.120 Procedure for requesting refunds.**

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

**§ 1120.121 Duties of the market administrator.**

Except as specified in § 1120.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1120.113(c).

(b) Set aside the amounts subtracted under § 1120.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1120.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1120.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1120.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provi-

sions of the advertising and promotion program (§§ 1120.110 through 1120.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

**§ 1120.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1120.70.

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## PART 1126—MILK IN NORTH TEXAS MARKETING AREA

**Subpart—Order Regulating Handling**

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AUTHORITY: The provisions of this Part 1126 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

**§ 1126.1 General provisions.**

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

**§ 1126.2 North Texas marketing area.**

"North Texas marketing area", hereinafter called the marketing area, means all territory, including all municipal corporations, Federal military reservations, facilities, and State institutions, within the following counties, all in the State of Texas:

| | |
|---|---|
| Anderson. | Kaufman. |
| Bosque. | Lamar. |
| Camp. | Limestone. |
| Cherokee. | Marion. |
| Cooke. | Morris. |
| Collin. | Navarro. |
| Dallas. | Panola. |
| Delta. | Parker. |
| Denton. | Rains. |
| Ellis. | Red River. |
| Erath. | Rockwall. |
| Fannin. | Rusk. |
| Franklin. | Sabine. |
| Freestone. | San Augustine. |
| Grayson. | Shelby. |
| Gregg. | Smith. |
| Harrison. | Somervell. |
| Henderson. | Tarrant. |
| Hill. | Titus. |
| Hood. | Upshur. |
| Hopkins. | Van Zandt. |
| Hunt. | Wood. |
| Johnson. | |

**§ 1126.3 Route disposition.**

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of a fluid milk product classified as Class I milk other than a delivery in bulk form to a milk processing plant.

**§ 1126.4 Plant.**

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit for route disposition shall not be a plant under this definition.

**§ 1126.5 Distributing plant.**

"Distributing plant" means a plant approved by any duly constituted State or municipal health authority, or acceptable to an agency of the State or Federal Government for the disposition of Grade A fluid milk products in the marketing area, at which milk products are received, processed and/or packaged, and from which there is route disposition of fluid milk products in the marketing area.

**§ 1126.6 Supply plant.**

"Supply plant" means any plant approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which milk is moved to a pool distributing plant as follows:

(a) During the month 50 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19;

(b) During the last month of any four or less consecutive months during which period an average of 50 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19 and 15 percent or more of such receipts are thus moved and assigned during the month; or

(c) During each of the months of January through August, if (1) such plant was a supply plant pursuant to paragraph (a) or (b) of this section during each of the immediately preceding months of September through December: *Provided*, That, to remain a supply plant during August, 15 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19, and (2) the operator of such plant has filed a written request on or before January 31 with the market administrator requesting that such plant be designated as a supply plant through August of such year.

**§ 1126.7 Pool plant.**

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Route disposition, except filled milk, in the marketing area equal to 10 percent or more of the receipts of Grade A milk at such plant; and

(2) Total route disposition, except filled milk equal to 50 percent or more of the receipts of Grade A milk at such plant, except that if two or more distributing plants operated by the same handler each meet the performance requirement of paragraph (a) (1) of this section and total route disposition, except filled milk, of such plants is 50 percent or more of receipts of Grade A milk at such plants, each such plant shall be deemed to have met the requirement of this subparagraph.

(b) Any supply plant.

(c) Any plant operated by a cooperative association which has been approved by any duly constituted state or municipal health authority and at which milk is received from dairy farmers holding permits or authorization from such health authority, and at least 50 percent or more of the producer milk of members of such cooperative association is physically received during the month at pool plants of other handlers described in paragraph (a) of this section or is transferred to such pool plants from the plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

**§ 1126.8 Nonpool plant.**

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units (other than to pool plants) in the marketing area during the month.

(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.

**§ 1126.9 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk diverted pursuant to § 1126.13 for the account of such cooperative association;

(c) Any cooperative association with respect to:

(1) Producer milk which it causes to be delivered during any period of less than a full month from its members directly to the pool plant of another handler if (i) during the same month such cooperative association is a handler pursuant to paragraph (a) or (b) of this section with respect to any milk of such producer, and (ii) such association notifies the handler and the market administrator in writing of its intent to become a handler with respect to such milk prior to delivery. For the purpose of location adjustments such milk shall be considered to have been received by the cooperative association at the location of the pool plant to which it is delivered; and

(2) The milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing that it wishes to be the handler for such milk. The cooperative association shall be considered the handler for such milk, effective the first day of the month following receipt of such notice, and milk so delivered shall be considered for purposes of location adjustments to have been received by such cooperative association at the location of the pool plant to which it is delivered; and

(d) Any person in his capacity as the operator of a partially regulated distributing plant.

**§ 1126.10 Producer-handler.**

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from producers;

(c) Disposes of no other source milk as Class I milk; and

(d) Receives from pool plants an amount of milk equal to not more than 5 percent of his own production.

**§ 1126.11 [Reserved]**

**§ 1126.12 Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for consumption as Grade A milk by any duly constituted State or municipal health authority, which milk is:

(1) Received at a pool plant, including milk of a dairy farmer delivered to the pool plant by a handler described in § 1126.9(c); or

(2) Diverted by a handler for his account pursuant to § 1126.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person during periods of temporary degrading by any duly constituted State or municipal health authority if such health authority notifies the operator of the pool plant or the market administrator in writing of the effective date or dates of such action and subsequent reapproval;

(3) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1126.44(a) (8) (iii) and the corresponding step of § 1126.44(b); and

(4) Any person with respect to milk produced by him which is 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.

**§ 1126.13 Producer milk.**

"Producer milk" of a handler operating a pool plant means only that skim milk and butterfat contained in milk described in paragraphs (a) and (b) of this section, and producer milk of a handler described in § 1126.9 (b) and (c) means milk described in paragraphs (c) and (d) of this section:

(a) Milk received from producers at a pool plant except that received from a handler described in § 1126.9(c);

(b) Milk of a producer diverted by the operator of a pool plant for his account to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section;

(c) Milk of a producer diverted by a cooperative association from the pool plant of another handler (or the pool plant of the cooperative) to a nonpool plant that is not a producer-handler plant for the account of such coopera-

tive association, subject to the conditions of paragraph (e) of this section;

(d) Milk received from a producer by a handler described in § 1126.9(c);

(e) With respect to milk diverted to nonpool plants, milk diverted in excess of the limit specified herein shall not be producer milk and the diverting handler shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If the diverting handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such handler:

(1) A cooperative association may divert for its account a total quantity of producer milk equal to not more than one-third of the total producer milk of its members physically received at all pool plants during the month;

(2) A handler, other than a cooperative association, operating a pool plant(s) may divert for his account milk of producers other than members of a cooperative association diverting milk pursuant to paragraph (e)(1) of this section, in a total quantity equal to not more than one-third of the milk physically received at such handler's pool plant(s) during the month from producers who are not members of such a cooperative association;

(3) Diverted milk shall be deemed to have been received by the diverting handler at the location of the plant to which it was diverted; and

(4) Milk shall be eligible for diversion as producer milk only if the person producing such milk has been delivering milk as producer milk to a pool plant on a regular basis prior to the diversion.

**§ 1126.14 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1126.40(b)(1) from any source other than producers, handlers described in § 1126.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1126.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1126.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1126.40(b)(1)) for which the handler fails to establish a disposition.

**§ 1126.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1126.40 (b) or (c)(1) (i) through (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.

**§ 1126.16 Fluid cream product.**

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1126.17 Filled milk.**

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

**§ 1126.18 Cooperative association.**

"Cooperative Association" means any cooperative marketing association of producers which the Secretary determines, after application by the Association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

**§ 1126.19 Reserve supply credit.**

The hundredweight of reserve supply credit that may be assigned to milk moved from a supply plant to a distributing plant shall be calculated as follows: From the total hundredweight of milk classified as Class I milk, except filled milk, at the distributing plant during the month, deduct Class I sales, except filled milk, to other pool plants(s) and from this result deduct an amount equal to 85 percent of the total hundredweight of milk received from producers during the month at such plant. Any plus figure resulting from this calculation shall be assigned pro rata to milk moved to such plant from supply plants unless the operator of the distributing plant notifies the market administrator in writing of a different assignment on or before the seventh day after the end of the month.

HANDLER REPORTS

**§ 1126.30 Monthly reports of receipts and utilization.**

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1126.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1126.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1126.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

**§ 1126.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1126.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1126.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) The market administrator shall furnish a cooperative association for its members the data furnished pursuant to paragraph (a) of this section.

**§ 1126.32 Other reports.**

(a) Each handler who causes milk to be diverted for his account directly from producers' farms to a nonpool plant shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) Each handler, with respect to fluid milk products and products specified in § 1126.40(b)(1) disposed of for animal feed, shall report to the market administrator such information and at such time as the market administrator may prescribe.

(c) In addition to the reports required pursuant to §§ 1126.30 and 1126.31 and paragraphs (a) and (b) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

**§ 1126.40 Classes of utilization.**

Except as provided in § 1126.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1126.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1126.15, plus the fluid equivalent of loss of nonfat milk solids occurring in the process of modification in any case where determination of the quantity of added nonfat milk solids disposed of in such products is based upon laboratory analysis by the market administrator, such loss allowable pursuant to this subparagraph not to exceed 2 percent of the fluid equivalent of the quantity of added nonfat milk solids so determined to be added; and

(6) In shrinkage assigned pursuant to § 1126.41(a) to the receipts specified in § 1126.41(a)(2) and in shrinkage specified in § 1126.41(b) and (c).

**§ 1126.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1126.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product 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 § 1126.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 § 1126.9 (b) or (c), but not in

excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1126.42 Classification of transfers and diversions.**

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1126.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1126.44(a)(12) and the corresponding step of § 1126.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1126.44(a)(7) or the corresponding step of § 1126.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1126.44(a)(11) or (12) or the coresponding steps of § 1126.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim 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 § 1126.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1126.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and

then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

**§ 1126.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1126.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1126.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1126.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1126.40, 1126.41, and 1126.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1126.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

**§ 1126.44 Classification of producer milk.**

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1126.9(a) for each of his pool plants separately and of each handler described in § 1126.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1126.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1126.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1126.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1126.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1126.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III 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 § 1126.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or

Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1126.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this 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 § 1126.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (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 an other pool plant or a handler described in § 1126.9(c) according to the classification of such products pursuant to § 1126.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

**§ 1126.45 Market administrator's reports and announcements concerning classification.**

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1126.44(a)(12) and the corresponding step of § 1126.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1126.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other

order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

CLASS PRICES

**§ 1126.50 Class prices.**

Subject to the provisions of § 1126.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.32.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

**§ 1126.51 Basic formula price.**

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

**§ 1126.52 Plant location adjustments for handlers.**

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Zone I" means all territory within the following Texas counties in the marketing area:

| | |
|---|---|
| Bosque. | Hood. |
| Cooke. | Hopkins. |
| Collin. | Hunt. |
| Dallas. | Johnson. |
| Delta. | Kaufman. |
| Denton. | Lamar. |
| Ellis. | Limestone. |
| Erath. | Navarro. |
| Fannin. | Parker. |
| Freestone. | Rockwall. |
| Grayson. | Somervell. |
| Hill. | Tarrant. |

(2) "Zone II" means all territory in the marketing area outside Zone I and all territory in Bowie and Cass Counties, Tex., and the city of Texarkana, Ark.

(b) For producer milk received at a pool plant which is classified as Class I milk, subject to paragraph (c) of this section, the price specified in § 1126.50 (a) shall be adjusted for the location of such plant as follows:

(1) At a plant located in Zone II, such price shall be increased by any amount by which the applicable Class I price at such location pursuant to Part 1121 regulating the handling of milk in the South Texas marketing area exceeds the price specified in § 1126.50(a); and

(2) At a plant located outside Zones I and II and 110 miles or more from the city hall in Dallas, Tex., such price shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is located from the Dallas city hall by shortest hard-surface highway distance as determined by the market administrator.

(c) For purposes of calculating such location adjustments transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of 95 percent of receipts at such plant from producers and handlers described in § 1126.9(c), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such an assignment to be made first to transferor-plants having the same Class I price, next to transferor-plants having a higher Class I price and then in sequence to plants having a lower Class I price, beginning with the plant at which the highest Class I price would apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

**§ 1126.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1126.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

**§ 1126.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1126.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1126.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1126.44(a)(14) and the corresponding step of § 1126.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1126.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1126.44 (a)(9) and the corresponding step of § 1126.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(7) (i) through (iv) and the corresponding step of § 1126.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(7) (v) and (vi) and the corresponding step of § 1126.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(11) and the corresponding step of § 1126.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

**§ 1126.61 Computation of uniform price.**

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content at pool plants at which no location adjustment applies as follows:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers who made the reports prescribed in § 1126.30 and who made the payments pursuant to § 1126.71 for the preceding month;

(b) Add not less than one-fourth of the cash balance on hand in the producer-settlement fund, less the total amount of the contingent obligations to handlers pursuant to § 1126.72;

(c) Add the aggregate of the values of minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1126.75;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents.

**§ 1126.62 Announcement of uniform price and butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

**§ 1126.70 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1126.71, 1126.76, and 1126.77 subject to the provisions of §1126.78 and from which he shall make all payments to handlers pursuant to §§ 1126.72 and 1126.77.

**§ 1126.71 Payments to the producer-settlement fund.**

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1126.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1126.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1126.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by mutiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

**§ 1126.72 Payments from the producer-settlement fund.**

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1126.71(a)(2) exceeds the amount computed pursuant to § 1126.71(a)(1): *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available: *And provided further,* That any amount due a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator for such handler pursuant to §§ 1126.71, 1126.77, 1126.78, 1126.85, and 1126.86.

**§ 1126.73 Payments to producers and to cooperative associations.**

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price for such month computed pursuant to § 1126.61, as adjusted pursuant to §§ 1126.74 and 1126.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided,* That if by such date such handler has not received full payment for such month pursuant to § 1126.72 he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month, to each producer (1) for whom payment is not made pursuant to paragraph (c) of this section and (2) who has not discontinued delivery of milk to such handler, a partial payment for milk received from such producer during the first 15 days of such month computed at not less than the Class III price for 3.5 percent milk of the preceding month, without deduction for hauling.

(c) On or before the 13th and 23d days of each month, in lieu of payments pursuant to paragraphs (a) and (b) of this section, respectively, to a cooperative association which so requests, with respect to producers for whose milk such cooperative association is authorized to collect payments, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payment shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1126.31.

(d) On or before the 13th day after the end of the month each handler shall pay to each cooperative association which is also a handler for milk received from it not less than the value of such milk as classified pursuant to § 1126.42 (a) at the respective class prices, as adjusted by the butterfat differential specified in § 1126.74, that are applicable at the location of the receiving handler's pool plant.

**§ 1126.74 Butterfat differential.**

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

**§ 1126.75 Plant location adjustments for producers and on nonpool milk.**

(a) In making payments to producers pursuant to § 1126.73 (a) or (c) the uniform price computed pursuant to § 1126.61 to be paid for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rate set forth in § 1126.52.

(b) For purposes of computation pursuant to §§ 1126.71 and 1126.72 the uniform price shall be adjusted at the rates set forth in § 1126.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

**§ 1126.76 Payments by handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1126.30(b) and 1126.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1126.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1126.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1126.60 for such handler shall include, in lieu of the value of other source milk specified in § 1126.60(f) less the value of such other source milk (specified in § 1126.71(a)(2)(ii), a value of milk determined pursuant to § 1126.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1126.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1126.30(b) and 1126.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1126.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1126.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1126.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

### § 1126.77 Adjustment of accounts.

Whenever verification by the market administrator of any handler's reports, books, records, accounts or payments discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

### § 1126.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1126.71, 1126.73, 1126.76, 1126.77, 1126.85, or 1126.86 shall be increased three-fourths of 1 percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due: *Provided*, That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section; and

(b) For the purpose of this section any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

## Administrative Assessment and Marketing Service Deduction

### § 1126.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each 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 from producers (including such handler's own production) except receipts by a handler described in § 1126.9(c);

(b) Receipts from a handler described in § 1126.9(c);

(c) Other source milk allocated to Class I pursuant to § 1126.44(a)(7) and (11) and the corresponding steps of § 1126.44(b), except such other source milk that is excluded from the computations pursuant to § 1126.60 (d) and (f); and

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1126.76(a)(2).

### § 1126.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1126.73, shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator

on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of each month pay such deduction to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

ADVERTISING AND PROMOTION PROGRAM

**§ 1126.110 Agency.**

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1126.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1126.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1126.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1126.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1126.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

**§ 1126.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1126.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1126.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1126.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

**§ 1126.115 Powers of the Agency.**

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1126.110,

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1126.110 and 1126.117.

**§ 1126.116 Duties of the Agency.**

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1126.110 and 1126.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

**§ 1126.117 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 appro-

priate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

**§ 1126.118 Limitation of expenditures by the Agency.**

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1126.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

**§ 1126.119 Personal liability.**

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1126.120 Procedure for requesting refunds.**

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assesment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

**§ 1126.121 Duties of the market administrator.**

Except as specified in § 1126.116, the market administrator in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1126.113(c).

(b) Set aside the amounts subtracted under § 1126.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1126.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1126.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1126.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1126.110 through 1126.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

**§ 1126.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1126.70.

## PART 1127—MILK IN SAN ANTONIO, TEXAS, MARKETING AREA

### Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1127 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

**§ 1127.1 General provisions.**

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

**§ 1127.2 San Antonio, Tex., marketing area.**

"San Antonio, Tex., marketing area", hereinafter called the "marketing area", means all the territory including all municipal corporations and all Federal military reservations, facilities and installations located within the boundaries of Bexar County, Tex.

**§ 1127.3 Route disposition.**

"Route disposition" means any delivery of any fluid milk product classified as Class I milk (including any delivery by a vendor or disposition at a plant store) to wholesale or retail outlets, except deliveries in bulk form to other pool plants.

**§ 1127.4 [Reserved]**

**§ 1127.5 Distributing plant.**

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Which is approved by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority for the processing of Grade A milk or which is acceptable to an agency of the Federal Government for distribution of milk to its installations in the marketing area;

(b) In which milk or skim milk is processed or packaged; and

(c) From which there is route disposition during the month in the marketing area or from which Class I milk is supplied to installations located in the marketing area of an agency of the Federal Government.

**§ 1127.6 Supply plant.**

"Supply plant" means all the buildings, premises, and facilities of a plant equipped to either receive or cool milk which is approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area, and from which an amount equal to not less than 50 percent of its receipts from dairy farmers, who would be producers if the plant qualified as a pool plant, are shipped to a distributing plant during the month: *Provided*, That any plant which qualifies as a supply plant for each of the months of July through February shall be considered to be a supply plant for the following months of March through June of such year, except that if the operator of such plant files a written request with the market administrator, supply plant status shall be terminated as of the first of the following month.

**§ 1127.7 Pool plant.**

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant which has route disposition, except filled milk, in the marketing area equal to 15 percent or more of its receipts of milk during the month from pool plants and from dairy farmers conforming to the requirements set forth in § 1127.12.

(b) A supply plant.

(c) Any plant approved by an appropriate health authority having jurisdiction in the marketing area to supply milk for distribution as Grade A milk in the marketing area which is operated by a cooperative association, and 50 percent or more of the producer milk of members is received during the month in the pool plants of other handlers, or is transferred to such plants from the plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements for pooling pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all of the provisions of this part in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area unless notwithstanding the provisions of this subparagraph it is fully regulated under such other order; and

(3) A plant meeting the requirements for pooling pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area, but which plant is fully regulated under such other Federal order.

**§ 1127.8 Nonpool plant.**

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

**§ 1127.9 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of a member producer diverted for its account pursuant to § 1127.12 for each day's milk production that such producer's milk is diverted during the month. Milk so diverted shall be deemed to have been received by the association at a pool plant at the location of the pool plant at which the milk was received prior to diversion;

(c) A cooperative association with respect to the producer milk of its members which is delivered directly from the farm to the pool plant of a handler in a tank truck owned and operated by or under contract to such cooperative association unless the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing, prior to the first day of the month, that it does not desire to be the handler for such milk. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the association at a pool plant at the location of the pool plant to which it is delivered; and

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition in the marketing area.

**§ 1127.10 [Reserved]**

**§ 1127.11 [Reserved]**

**§ 1127.12 Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk (1) under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk, issued by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority, or (2) which is acceptable to

an agency of the Federal Government for fluid consumption in its institutions or bases located in the marketing area; which is received directly from the farm at a pool plant or diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of a cooperative association: *Provided*, That if the days of production of such person for which milk is diverted exceed one-third of the days of production that milk is delivered to a pool plant during the month, such milk shall cease to be producer milk for the entire period of such diversion.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1127.44 (a)(8)(iii) and the corresponding step of § 1127.44(b);

(3) Any person with respect to milk produced by him which is 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; and

(4) A dairy farmer during the months of March through June, if milk from the same dairy farmer (or farm) was received at a nonpool plant operated by the same handler, as other than producer milk, on more than half the days of delivery during the preceding months of July through February.

### § 1127.13 Producer milk.

"Producer milk" means any skim milk or butterfat contained in milk of a producer received at a pool plant or diverted by a cooperative association in accordance with § 1127.9(b).

### § 1127.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1127.40 (b)(1) from any source other than producers, handlers described in § 1127.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1127.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1127.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1127.40(b)(1)) for which the handler fails to establish a disposition.

### § 1127.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1127.40 (b) or (c)(1) (i) through (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.

### § 1127.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

### § 1127.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

### § 1127.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association (a) to have its entire activities under the control of its members, (b) to have full authority in the sale of milk of its members, and (c) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

## Handler Reports

### § 1127.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1127.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1127.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1127.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

### § 1127.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1127.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1127.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

### § 1127.32 Other reports.

In addition to the reports required pursuant to §§ 1127.30 and 1127.31, each

handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

**§ 1127.40 Classes of utilization.**

Except as provided in § 1127.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1127.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1127.15; and

(6) In shrinkage assigned pursuant to § 1127.41(a) to the receipts specified in § 1127.41(a) (2) and in shrinkage specified in § 1127.41 (b) and (c).

**§ 1127.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1127.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product 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;

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1127.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) [Reserved]

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 § 1127.9 (b) or (c), but not in excess of 0 5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1127.42 Classification of transfers and diversions.**

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1127.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1127.44(a) (12) and the corresponding step of § 1127.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1127.44(a) (7) or the corresponding step of § 1127.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3 If the transferor-handler received during the month other source milk to be allocated pursuant to § 1127.44(a) (11) or (12) or the corresponding steps of § 1127.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall

apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1127.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1127.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

### § 1127.43 General classification rules.

In determining the classification of producer milk pursuant to § 1127.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1127.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1127.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1127.40, 1127.41, and 1127.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1127.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

### § 1127.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1127.9(a) for each of his pool

plants separately and of each handler described in § 1127.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1127.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1127.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1127.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1127.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1127.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from persons described in § 1127.12 (b) (4);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III 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 § 1127.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1127.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) 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 § 1127.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (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 be 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 or a handler described in § 1127.9(c) according to the classification of such products pursuant to § 1127.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

### § 1127.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1127.44(a)(12) and the corresponding step of § 1127.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1127.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be assigned to each class in the proportion that the total producer milk in each class is to the total receipts of producer milk by such handler.

## Class Prices

### § 1127.50 Class prices.

Subject to the provisions of § 1127.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.74.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

### § 1127.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

### § 1127.52 Plant location adjustments for handlers.

(a) For milk which is received from producers at a pool plant located more than 50 miles from the city hall in San Antonio, Tex., by the shortest hard-

surfaced highway distance as determined by the market administrator and which is classified as Class I milk, the price specified in § 1127.50(a) shall be reduced 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the city hall in San Antonio, Tex.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1127.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

**§ 1127.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1127.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

**§ 1127.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1127.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1127.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1127.44(a)(14) and the corresponding step of § 1127.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1127.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1127.44 (a)(9) and the corresponding step of § 1127.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1127.44(a)(7) (i) through (iv) and (vii) and the corresponding step of § 1127.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1127.44(a)(7) (v) and (vi) and the corresponding step of § 1127.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1127.44(a)(11) and the corresponding step of § 1127.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1127.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

**§ 1127.61 Computation of uniform price.**

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1127.60 for all handlers who have made the reports prescribed by § 1127.30 for the month and who have made the payment required pursuant to § 1127.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1127.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1127.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

**§ 1127.62 Announcement of uniform price and butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

**§ 1127.70 Producer-settlement fund.**

The market administrator shall establish a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1127.71, 1127.76, and 1127.77 and from which he shall make all payments pursuant to §§ 1127.72 and 1127.77.

**§ 1127.71 Payments to the producer-settlement fund.**

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1127.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1127.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1127.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route dis-

position in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

**§ 1127.72 Payments from the producer-settlement fund.**

On or before the 14th day after the end of each month the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the amount computed pursuant to § 1127.71(a)(2) exceeds the amount computed pursuant to § 1127.71(a)(1).

**§ 1127.73 Payments to producers and to cooperative associations.**

(a) Each handler shall pay to a cooperative association on or before the 13th day of the month, for milk received from it during the preceding month for which such association is a handler described in § 1127.9(c), the value of such milk at not less than the class prices as adjusted by the butterfat differential specified in § 1127.74, that are applicable at the location of the receiving handler's pool plant: *Provided, however,* That for each hundredweight of milk so received during the first 15 days of any month, such handler shall, upon written request of the cooperative association make a partial payment to such association by the 26th day of the month at not less than the Class III price of the preceding month, in which case the obligation of the handler otherwise payable on or before the 13th day of the following month shall be reduced by the amount of such partial payment.

(b) Except as provided in paragraph (b)(3) of this section each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of such month at not less than the price per hundredweight for Class III milk for the preceding month.

(2) On or before the 15th day after the end of the month during which the milk was received at not less than the uniform price per hundredweight computed for such month pursuant to § 1127.61 subject to the following adjustments: (i) The butterfat differential pursuant to § 1127.74, (ii) the location adjustment pursuant to § 1127.75, (iii) the payment made pursuant to paragraph (b)(1) of this section, (iv) deductions for marketing services pursuant to § 1127.86, and (v) proper deductions authorized by such producer: *Provided,* That if by such date such handler has not received full payment pursuant to § 1127.72 he may reduce his total payment to all producers pro rata by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this subparagraph not later than the date for making such payments next following receipt of the balance due from the market administrator.

(3)(i) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall on or before the 20th day of each month furnish the cooperative association information showing the daily and total pounds of milk received from each of the association's member producers for the first 15 days of such month and, on or before the 10th day after the end of each month, such information for the 16th through the end of such month, and shall pay to such association on or before the 26th and 13th day of each month, in lieu of payments pursuant to paragraph (a)(1) and (2) respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(ii) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(4) In making the payments to producers pursuant to paragraph (b)(2) and (3) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show:

(i) The month for which payment is made and the identity of the handler and of the producer;

(ii) The total pounds and average butterfat test of milk received from such producer;

(iii) The minimum rate or rates at which payment to such producer is required;

(iv) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(v) The amount or rate per hundredweight of each deduction claimed by the handler; together with a description of the respective deductions; and

(vi) The net amount of payment to such producer.

**§ 1127.74 Butterfat differential.**

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

**§ 1127.75 Plant location adjustments for producers and on nonpool milk.**

(a) In making payments to producers pursuant to § 1127.73 for that milk which is received from producers at a pool plant located more than 50 miles from the city hall in San Antonio, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, the handler may deduct an amount equal to not more than 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the city hall in San Antonio, Tex.

(b) For the purposes of computations pursuant to §§ 1127.71 and 1127.72 the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1127.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

**§ 1127.76 Payments by handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1127.30(b) and 1127.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as

an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1127.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1127.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1127.60 for such handler shall include, in lieu of the value of other source milk specified in § 1127.60(f) less the value of such other source milk specified in § 1127.71(a)(2)(ii), a value of milk determined pursuant to § 1127.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1127.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1127.30(b) and 1127.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1127.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1127.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1127.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

### § 1127.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's books, reports, records, or accounts discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

## Administrative Assessment and Marketing Service Deduction

### § 1127.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Skim milk and butterfat received from producers (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1127.44(a)(7) and (11) and the corresponding steps of § 1127.44(b), except other source milk that is excluded from the computations pursuant to § 1127.60(d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1127.76(a)(2).

### § 1127.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section each handler, in making payments to producers (other than himself) shall make a deduction of 6 cents per hundredweight of milk or such lesser deduction as the Secretary from time to time may prescribe. Such deductions shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for verification of weights and tests of milk received from such producers and in providing market information to such producers.

(b) In the case of each producer who is a member of, or who has given written authorization for the rendering of marketing services and the taking of a deduction therefor to a cooperative association, which the Secretary has determined is performing the services described in paragraph (a) of this section, such handler, in lieu of the deduction specified under paragraph (a) of this section, shall deduct from the payments to such producer the amount per hundredweight specified by such association which is not in excess of the rate authorized by such producer and shall pay such deduction to the cooperative association entitled to receive it on or before the 15th day after the end of the month during which such milk was received.

## Advertising and Promotion Program

### § 1127.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1127.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding

brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1127.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1127.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1127.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1127.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

**§ 1127.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1127.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1127.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1127.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

**§ 1127.115 Powers of the Agency.**

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1127.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1127.110 and 1127.117.

**§ 1127.116 Duties of the Agency.**

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1127.110 and 1127.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

**§ 1127.117 Advertising, Research, Education, and Promotion Program.**

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

**§ 1127.118 Limitation of expenditures by the Agency.**

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1127.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producers participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

**§ 1127.119 Personal liability.**

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except

for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1127.120 Procedure for requesting refunds.**

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

**§ 1127.121 Duties of the market administrator.**

Except as specified in § 1127.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1127.113(c).

(b) Set aside the amounts subtracted under § 1127.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1127.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1127.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1127.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1127.110 through 1127.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

**§ 1127.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1127.70.

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## PART 1128—MILK IN CENTRAL WEST TEXAS MARKETING AREA

**Subpart—Order Regulating Handling**

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AUTHORITY: The provisions of this Part 1128 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

**§ 1128.1 General provisions.**

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

**§ 1128.2 Central West Texas marketing area.**

"Central West Texas marketing area," hereafter called the "marketing area," means all territory within the boundaries of the Abilene Air Force Base and within the corporate limits of the following cities and towns, all in the State of Texas:

Abilene.
Albany.
Anson.
Aspermont.
Ballinger.
Big Spring.
Breckenridge.
Brownwood.
Cisco.
Coleman.
Colorado City.
Comanche.
Eastland.
Hamlin.
Haskell.
Knox City.
Lamesa.
Merkel.
Midland.
Mineral Wells.
Munday.
Odessa.
Ranger.
Rochester.
Rotan.
Rule.
San Angelo.
Snyder.
Stamford.
Sweetwater.
Tye.
Winters.

§ 1128.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or at a plant store) of a fluid milk product classified as Class I milk other than in bulk to a milk or filled milk processing plant.

§ 1128.4 [Reserved]

§ 1128.5 [Reserved]

§ 1128.6 [Reserved]

§ 1128.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A milk plant approved by and under the routine inspection of the health authority of any municipality in the marketing area:

(1) From which there is route disposition of Grade A fluid milk products, other than filled milk, in consumer packages in the marketing area; or

(2) At which milk is received from producers as defined in § 1128.12(a)(1) and which serves as a receiving station at which producer milk is received, weighed, and commingled and from which milk or skim milk (i) is moved during the month to a pool plant(s) specified in paragraph (a)(1) or (b) of this section, or (ii) was moved to any such plant(s) in an amount equal to 60 percent or more of the total receipts of producer milk during the months of October through January immediately preceding any month of April, May, or June during which no milk was moved to such plant(s).

(b) A milk plant approved by and under the routine inspection of a health authority other than that of a municipality in the marketing area from which there is route disposition of Grade A fluid milk products, other than filled milk, in consumer packages in the marketing area in an amount equal to 10 percent or more of the total disposition of Class I milk, except filled milk, from such plant during the month.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements of paragraph (a)(1) or (b) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which there is a greater proportion of route disposition in such other marketing area unless notwithstanding the provisions of this subparagraph it is regulated under such other order;

(3) A plant meeting the requirements of paragraph (a)(1) or (b) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is fully regulated under such other Federal order; and

(4) A plant meeting the requirements of paragraph (a)(2) of this section which (i) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part or (ii) retains automatic pooling status for the month under another Federal order by virtue of its performance in previous months.

§ 1128.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

§ 1128.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted pursuant to § 1128.12 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of producers which it causes to be delivered directly from the farm for its own account, in tank truck(s) owned or operated by such association, to the pool plant of another handler described in § 1128.7 (a)(1) or (b): *Provided*, That such milk shall be deemed to have been received by the cooperative association at a pool plant at the location of the plant to which it is delivered; or

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition during the month in the marketing area.

§ 1128.10 Producer-handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a milk plant approved by and under the routine inspection of the appropriate health authority from which there is route disposition of Grade A fluid milk products in consumer-type packages in the marketing area; and

(b) Whose disposition of fluid milk products does not exceed his own farm production and receipts of fluid milk products from pool plants.

§ 1128.11 [Reserved]

§ 1128.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person described in paragraph (a)(1) or (2) of this section and shall include any such person whose milk is received by a handler described in § 1128.9 (c) or whose milk is regularly received at a pool plant but is caused to be diverted by a handler to a nonpool plant that is not a producer-handler plant, and milk so diverted shall be deemed to have been received by the handler at the location of the pool plant at which it was received immediately prior to its being so diverted:

(1) Who produces milk under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk issued by the health authority of any municipality in the marketing area, which milk is received at a pool plant described in § 1128.7(a); or

(2) Who produces milk under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk issued by a health authority whose certification is accepted by the appropriate health authority of a municipality in the marketing area, which milk is received at a pool plant described in § 1128.7(b).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1128.44(a)(8)(iii) and the corresponding step of § 1128.44(b); and

(3) Any person with respect to milk produced by him which is 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.

§ 1128.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in:

(a) Milk received at a pool plant directly from producers;

(b) Milk of producers that is diverted pursuant to § 1128.12; or

(c) Milk received by a handler described in § 1128.9(c).

**§ 1128.14 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1128.40 (b)(1) from any source other than producers, handlers described in § 1128.9 (c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1128.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1128.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1128.40(b)(1)) for which the handler fails to establish a disposition.

**§ 1128.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1128.40 (b) or (c)(1) (i) through (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.

**§ 1128.16 Fluid cream product.**

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1128.17 Filled milk.**

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

**§ 1128.18 Cooperative association.**

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

**§ 1128.30 Reports of receipts and utilization.**

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1128.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1128.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1128.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

**§ 1128.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1128.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1128.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) The market administrator shall furnish to a cooperative association upon request the data with respect to milk of its members furnished pursuant to paragraph (a) of this section.

**§ 1128.32 Other reports.**

(a) Each handler who causes milk to be diverted to a nonpool plant shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant §§ 1128.30 and 1128.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

**§ 1128.40 Classes of utilization.**

Except as provided in § 1128.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1128.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to

any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1128.15; and

(6) In shrinkage assigned pursuant to § 1128.41(a) to the receipts specified in § 1128.41(a)(2) and in shrinkage specified in § 1128.41(b) and (c).

**§ 1128.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1128.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product 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 § 1128.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 § 1128.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1128.42 Classification of transfers and diversions.**

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1128.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1128.44(a)(12) and the corresponding step of § 1128.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1128.44(a)(7) or the corresponding step of § 1128.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1128.44(a)(11) or (12) or the corresponding steps of § 1128.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so

request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1128.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1128.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

**§ 1128.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1128.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1128.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1128.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1128.40, 1128.41, and 1128.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1128.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

**§ 1128.44 Classification of producer milk.**

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1128.9(a) for each of his pool plants separately and of each handler described in § 1128.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1128.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as

an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1128.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1128.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1128.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1128.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III 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 II 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 § 1128.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1128.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) 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 re-

maining 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 § 1128.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (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 § 1128.9(c) according to the classification of such products pursuant to § 1128.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

### § 1128.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1128.44(a)(12) and the corresponding step of § 1128.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1128.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

## Class Prices

### § 1128.50 Class prices.

Subject to the provisions of § 1128.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.57.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

### § 1128.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

### § 1128.52 Plant location adjustments for handlers.

For producer milk classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price set forth in § 1128.50(a) shall be subject to the following adjustments:

(a) For milk received from producers at a pool plant located (1) east of the 103d principal meridian, (2) more than 180 highway miles from the U.S. Post Office in Midland, Tex., and also (3) at the following highway distances from the U.S. Post Office in Abilene, Tex., such price shall be reduced as follows:

| | *Cents* |
|---|---|
| More than 70 miles but less than 105 miles | 20 |
| 105 miles or more | 25 |

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1128.9(c), and the pounds assigned as Class I to receipts from other order plants

and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

**§ 1128.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1128.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

**§ 1128.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1128.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1128.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1128.44(a)(14) and the corresponding step of § 1128.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1128.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1128.44(a)(9) and the corresponding step of § 1128.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1128.44(a)(7) (i) through (iv) and the corresponding step of § 1128.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1128.44(a)(7) (v) and (vi) and the corresponding step of § 1128.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1128.44(a)(11) and the corresponding step of § 1128.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

**§ 1128.61 Computation of uniform price.**

For each month the market administrator shall compute the uniform price per hundredweight for all milk of 3.5 percent butterfat content received at a pool plant as follows:

(a) Combine into one total the values computed pursuant to § 1128.60 for all handlers who have made the reports prescribed in § 1128.30 and who have made the payments due pursuant to § 1128.71 for the preceding month;

(b) Add the aggregate of the values of all minus location adjustments pursuant to § 1128.75;

(c) Add not less than one-half of the unobligated cash balance on hand in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in such computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1128.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents.

**§ 1128.62 Announcement of uniform price and butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENT FOR MILK

**§ 1128.70 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1128.71, 1128.76, and 1128.77, and from which he shall make all payments to handlers pursuant to §§ 1128.72 and 1128.77.

**§ 1128.71 Payments to the producer-settlement fund.**

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1128.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1128.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1128.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

**§ 1128.72 Payments from the producer-settlement fund.**

On or before the 14th day after the end of each month the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the amount computed pursuant to § 1128.71(a)(2) exceeds the amount computed pursuant to § 1128.71(a)(1): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

**§ 1128.73 Payments to producers and to cooperative associations.**

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the

milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price for such month computed pursuant to § 1128.61, as adjusted pursuant to §§ 1128.74 and 1128.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided*, That if by such date such handler has not received full payment pursuant to § 1128.72, he may reduce his total payments to all producers uniformly by not less than the amount of reduction in payments from the market administrator: he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month, to each producer for whom payment is not made pursuant to paragraph (c) of this section for milk received during the first 15 days of such month at not less than the Class III price of the preceding month.

(c) On or before the 13th and 23d days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, with respect to producers for whose milk such cooperative association is authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producer. Such payment shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1128.31.

**§ 1128.74 Butterfat differential.**

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

**§ 1128.75 Plant location adjustments for producers and on nonpool milk.**

(a) In making payments to producers pursuant to § 1128.73, the uniform price for all milk computed pursuant to § 1128.61 for milk received from producers at a pool plant shall be adjusted at the rates set forth in § 1128.52(a), applicable at the location of such plant.

(b) For purposes of computations pursuant to §§ 1128.71 and 1128.72 the uniform price for all milk shall be adjusted at the rates set forth in § 1128.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

**§ 1128.76 Payments by handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1128.30(b) and 1128.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1128.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1128.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1128.60 for such handler shall include, in lieu of the value of other source milk specified in § 1128.60(f) less the value of such other source milk specified in § 1128.71(a)(2)(ii), a value of milk determined pursuant to § 1128.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1128.7(a)(2) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1128.30(b) and 1128.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1128.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential

specified in § 1128.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1128.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) o this section applies.

**§ 1128.77 Adjustment of accounts.**

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due;

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amounts so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

**§ 1128.85 Assessment for order administration.**

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1128.9(c), shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1128.9(c);

(b) Other source milk allocated to Class I pursuant to § 1128.44(a) (7) and (11) and the corresponding steps of § 1128.44(b), except such other source milk that is excluded from the computations pursuant to § 1128.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1128.76(a)(2).

**§ 1128.86 Deduction for marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1128.73(a), shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative asociation is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of each month pay such deduction to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

ADVERTISING AND PROMOTION PROGRAM

**§ 1128.110 Agency.**

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1128.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1128.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1128.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1128.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1128.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

**§ 1128.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1128.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1128.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representa-

tive subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1128.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

**§ 1128.115 Powers of the Agency.**

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuit to § 1128.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1128.110 and 1128.117.

**§ 1128.116 Duties of the Agency.**

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1128.110 and 1128.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

**§ 1128.117 Advertising, Research, Education, and Promotion Program.**

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

**§ 1128.118 Limitation of expenditures by the Agency.**

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1128.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

**§ 1128.119 Personal liability.**

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1128.120 Procedure for requesting refunds.**

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

**§ 1128.121 Duties of the market administrator.**

Except as specified in § 1128.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1128.113(c).

(b) Set aside the amounts subtracted under § 1128.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1128.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1128.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1128.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1128.110 through 1128.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

**§ 1128.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are

terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1128.70.

## PART 1129—MILK IN AUSTIN-WACO, TEX., MARKETING AREA

### Subpart—Order Regulating Handling

GENERAL PROVISIONS

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1129.1 General provisions.

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GENERAL PROVISIONS

### § 1129.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

### § 1129.2 Austin-Waco marketing area.

"Austin-Waco Marketing Area," hereinafter called the marketing area, means all territory, including all municipal corporations and all Federal military reservations, facilities and installations, located within or partially within the boundaries of Travis, Hays, Lampasas, Burnet, Caldwell, Bastrop, Williamson, Bell, Falls, McLennan, Coryell, Comal and Guadalupe Counties, all in the State of Texas.

### § 1129.3 Route disposition.

"Route disposition" means the delivery (including delivery by a vendor or sale at a plant store) of fluid milk products classified as Class I milk other than as follows:

(a) Delivery in bulk to a plant, or

(b) Delivery in consumer packages from a milk processing plant to a distributing plant in an amount not in excess of the amount of producer milk received by such processing plant during the month from the operator of such distributing plant and classified as Class I milk: *Provided*, That for the purposes of this paragraph milk so transferred to such processing plant shall be considered to be producer milk to the extent that total receipts during the month of producer milk by the operator of such distributing plant exceed his gross Class I sales less: (1) Receipts of Class I milk from other fluid milk plants; (2) milk transferred as Class I milk to such milk processing plant; and (3) milk received in consumer packages from such milk processing plant.

### § 1129.4 [Reserved]

### § 1129.5 Distributing plant.

"Distributing plant" means any milk processing or packaging plant from which there is route disposition, except filled milk, in the marketing area during the month equal to more than an average of 500 pounds per day or 5 percent, whichever is less, of the Grade "A" milk and skim milk received from dairy farmers or other plants.

### § 1129.6 Supply plant.

"Supply plant" means any plant from which fluid milk or fluid skim milk is received at a distributing plant:

(a) For any of the months of February through July, on 4 or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month; and

(b) For any of the months of August through January:

(1) On 10 or more days during the month, or in an amount equal to a daily average of not less than 8,300 pounds for such month; or

(2) On 4 or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month, and such plant was a supply plant pursuant to paragraph (a) of this section during any month of the immediately preceding period of February through July.

### § 1129.7 Fluid milk plant.

Except as provided in paragraph (c) of this section, "fluid milk plant" means:

(a) A distributing plant or a supply plant.

(b) Any plant approved by the appropriate health authority to supply milk for distribution as Grade A milk in the marketing area if such plant is operated by a cooperative association, and 75 percent or more of the milk of the members of such association, including receipts pursuant to § 1129.9 (b) and (c), is received at the fluid milk plants of other handlers.

(c) The term "fluid milk plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An approved distributing plant which also meets the pooling requirements of another Federal order and from which the Secretary determines there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in the Austin-Waco marketing area;

(3) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in the Austin-Waco marketing area than in such other Federal order marketing area, but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) An approved supply plant which (i) meets the pooling requirements of another Federal order and from which greater qualifying shipments, except filled milk, are made during the month to plants regulated under such other order than are made to plants regulated under this part, or (ii) retains automatic pooling status under another Federal order.

### § 1129.7a Approved plant.

"Approved plant" means: (a) A fluid milk plant, or (b) any milk plant from

which there is route disposition in the marketing area.

**§ 1129.8 Nonfluid milk plant.**

"Nonfluid milk plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonfluid milk plant from which fluid milk products are moved to a fluid milk plant during the month, but which is neither an other order plant nor a producer-handler plant.

**§ 1129.9 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of one or more approved plants;

(b) Any cooperative association with respect to the milk of any producer which it diverts pursuant to § 1129.12; and

(c) Any cooperative association with respect to the milk of any producer which it causes to be delivered directly from the farm in bulk tank pickup truck(s) owned and/or controlled by such association, to the fluid milk plant of another handler. Such milk shall be deemed to have been received by the cooperative association at the location of the fluid milk plant to which it is delivered.

**§ 1129.10 Producer-handler.**

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which milk is received from the dairy farm(s) of such person but from no other dairy farm: *Provided*, That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care, and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such producer in his capacity as a handler.

**§ 1129.11 [Reserved]**

**§ 1129.12 Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is:

(1) Received at a fluid milk plant; or

(2) Diverted for his account by the operator of a fluid milk plant or cooperative association from such plant to a nonfluid milk plant that is not a producer-handler plant during the period January through July and on not more than one-third of the days of delivery during the month for the period August through December: *Provided*, That milk so diverted shall be deemed to have been received by the diverting handler at the plant from which it was diverted.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a fluid milk plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III pursuant to § 1129.44(a)(8)(iii) and the corresponding step of § 1129.44(b); and

(3) Any person with respect to milk produced by him which is 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.

**§ 1129.13 Producer milk.**

"Producer milk" means all skim milk and butterfat contained in milk produced by a producer and received at a fluid milk plant directly from producers or diverted pursuant to § 1129.12.

**§ 1129.14 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1129.40(b)(1) from any source other than producers, handlers described in § 1129.9(c) or fluid milk plants;

(b) Receipts in packaged form from other plants of products specified in § 1129.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1129.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1129.40(b)(1)) for which the handler fails to establish a disposition.

**§ 1129.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1129.40(b) or (c)(1)(i) through (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.

**§ 1129.16 Fluid cream product.**

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1129.17 Filled milk.**

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

**§ 1129.18 Cooperative association.**

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 10, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

**§ 1129.30 Reports of receipts and utilization.**

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his fluid milk plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the fluid milk plant to other plants;

(2) Receipts of milk from handlers described in § 1129.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other fluid milk plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1129.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler described in § 1129.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to his receipts and utilization of milk, filled milk and milk products in such manner as the market administrator may prescribe.

**§ 1129.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1129.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) The market administrator, upon request, shall furnish to a cooperative association for its members the data reported pursuant to paragraph (a) (1), (2), and (3) of this section.

**§ 1129.32 Other reports.**

(a) Each handler, who causes milk to be diverted for his account directly from producers' farms to an unapproved plant, shall prior to such diversion, report to the market administrator and to the cooperative association, of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1129.30 and 1129.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

**§ 1129.40 Classes of utilization.**

Except as provided in § 1129.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1129.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1129.15; and

(6) In shrinkage assigned pursuant to § 1129.41(a) to the receipts specified in § 1129.41(a)(2) and in shrinkage specified in § 1129.41 (b) and (c).

**§ 1129.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1129.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each fluid milk plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product 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 § 1129.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1129.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other fluid milk plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid

milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 § 1129.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1129.42 Classification of transfers and diversions.**

(a) *Transfers to fluid milk plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another fluid milk plant or by a handler described in § 1129.9(c) to another handler's fluid milk plant shall be classified as Class I milk unless both handlers request the same classification in another class. The percentage of the total quantities of skim milk and butterfat, respectively, in products thus transferred and assigned to Class I milk shall not be greater than the percentage of skim milk and butterfat in producer milk classified as Class I milk in the plant of the transferee-handler. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computation pursuant to § 1129.44(a)(12) and the corresponding step of § 1129.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1129.44(a)(7) or the corresponding step of § 1129.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1129.44(a)(11) or (12) or the corresponding steps of § 1129.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the fluid milk plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b) (3) of this section):

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1129.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a fluid milk plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonfluid milk plants.* Skim milk or butterfat transferred or diverted in the following forms from a fluid milk plant to a nonfluid milk plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonfluid milk plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1129.30 for the month within which such transaction occurred; and

(*b*) The nonfluid milk plant operator maintains books and records showing utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonfluid milk plant and transfers of packaged fluid milk products from such nonfluid milk plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonfluid milk plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonfluid milk plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonfluid milk plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the

transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonfluid milk plant from fluid milk plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonfluid milk plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonfluid milk plant shall be assigned to the extent possible in the following sequence:

(a) To such nonfluid milk plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant; and

(b) To such nonfluid milk plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonfluid milk plant;

(vii) Receipts of bulk fluid cream products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonfluid milk plant; and

(viii) In determining the nonfluid milk plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonfluid milk plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

**§ 1129.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1129.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1129.30 and shall compute separately for each fluid milk plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1129.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1129.40, 1129.41, and 1129.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1129.9 (b) or (c) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association.

**§ 1129.44 Classification of producer milk.**

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1129.9(a) for each of his fluid milk plants separately and of each handler described in § 1129.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1129.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1129.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1129.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the fluid milk plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1129.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1129.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order; and

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (a) through (c) of this section. Should the pounds of skim milk to be 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 § 1129.9(c), fluid milk products from fluid milk plants of other handlers, and bulk fluid milk products from other order plants; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1129.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) 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 quality 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 or a handler described in § 1129.9(c) according to the classification of such products pursuant to § 1129.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

**§ 1129.45 Market administrator's reports concerning classification.**

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1129.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating a fluid milk plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 12th day after the end of each month, report to each cooperative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

CLASS PRICES

§ 1129.50 Class prices.

Subject to the provisions of § 1129.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.70.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1129.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1129.52 Plant location adjustments for handlers.

For milk received from producers at a fluid milk plant located outside of Zone I (Zone I comprises all the territory south of the northern boundaries of Guadalupe, Comal, Kendall, Kerr, Edwards, and Val Verde Counties, all in the State of Texas, and all territory south of a boundary formed by U.S. Highway 90 east of the marketing area to the Colorado River and thence south along the Colorado River) which is classified as Class I milk, the price specified in § 1129.50(a) shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the county court house of the county in which such plant is located is from the county court house in New Braunfels, Tex.

§ 1129.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1129.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1129.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1129.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1129.44(a)(14) and the corresponding step of § 1129.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1129.74, that are applicable at the location of the fluid milk plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the fluid milk plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1129.44(a)(9) and the corresponding step of § 1129.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1129.44(a)(9) and the corresponding step of § 1129.44(b) for the current month, or

(ii) The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after the computations pursuant to § 1129.44(a)(11) and the corresponding step of § 1129.44 (b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section; and

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of receipts and utilization of skim milk and butterfat for previous months.

§ 1129.61 Computation of uniform price for each handler.

For each month, the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers by each handler as follows:

(a) Add to the amount computed pursuant to § 1129.60 the total of the location adjustments to be made pursuant to § 1129.75;

(b) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month;

(c) Subtract an amount computed by multiplying the total hundredweight of producer milk in each class by 5 cents; and

(d) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The result, less any fraction of a cent, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content, at fluid milk plants in Zone I.

§ 1129.62 Announcement of uniform price for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for each handler for such month.

PAYMENTS FOR MILK

§ 1129.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (d) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 28th day of each month, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month.

(b) On or before the 15th day after the end of each month for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1129.61 as adjusted pursuant to §§ 1129.74 and 1129.75; plus or minus adjustments for errors made in previous payments to such producers; and less (1) payment made pursuant to paragraph (a) of this section; (2) deductions for marketing services pursuant to § 1129.86 and (3) proper deductions authorized by such producer.

(c) On or before the 13th and 26th days of each month in lieu of the payments pursuant to paragraphs (a) and (b) of this section, respectively, each handler shall pay to a cooperative association for milk which it caused to be delivered to such handler from producers and for which such cooperative association is not a handler pursuant to § 1129.9 (c), if such cooperative association is authorized to collect such payments for its member-producers and has so requested the handler, an amount equal to the sum of the individual payments otherwise payable to such producers.

(d) On or before the 13th and 26th days of each month, each handler shall pay to a cooperative association for milk which was caused to be delivered to such handler by such cooperative association, and for which it is a handler pursuant to § 1129.9(c), an amount not less than the value of such milk computed by multiplying the pounds of such milk classified in each class pursuant to § 1129.44 by the class prices, as adjusted by the butterfat differential specified in § 1129.74, that are applicable at the location of the receiving handler's fluid milk plant.

(e) In making the payments to producers pursuant to paragraphs (b) and (c) or (d) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

**§ 1129.74 Butterfat differential.**

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

**§ 1129.75 Plant location adjustments for producers.**

In making payment to producers pursuant to § 1129.73, the uniform price to be paid for producer milk received at a fluid milk plant located outside of Zone I shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the county courthouse of the county in which such plant is located is from the county courthouse in New Braunfels, Tex.

**§ 1129.76 [Reserved]**

**§ 1129.77 Adjustment of accounts.**

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or verification of weights and butterfat tests of milk or milk products discloses errors resulting in money due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

**§ 1129.85 Assessment for order administration.**

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1129.9(c), shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1129.9(c);

(b) Other source milk allocated to Class I pursuant to § 1129.44(a) (7) and (11) and the corresponding steps of § 1129.44(b); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds Class I milk received during the month at such plant from fluid milk plants and other order plants.

**§ 1129.86 Deduction for marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1129.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 13th day after the end of each month and pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

ADVERTISING AND PROMOTION PROGRAM

**§ 1129.110 Agency.**

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1129.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1129.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1129.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1129.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1129.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

**§ 1129.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1129.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative, who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1129.111 and paragraph(a) of this section.

(c) Selection of agency members to represent participating nonmember pro-

ducers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1129.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

**§ 1129.115 Powers of the Agency.**

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1129.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1129.110 and 1129.117.

**§ 1129.116 Duties of the Agency.**

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business.

(b) Develop programs and projects pursuant to §§ 1129.110 and 1129.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

**§ 1129.117 Advertising, Research, Education, and Promotion Program.**

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

**§ 1129.118 Limitation of expenditures by the Agency.**

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1129.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

**§ 1129.119 Personal liability.**

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1129.120 Procedure for requesting refunds.**

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

**§ 1129.121 Duties of the market administrator.**

Except as specified in § 1129.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1129.113(c).

(b) Set aside the amounts subtracted under § 1129.61(c) and received pursuant to § 1129.123 into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight

on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1129.61(c).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1129.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1129.61(c) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1129.110 through 1129.123).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

**§ 1129.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall be distributed in an equitable manner to producers by the market administrator.

**§ 1129.123 Payment of advertising and promotion funds.**

On or before the 15th day after the end of each month during which producer milk was received, each handler shall turn over to the market administrator the advertising and promotion funds deducted pursuant to § 1129.61(c).

## PART 1130—MILK IN CORPUS CHRISTI, TEX., MARKETING AREA

**Subpart—Order Regulating Handling**

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AUTHORITY: The provisions of this Part 1130 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

### GENERAL PROVISIONS

**§ 1130.1 General provisions.**

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

### DEFINITIONS

**§ 1130.2 Corpus Christi, Tex., marketing area.**

"Corpus Christi, Tex., marketing area", called the "marketing area" in this part, means all the territory within the following counties, all in the State of Texas:

Brooks.
Cameron.
Duval.
Hidalgo.
Jim Wells.
Kleberg.
Live Oak.
Nueces.
San Patricio.

**§ 1130.3 Route disposition.**

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery to a milk or filled milk plant.

**§ 1130.4 Plant.**

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities without storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit for route disposition shall not be a plant under this definition.

**§ 1130.5 Distributing plant.**

"Distributing plant" means a plant from which there is route disposition of Grade A fluid milk products during the month in the marketing area.

**§ 1130.6 Supply plant.**

"Supply plant" means any plant approved by an appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which milk is moved to a distributing plant.

**§ 1130.7 Pool plant.**

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any distributing plant from which during the month:

(1) The route disposition of fluid milk products, except filled milk, within the marketing area is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total route disposition of fluid milk products, except filled milk, is 50 percent or more of the receipts of Grade A milk at such plant.

(b) A supply plant:

(1) During any month in which 50 percent or more of the receipts of Grade A milk from dairy farmers and handlers described in § 1130.9(c) at such plant is moved as fluid milk products, except filled milk, to pool distributing plants; or

(2) During each of the months of January through August, if such plant was a pool plant pursuant to paragraph (b)(1) of this section during each of the immediately preceding months of September through December, unless the operator of such plant has filed with the market administrator before the first day of any month written request that such plant not be a pool plant for each month through August during which it does not otherwise qualify as a pool plant.

(c) Any plant located in the marketing area and operated by a cooperative association approved by any duly con-

stituted State or municipal health authority, and at which milk is received from dairy farmers holding permits or authorizations from such health authority, if 50 percent or more of the producer milk of members of such cooperative association is physically received during the month at pool plants of other handlers described in paragraph (a) of this section or is transferred to such pool plants from a plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is nevertheless, fully regulated under such other Federal order; and

(4) A plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months January through August, if such plant retains automatic pooling status under this part.

**§ 1130.8 Nonpool plant.**

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another Federal order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

**§ 1130.9 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1130.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producer members which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person in his capacity as the operator of an other order plant with route disposition in the marketing area.

**§ 1130.10 Producer-handler.**

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from other dairy farmers;

(c) Disposes of no other source milk as Class I milk except that represented by nonfat solids used in the fortification of fluid milk products;

(d) Receives during the month from pool plants fluid milk products in a total quantity of not more than 10,000 pounds, or 5 percent of his Class I disposition, whichever is less; and

(e) Furnishes satisfactory proof to the market administrator that the maintenance, care, and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

**§ 1130.11 [Reserved]**

**§ 1130.12 Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for consumption as Grade A milk by any duly constituted State or municipal health authority, which is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1130.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1130.44(a)(8)(iii) and the corresponding step of § 1130.44(b); and

(3) Any person with respect to milk produced by him which is 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.

**§ 1130.13 Producer milk.**

"Producer milk" means skim milk and butterfat for each handler's account in milk from producers as follows:

(a) With respect to operations of a pool plant:

(1) Received directly from such producers;

(2) Received from a handler described in § 1130.9(c); or

(3) Diverted by the operator of such pool plant to a nonpool plant that is not a producer-handler plant for his account, subject to the conditions of paragraph (c) of this section.

(b) With respect to additional receipts by a cooperative association handler:

(1) Diverted by such cooperative association from the pool plant of another handler to a nonpool plant that is not a producer-handler plant for the account of such cooperative association, subject to the conditions of paragraph (c) of this section; or

(2) Received by such cooperative association from producers' farms as a handler described in § 1130.9(c) in excess of the quantity delivered to pool plants pursuant to paragraph (a)(2) of this section.

(c) With respect to diversions to nonpool plants:

(1) A cooperative association may divert for its account a total quantity of milk not in excess of one-third of the total producer milk of its members received at all pool plants during the month. Diversions in excess of such quantity shall not be producer milk and the diverting cooperative shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If the cooperative association fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such cooperative association;

(2) A handler operating a pool plant may divert for his account milk of producers other than members of a cooperative association diverting milk pursuant to paragraph (c)(1) of this section, in a total quantity not in excess of one-third of the milk at such pool plant during the month from producers who are not members of such a cooperative association. Milk diverted in excess of such quantity shall not be producer milk and the diverting handler shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such handler;

(3) For the purposes of location adjustments pursuant to §§ 1130.52 and 1130.75, diverted milk shall be priced at

the location of the nonpool plant to which diverted; and

(4) For purposes of determining qualification of pool plants pursuant to § 1130.7 (a) and (b), milk diverted pursuant to paragraph (a)(3) of this section shall be considered receipts of Grade A milk at the plant from which diverted.

**§ 1130.14 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1130.40 (b)(1) from any source other than producers, handlers described in § 1130.9 (c) or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1130.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1130.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1130.40(b)(1)) for which the handler fails to establish a disposition.

**§ 1130.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less that 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1130.40(b) or (c)(1)(i) through (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.

**§ 1130.16 Fluid cream product.**

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1130.17 Filled milk.**

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

**§ 1130.18 Cooperative association.**

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

## Handler Reports

**§ 1130.30 Reports of receipts and utilization.**

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1130.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1130.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1130.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

**§ 1130.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1130.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1130.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

**§ 1130.32 Other reports.**

(a) Each handler who causes milk to be delivered for his account directly from producers' farms to a nonpool plant shall, prior to such diversion, report to the market administrator his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required in §§ 1130.30 and 1130.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

## Classification of Milk

**§ 1130.40 Classes of utilization.**

Except as provided in § 1130.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1130.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1130.15; and

(6) In shrinkage assigned pursuant to § 1130.41(a) to the receipts specified in § 1130.41(a)(2) and in shrinkage specified in § 1130.41 (b) and (c).

**§ 1130.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1130.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product 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 sepcified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1130.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1130.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 § 1130.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1130.42 Classification of transfers and diversions.**

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1130.44(a)(12) and the corresponding step of § 1130.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1130.44(a)(7) or the corresponding step of § 1130.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1130.44(a) (11) or (12) or the corresponding steps of § 1130.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1130.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1130.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

**§ 1130.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1130.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1130.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1130.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1130.40, 1130.41, and 1130.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1130.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

**§ 1130.44 Classification of producer milk.**

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1130.9(a) for each of his pool plants separately and of each handler described in § 1130.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1130.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim

milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1130.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1130.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1130.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1130.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III 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 § 1130.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) 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 paragraphs (a) (2), (7) (v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from 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 § 1130.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (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 § 1130.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

### § 1130.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1130.44(a)(12) and the corresponding step of § 1130.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1130.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month report to each cooperative association, upon request by such association, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

## Class Prices

### § 1130.50 Class prices.

Subject to the provisions of § 1130.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.07.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

### § 1130.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

### § 1130.52 Plant location adjustments for handlers.

(a) For milk which is received from producers or a cooperative association at a pool plant located more than 80 miles, but not more than 150 miles from the city hall in Mercedes, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1130.50(a) shall be reduced 9 cents per hundredweight and for milk which is received from producers or a cooperative association at a pool plant located more than 150 miles from the city hall in Mercedes, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1130.50(a) shall be reduced 1-cent per hundredweight for each 10 miles distance or fraction thereof that such plant is from the city hall in Mercedes, Tex.

(b) For purposes of calculating such location adjustment, transfers between pool plants shall be assigned Class I location credit as follows:

(1) If in packaged form without limit; and

(2) If in bulk form, to the extent that Class I disposition at the transferee-plant exceeds the sum of (i) 95 percent of receipts at such plant from producers and handlers described in § 1130.9(c), (ii) the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, and (iii) assignments pursuant to paragraph (b)(1) of this section, such assignment to be made first to transferor plants having the same location adjustment, then in sequence to plants having a greater location adjustment, beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other-source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

**§ 1130.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1130.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

**§ 1130.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1130.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1130.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1130.44(a)(14) and the corresponding step of § 1130.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1130.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(9) and the corresponding step of § 1130.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1130.44(a)(9) and the corresponding step of § 1130.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1130.44(a)(12) and the corresponding step of § 1130.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(7) (i) through (iv) and the corresponding step of § 1130.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(7) (v) and (vi) and the corresponding step of § 1130.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(11) and the corresponding step of § 1130.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1130.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

**§ 1130.61 Computation of uniform price.**

For each month the market administrator shall compute the uniform price per hundredweight applicable for milk of 3.5 percent butterfat content at pool plants at which no location adjustment applies as follows:

(a) Combine into one total the values computed pursuant to § 1130.60 for all handlers who have made the reports prescribed in § 1130.30 for the month and who have made the payments required pursuant to § 1130.71 for the preceding month;

(b) Add not less than one-fourth of the unobligated cash balance on hand in the producer-settlement fund;

(c) Add the aggregate of the values of the minus location adjustments pursuant to § 1130.75;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1130.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents.

**§ 1130.62 Announcement of uniform price and butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

**§ 1130.70 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1130.71, 1130.76, and 1130.77, subject to the provisions of § 1130.78, and from which he shall make all payments to handlers pursuant to §§ 1130.72 and 1130.77.

**§ 1130.71 Payments to the producer-settlement fund.**

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1130.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1130.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1130.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the mar-

keting area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

**§ 1130.72 Payments from the producer-settlement fund.**

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1130.71(a)(2) exceeds the amount computed pursuant to § 1130.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. Any amount due a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator from such handler, pursuant to §§ 1130.71, 1130.77, 1130.78, 1130.85, or 1130.86.

**§ 1130.73 Payments to producers and to cooperative associations.**

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the 25th day of each month, to each producer who has not discontinued delivery of milk to such handler, a partial payment for milk received from such producer during the first 15 days of such month at not less than the Class III milk price for the preceding month;

(2) On or before the 15th day after the end of each month, for milk received during such month, an amount not less than the uniform price computed pursuant to § 1130.61, subject to adjustments pursuant to §§ 1130.74 and 1130.75, plus or minus adjustments for errors made in previous payments to such producers, and less:

(i) Payments made pursuant to paragraph (a)(1) of this section;

(ii) Deductions for marketing services pursuant to § 1130.86; and

(iii) Proper deductions authorized by such producer;

(3) If by the date for payment pursuant to paragraph (a)(2) of this section, a handler has not received full payment for such month pursuant to § 1130.72, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payments from the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b)(1) Upon receipt of a written request from a cooperative association, which the market administrator determines is authorized by its members to collect payment for their milk, and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 23d and 14th days of each month in lieu of payments pursuant to paragraph (a) (1) and (2), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(c) In making the payments pursuant to paragraphs (a)(2) and (b) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount of the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producers.

(d) As follows, to each cooperative association for milk for which it is the handler pursuant to § 1130.9(c):

(1) On or before the 23d day of the month, a partial payment for milk received during the first 15 days of such month, at not less than the amount specified in paragraph (b) of this section; and

(2) On or before the 14th day of the following month, in final settlement, the value of such milk received during the month, at the uniform price, as adjusted pursuant to §§ 1130.74 and 1130.75, less the amount of payment made pursuant to paragraph (d)(1) of this section.

(e) On or before the 14th day after the end of the month, for milk received from the pool plant of a cooperative association, to such cooperative association not less than the value of such milk at the applicable price(s) for the class(es) at which transferred pursuant to § 1130.42(a), as adjusted by the butterfat differential specified in § 1130.74, that are applicable at the location of the transferee-handler's pool plant.

**§ 1130.74 Butterfat differential.**

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 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.

**§ 1130.75 Plant location adjustments for producers and on nonpool milk.**

(a) In making payments pursuant to § 1130.73, the uniform price computed pursuant to § 1130.61 to be paid for such milk received at a pool plant at which a location adjustment pursuant to § 1130.52 applies may be reduced by the amount of such location adjustments.

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

**§ 1130.76 Payments by handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1130.30(b) and 1130.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1130.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1130.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1130.60 for such handler shall include, in lieu of the value of other source milk specified in § 1130.60(f) less the value of such other source milk specified in § 1130.71(a)(2)(ii), a value of milk determined pursuant to § 1130.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1130.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1130.30(b) and 1130.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1130.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1130.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1130.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

### § 1130.77 Adjustment of accounts.

Whenever verification by the market administrator of any handler's reports, books, records, accounts, or payments discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler, of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

### § 1130.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1130.71, 1130.77(a), 1130.85, or 1130.86 shall be increased one-half of 1 percent on the first day of the calendar month next following the due date of such obligation and, on the first day of each calendar month thereafter until such obligation is paid.

## Administrative Assessment and Marketing Service Deduction

### § 1130.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1130.13(a)(2) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1130.44(a)(7) and (11) and the corresponding steps of § 1130.44(b), except such other source milk that is excluded from the computations pursuant to § 1130.60 (d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1130.76(a)(2).

### § 1130.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1130.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator, on or before the 13th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of milk from producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and

such producers, and on or before the 13th day after the end of each month pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1130.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1130.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1130.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1130.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1130.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1130.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1130.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1130.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1130.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinue producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1130.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1130.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1130.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1130.110 and 1130.117.

§ 1130.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1130.110 and 1130.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1130.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval of all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1130.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant

to § 1130.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

### § 1130.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

### § 1130.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

### § 1130.121 Duties of the market administrator.

Except as specified in § 1130.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1130.113(c).

(b) Set aside the amounts subtracted under § 1130.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1130.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1130.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1130.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1130.110 through 1130.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

### § 1130.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1130.70.

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## PART 1131—MILK IN CENTRAL ARIZONA MARKETING AREA

### Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1131 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

### § 1131.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

### § 1131.2 Central Arizona marketing area.

"Central Arizona marketing area", hereinafter called the "marketing area", means all territory within the counties of Cochise, Graham, Greenlee, Maricopa, Pima, and Pinal, and that part of Yuma County south of 33 degrees latitude (North from the Equator), all in the State of Arizona.

**§ 1131.3 Route disposition.**

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or a plant store) of a fluid milk product classified as Class I milk other than a delivery to a plant described in § 1131.7(a).

**§ 1131.4 [Reserved]**

**§ 1131.5 [Reserved]**

**§ 1131.6 [Reserved]**

**§ 1131.7 Pool plant.**

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant approved by a duly constituted state or municipal health authority for the receipt or processing of Grade A milk or which supplies processed milk to an agency of the U.S. Government located within the marketing area, from which during the month:

(1) There is route disposition, except filled milk, equal to at least 50 percent of the total receipts at the plant (i) of milk qualified by inspection to become producer milk pursuant to § 1131.13(a), and (ii) from other milk plants and handlers described in § 1131.9(c) in the form of fluid milk products, except filled milk, qualified for fluid consumption; and

(2) There is route disposition, except filled milk, in the marketing area in a volume not less than 25 percent of such receipts and also greater than an average of 600 pounds per day.

(b) Any plant which ships fluid milk products, except filled milk, approved by any health authority having jurisdiction in the marketing area as eligible for distribution under a Grade A label in a volume not less than 50 percent of its receipts of milk (from dairy farmers who would be producers if this plant qualifies as a pool plant) in the current month during the period of July through October or 20 percent in the current month during the period of November through June to a plant specified in paragraph (a) of this section: *Provided,* That if a plant qualifies in each of the months of July through October in the manner prescribed in this section such plant shall upon written application to the market administrator on or before October 31 following such compliance be designated as a pool plant until the end of the following June.

(c) A milk plant located within the marketing area at which milk may be received from the farms of dairy farmers holding permits or authorization issued by health authorities having jurisdiction in the marketing area and which is operated by a cooperative association qualified under § 1131.18 which has 75 percent or more of its member producers' milk received at the pool plants of other handlers. Milk received by such cooperative, in a truck owned or under contract to the cooperative, from a pool plant and transferred in such truck to another pool plant for the account of the cooperative shall be considered a receipt at the cooperative's plant and a transfer from such plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Central Arizona marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period November through June, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of an other order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

**§ 1131.8 Nonpool plant.**

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant and which is not an other order plant nor a producer-handler plant.

**§ 1131.9 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to milk of any producer which such cooperative association causes to be diverted pursuant to § 1131.13 for the account of such association;

(c) A cooperative association with respect to the milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing prior to the first day of the month in which the milk is delivered, that it elects to be the handler for such milk;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant described in § 1131.7(d).

**§ 1131.10 Producer-handler.**

"Producer-handler" means:

(a) Any person who is both a dairy farmer and the operator of a plant from which fluid milk products are disposed of as route disposition in the marketing area and who:

(1) Receives at his plant, or acquires for route disposition fluid milk products only from:

(i) His own farm production; and

(ii) Fluid milk products obtained by transfer from pool plants or other order plants in an amount not to exceed 5 percent of his total fluid milk product disposition for the month or 5,000 pounds, whichever is less;

(2) Does not reprocess or convert milk products into a fluid milk product except to increase the nonfat milk solids content above that of the fluid milk product received;

(3) Furnishes proof satisfactory to the market administrator that:

(i) The maintenance, care, and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled (other than that received from regulated plants) is the personal enterprise of and at the personal risk of such person in his capacity as a producer; and

(ii) The operation of such plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

(b) The governmental agency that operates a milk plant, except that a plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant that is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for 1 month and thereafter resumes the status of a nonpool plant, it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

**§ 1131.11 [Reserved]**

**§ 1131.12 Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk pursuant to the requirements specified in paragraph (a) (1) or (2) of this section, and whose milk is received directly from the farm at a pool plant or is diverted as producer milk pursuant to § 1131.13.

(1) Produces milk, on a dairy farm subject to the regular inspection by a duly constituted State or municipal health authority, under a dairy farm permit or rating issued by such authority for the production of milk to be disposed of for fluid consumption.

(2) Produces milk which is acceptable to an agency of the Federal Government

for fluid consumption in its institutions or bases.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1131.44(a)(8)(iii) and the corresponding step of § 1131.44(b); and

(3) Any person with respect to milk produced by him which is 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.

**§ 1131.13 Producer milk.**

"Producer milk" of each handler means all skim milk and butterfat produced by producers:

(a) With respect to receipts at a pool plant:

(1) Received directly from such producers; and

(2) Diverted from such pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of the pool plant, subject to the limitations and conditions of paragraph (c) of this section;

(b) With respect to additional receipts of a cooperative association:

(1) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the limitations and conditions of paragraph (c) of this section; and

(2) For which the cooperative association is the handler pursuant to § 1131.9(c); and

(c) With respect to diversions to nonpool plants pursuant to paragraphs (a)(2) and (b)(1) of this section:

(1) Such diversions may be without limit during the months of December through April, but shall not be for more than 8 days' production of any producer during any other month, otherwise only milk of such producer received at a pool plant shall be producer milk; and

(2) For purposes of location adjustments pursuant to §§ 1131.52 and 1131.75, milk so diverted shall be priced at the location of the plant to which diverted.

**§ 1131.14 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1131.40(b)(1) from any source other than producers, handlers described in § 1131.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1131.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1131.40(b)(1), and products produced at the plant during the 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 § 1131.40(b)(1)) for which the handler fails to establish a disposition.

**§ 1131.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1131.40 (b) or (c)(1) (i) through (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.

**§ 1131.16 Fluid cream product.**

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1131.17 Filled milk.**

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

**§ 1131.18 Cooperative association.**

"Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk for its members.

HANDLER REPORTS

**§ 1131.30 Reports of receipts and utilization.**

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1131.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1131.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1131.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

**§ 1131.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1131.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1131.76(b) shall report for each dairy farmer who

would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

**§ 1131.32 Other reports.**

(a) Each handler, except a producer-handler or a handler making payment pursuant to § 1131.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month, the payments made to a cooperative association pursuant to § 1131.73(d);

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to § 1131.13 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1131.30 and 1131.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

**§ 1131.40 Classes of utilization.**

Except as provided in § 1131.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1131.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1131.15; and

(6) In shrinkage assigned pursuant to § 1131.41(a) to the receipts specified in § 1131.41(a)(2) and in shrinkage specified in § 1131.41(b) and (c).

**§ 1131.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1131.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product 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 § 1131.9(c), except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests 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 § 1131.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1131.42 Classification of transfers and diversions.**

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid

cream product from a pool plant to another pool plant or by a handler described in § 1131.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1131.44(a)(7) or the corresponding step of § 1131.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1131.44 (a) (11) or (12) or the corresponding steps of § 1131.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant; and

(4) Unless a different utilization is claimed by both handlers, skim milk and butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant described in § 1131.7(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class for such month at the pool plant(s) of the receiving handler after the computations pursuant to § 1131.44(a)(13)(i) and the corresponding step of § 1131.44(b).

(b) *Transfers or diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3), of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1131.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1131.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remain-

ing Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

**§ 1131.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1131.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1131.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1131.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1131.40, 1131.41, and 1131.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1131.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

**§ 1131.44 Classification of producer milk.**

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1131.9(a) for each of his pool plants separately and of each handler described in § 1131.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1131.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1131.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1131.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding 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 § 1131.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1131.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III 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 § 1131.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1131.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to

paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) 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 poducts from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from 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 paragraphs (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 § 1131.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (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) and (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) and (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 § 1131.9(c) according to the classification of such products pursuant to § 1131.42(a); and

(ii) A cooperative association in its capacity as a handler pursuant to § 1131.9 (c) or as the operator of a pool plant described in § 1131.7(c) according to the classification of such products pursuant to § 1131.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

### § 1131.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1131.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any

changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

**§ 1131.50 Class prices.**

Subject to the provisions of § 1131.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.52.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

**§ 1131.51 Basic formula price.**

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest 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.

**§ 1131.52 Plant location adjustments for handlers.**

(a) For milk received from producers at a pool plant located outside Pima County and more than 30 miles by shortest highway distance as measured by the market administrator, from the nearer of the Courthouses in Maricopa and Graham Counties, Ariz., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1131.50(a) shall be reduced by 10 cents if such plant is located not more than 130 miles from the nearer courthouse and by an additional cent for each 10 miles or fraction thereof that such distance exceeds 130 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1131.9(c), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) For other source milk to which a location adjustment is applicable and for milk received from producers at a plant located in Pima County, Ariz., and which is classified as Class I milk, the price computed under § 1131.50(a) shall be increased 12 cents.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (c) of this section, except that the adjusted Class I price shall not be less than the Class III price.

**§ 1131.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1131.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

**§ 1131.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1131.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1131.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1131.44(a)(14) and the corresponding step of § 1131.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1131.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(9) and the corresponding step of § 1131.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1131.44(a)(9) and the corresponding step of § 1131.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(7) (i) through (iv) and the corresponding step of § 1131.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(7) (v) and (vi) and the corresponding step of § 1131.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(11) and the corresponding step of § 1131.44 (b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

**§ 1131.61 Computation of uniform price.**

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1131.60 for all handlers who filed the reports prescribed by § 1131.30 for the month and who made the payments pursuant to §§ 1131.71 and 1131.73 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1131.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1131.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

**§ 1131.62 Announcement of uniform price and butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

**§ 1131.70 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1131.71 and 1131.76 and out of which he shall make all payments pursuant to § 1131.72: *Provided*, That payments due to any handler shall be offset by any payments due from such handler.

**§ 1131.71 Payments to the producer-settlement fund.**

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1131.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1131.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

**§ 1131.72 Payments from the producer-settlement fund.**

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(a)(2) exceeds the amount computed pursuant to § 1131.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

**§ 1131.73 Payments to producers and to cooperative associations.**

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the 27th day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount not less than 1.3 times the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price as adjusted pursuant to §§ 1131.74 and 1131.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to paragraph (a)(1) of this section, (ii) less deductions made for marketing services pursuant to § 1131.86, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1131.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the second day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the seventh day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) the amount or rate and nature of any authorized deductions to be made from payments, and (iii) the amount and nature of payments due pursuant to § 1131.77; and

(d) Each handler who receives milk from a cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received from such cooperative association during the first 15 days of the month at not less than 1.3 times the Class III price for the preceding month; and

(2) In final settlement, the value of such milk as classified pursuant to § 1131.44 at the class prices, as adjusted by the butterfat differential specified in § 1131.74, that are applicable at the location of the receiving handler's pool plant, less payment made pursuant to paragraph (d)(1) of this section.

**§ 1131.74 Butterfat differential.**

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

**§ 1131.75 Plant location adjustments for producers and on nonpool milk.**

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant, at the rates set forth in § 1131.52; and

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price shall not be less than the Class III price.

**§ 1131.76 Payments by handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1131.30(b) and 1131.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1131.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1131.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1131.60 for such handler shall include, in lieu of the value of other source milk specified in § 1131.60(f) less the value of such other source milk specified in § 1131.71(a)(2)(ii), a value of milk determined pursuant to § 1131.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1131.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1131.30(b) and 1131.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1131.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1131.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1131.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

**§ 1131.77 Adjustment of accounts.**

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in monies due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

**§ 1131.78 Charges on overdue accounts.**

Any unpaid obligation of a handler pursuant to § 1131.71 or § 1131.77 relative to payments to the producer-settlement fund shall be increased one-half of 1 percent on the second day following the due date of such obligation and on the 15th day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

**§ 1131.85 Assessment for order administration.**

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1131.44(a)(7) and (11) and the corresponding steps of § 1131.44(b), except such other source milk that is excluded from the computations pursuant to § 1131.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1131.76(a)(2).

**§ 1131.86 Deduction for marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1131.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions

to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

## PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

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AUTHORITY: The provisions of this Part 1132 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

### GENERAL PROVISIONS

**§ 1132.1 General provisions.**

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

### DEFINITIONS

**§ 1132.2 Texas Panhandle marketing area.**

"Texas Panhandle marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, all in the State of Texas, and Beckham in the State of Oklahoma.

**§ 1132.3 [Reserved]**

**§ 1132.4 [Reserved]**

**§ 1132.5 Distributing plant.**

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

**§ 1132.6 Supply plant.**

"Supply plant" means a plant from which milk or skim milk which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1132.7(a).

**§ 1132.7 Pool plant.**

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk:

(1) Not less than 50 percent of the Grade A milk received at such plant from dairy farmers, from handlers described in § 1132.9(c), and from other plants, is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants); and

(2) Not less than 15 percent of such receipts, or an average of not less than 10,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from handlers described in § 1132.9(c) during such month: *Provided*, That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of to retail and wholesale outlets (excluding pool plants) in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area un-

less notwithstanding the provisions of this subparagraph it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) such Class I disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month to retail and wholesale outlets (excluding pool plants) in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order; and

(4) That portion of a plant that is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

**§ 1132.8 Nonpool plant.**

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

**§ 1132.9 Handler.**

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of producers which is diverted pursuant to § 1132.13 for the account of such association;

(c) Any cooperative association with respect to milk of its member producers picked up at the farm for delivery to the pool plant of another handler in a tank truck owned or operated by such association or under control of such association, by contract or otherwise, in such a way that the association supervises and controls the determination of farm weights and tests of the milk of each of such member producers;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1132.7(c).

**§ 1132.10 Producer-handler.**

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers and who disposes of no fluid milk products in excess of his own milk production and fluid milk products received from pool plants.

**§ 1132.11 [Reserved]**

**§ 1132.12 Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is (1) received at a pool plant, or (2) diverted pursuant to § 1132.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1132.44(a)(8)(iii) and the corresponding step of § 1132.44(b); and

(3) Any person with respect to milk produced by him which is 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.

**§ 1132.13 Producer milk.**

"Producer milk" means the skim milk and butterfat in milk from a producer that is handled by a pool plant operator or a handler described in § 1132.9 (b) and (c) as follows:

(a) Producer milk of a handler operating a pool plant is skim milk and butterfat in milk:

(1) Diverted by the operator of such pool plant for his account to a nonpool plant that is not a producer-handler plant, subject to the limits prescribed in paragraph (d) of this section; and

(2) Received at such pool plant directly from producers and from a handler described in § 1132.9(c). If the handler to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the entire truckload shall be considered a receipt of producer milk at the first plant of delivery.

(b) Producer milk of a handler described in § 1132.9(b) is skim milk and butterfat in milk received by such handler from producers' farms and diverted by such handler for its account to a nonpool plant that is not a producer-handler plant, subject to the limits prescribed in paragraph (d) of this section.

(c) Producer milk of a handler described in § 1132.9(c) is skim milk and butterfat in milk received by such handler from producers' farms in excess of the quantity delivered to pool plants. Such milk shall be priced to such handler at the location of the pool plant to which most of the milk in the tank truck was delivered during the month.

(d) Diverted milk is producer milk in any month only to the extent it meets conditions set forth in this paragraph:

(1) It is claimed as producer milk by the diverting handler in his report filed pursuant to § 1132.30;

(2) It is milk received from a dairy farmer who had producer status immediately prior to such diversion;

(3) It is not in excess of 15 days' production of each producer during any of the months July through February; and

(4) Such diverted producer milk shall be priced at the location of the pool plant where the producer's milk was last physically received.

**§ 1132.14 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1132.40(b)(1) from any source other than producers, handler described in § 1132.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1132.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1132.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1132.40(b)(1)) for which the handler fails to establish a disposition.

**§ 1132.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1132.40 (b) or (c)(1) (i) through

(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.

**§ 1132.16 Fluid cream product.**

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1132.17 Filled milk.**

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified, by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

**§ 1132.18 Cooperative association.**

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

**§ 1132.30 Reports of receipts and utilization.**

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1132.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1132.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition of fluid milk products in the marketing area.

(c) Each handler described in § 1132.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

**§ 1132.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1132.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1132.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

**§ 1132.32 Other reports.**

(a) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1132.30 and 1132.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

**§ 1132.40 Classes of utilization.**

Except as provided in § 1132.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1132.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1132.15; and

(6) In shrinkage assigned pursuant to § 1132.41(a) to the receipts specified in § 1132.41(a)(2) and in shrinkage specified in § 1132.41 (b) and (c).

**§ 1132.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1132.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product 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 § 1132.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1132.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 § 1132.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1132.42 Classification of transfers and diversions.**

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1132.44(a)(12) and the corresponding step of § 1132.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1132.44(a)(7) or the corresponding step of § 1132.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1132.44 (a) (11) or (12) or the corresponding steps of § 1132.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1132.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a

bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i)(*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1132.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

### § 1132.43 General classification rules.

In determining the classification of producer milk pursuant to § 1132.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1132.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1132.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1132.40, 1132.41, and 1132.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1132.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

### § 1132.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1132.9(a) for each of his pool plants separately and of each handler described in § 1132.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1132.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtacted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1132.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1132.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the 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 § 1132.40(b), but

not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1132.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined.

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III 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 § 1132.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) 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 § 1132.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (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 § 1132.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

**§ 1132.45 Market administrator's reports and announcements concerning classification.**

The market administrator shall make the following reports and announcements concerning classifications:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1132.44(a)(12) and the corresponding step of § 1132.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1132.44 on the basis of such report and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

## Class Prices

**§ 1132.50 Class prices.**

Subject to the provisions of § 1132.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.25.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

**§ 1132.51 Basic formula price.**

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

**§ 1132.52 Plant location adjustments for handlers.**

(a) For that milk which is received from producers at a pool plant located 100 miles or more from the city hall, Amarillo, Tex., by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to a distributing plant which is a pool plant in the form of a fluid milk product and assigned to Class I pursuant to paragraph (b) of this section, or otherwise classified as Class I milk, the price specified in § 1132.50(a) shall be reduced at the rate set forth in the following schedule according to the location of the plant where such milk is received:

| Distance from the Amarillo City Hall (miles): | *Rate per hundredweight (cents)* |
|---|---|
| 100 but less than 110 | 15.0 |
| For each additional 10 miles or fraction thereof an additional | 1.5 |

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1132.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

**§ 1132.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1132.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

## Uniform Price

**§ 1132.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to

each of his pool plants and of each handler described in § 1132.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1132.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1132.44(a)(14) and the corresponding step of § 1132.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1132.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1132.44(a)(9) and the corresponding step of § 1132.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(7) (i) through (iv) and the corresponding step of § 1132.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(7) (v) and (vi) and the corresponding step of § 1132.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(11) and the corresponding step of § 1132.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

### § 1132.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price for all milk of 3.5 percent butterfat content f.o.b. pool plants located within 100 miles of the City Hall of Amarillo, Tex., as follows:

(a) Combine into one total the values computed pursuant to § 1132.60 for all handlers who made the reports prescribed in § 1132.30 for such month, except those in default of payments required pursuant to § 1132.71 for the preceding month;

(b) Add an amount equal to the sum of the location adjustments to be made pursuant to § 1132.75;

(c) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1132.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be the "uniform price" for producer milk.

### § 1132.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

## Payments for Milk

### § 1132.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1132.71, 1132.76, and 1132.77, and from which he shall make all payments pursuant to §§ 1132.72 and 1132.77: *Provided,* That payments due to any handler shall be offset by payments due from such handler.

### § 1132.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1132.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1132.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1132.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which is allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

### § 1132.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1132.71(a)(2) exceeds the amount computed pursuant to § 1132.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the appropriate funds are available.

### § 1132.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month, for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month.

(b) On or before the 15th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1132.61, subject to the butterfat differential computed pursuant to § 1132.74, and plus or minus adjustments for errors made in previous payments to such producer; and less (1) payment made pursuant to paragraph (a) of this section, (2) location adjustments pursuant to § 1132.75, (3) deductions for marketing services pursuant to § 1132.86, and (4) proper deductions authorized by such producer: *Provided,* That if such handler has not received full payment for such month pursuant to § 1132.72 he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator. The handler

shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 26th and 13th days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a cooperative association which collects payments for its members pursuant to paragraph (c)(1) of this section shall, on or before the 20th of each month, furnish such association information showing the daily and total pounds milk received from each of the association's member producers for the first 15 days of such month and, on or before the fifth day after the end of each month, such information for the 16th through the end of such month.

(4) For producer milk received from a handler described in § 1132.9(c), each handler shall make payments as follows:

(i) On or before the 26th day of the month, a partial payment for milk received during the first 15 days of such month at not less than the amount specified in paragraph (a) of this section; and

(ii) On or before the 13th day of the following month, in final settlement, the value of such milk received during the month, at the applicable uniform price as adjusted pursuant to §§ 1132.74 and 1132.75, less the amount of payment made pursuant to paragraph (c)(4)(i) of this section.

(d) In making the payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

### § 1132.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a 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.

### § 1132.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment pursuant to § 1132.73 the uniform price pursuant to § 1132.61 to be paid for milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

| Distance from the Amarillo City Hall (miles): | *Rate per hundredweight (cents)* |
|---|---|
| 100 but less than 110 | 15.0 |
| For each additional 10 miles or fraction thereof an additional | 1.5 |

(b) For purposes of computations pursuant to §§ 1132.71 and 1132.72, the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1132.52 applicable at the location of the nonpool plant from which the milk was received (but the resulting price shall not be less than the Class III price).

### § 1132.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1132.30(b) and 1132.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1132.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant

from pool plants and other order plants that are classified in the corresponding class purusant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1132.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1132.60 for such handler shall include, in lieu of the value of other source milk specified in § 1132.60(f) less the value of such other source milk specified in § 1132.71(a)(2)(ii), a value of milk determined pursuant to § 1132.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1132.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1132.30 (b) and 1132.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1132.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1132.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1132.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

### § 1132.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1132.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1132.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1132.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

### § 1132.78 Charges on overdue accounts.

There shall be added to any balance due the market administrator pursuant to §§ 1132.71, 1132.76, 1132.77, 1132.85, and 1132.86 an amount equal to one-half of 1 percent of such balance for each month or any portion thereof that payment of the balance is overdue.

## Administrative Assessment and Marketing Service Deduction

### § 1132.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1132.44(a) (7) and (11) and the corresponding steps of § 1132.44(b), except such other source milk that is excluded from the computations pursuant to § 1132.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1032.76(a)(2).

### § 1132.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1132.73(b) shall deduct 6 cents per hundredweight or such lesser amounts as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Producers' cooperative associations: In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

## Advertising and Promotion Program

### § 1132.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1132.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

### § 1132.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1132.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1132.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall, nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1132.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1132.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1132.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative, who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1132.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1132.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1132.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1132.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1132.110 and 1132.117.

§ 1132.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1132.110 and 1132.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1132.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1132.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1132.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1132.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1132.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter in-

volved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

**§ 1132.121 Duties of the market administrator.**

Except as specified in § 1132.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1132.113(c).

(b) Set aside the amounts subtracted under § 1132.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1132.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1132.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1132.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1132.110 through 1132.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

**§ 1132.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1132.70.

## PART 1138—MILK IN RIO GRANDE VALLEY MARKETING AREA

### Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1138 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

**§ 1138.1 General provisions.**

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

**§ 1138.2 Rio Grande Valley marketing area.**

"Rio Grande Valley marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the counties of Bernalillo, Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Lea, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia, all in the State of New Mexico; El Paso in the State of Texas; and Archuleta, Montezuma, and La Plata, in the State of Colorado.

**§ 1138.3 Route disposition.**

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk products classified as Class I milk, other than a delivery to a pool plant or nonpool plant.

**§ 1138.4 [Reserved]**

**§ 1138.5 [Reserved]**

**§ 1138.6 [Reserved]**

**§ 1138.7 Pool plant.**

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant hereinafter referred to as a "distributing pool plant" in which fluid milk products are pasteurized or packaged and from which there is route disposition in the marketing area equal to not less than 15 percent of the total Class I sales of such plant, except filled milk, or 10,000 pounds daily (average), whichever is less: *Provided*, That the total quantity of Class I milk, except filled milk, disposed from such plant during the month is not less than 50 percent of such plant's receipts of Grade A milk, which receipts shall include all milk diverted from such pool plant to

a nonpool plant by the handler operating such pool plant.

(b) Any plant hereinafter referred to as a "supply pool plant" from which during the month not less than 50 percent of its dairy farm supply of Grade A milk is moved to plants from each of which there is route disposition, except filled milk, equal to not less than 50 percent of its receipts of Grade A milk during the month and route disposition, except filled milk, in the marketing area equal to at least 15 percent of such receipts or a daily average of 10,000 pounds, whichever is less.

(c) Any plant, hereinafter referred to as a "cooperative standby pool plant," which is operated by a cooperative association, and is located within the marketing area, if 50 percent or more of the milk delivered during the month by producers who are members of such association is delivered directly or is transferred by the association to pool plants of other handlers.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Rio Grande Valley marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period March through July, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

### § 1138.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant qualified pursuant to § 1138.7 and which is not an other order plant nor a producer-handler plant.

### § 1138.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of any member producer which such cooperative association causes to be diverted pursuant to § 1138.12 for the account of such cooperative association;

(c) A cooperative association with respect to the milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association, if the cooperative association notified the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it elects to be a handler for such milk. For purposes of location adjustments to producers such milk is considered to have been received from producers by the cooperative association at the location of the pool plant to which it is delivered;

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition in the marketing area; and

(e) Any person in his capacity as the operator of a nonpool plant from which Grade A milk as shipped to a pool plant pursuant to § 1138.7(a).

### § 1138.10 Producer-handler.

(a) "Producer-handler" means any person who processes and packages milk from his own farm production, who has route disposition within the marketing area consisting of any portion of such milk, and who receives no fluid milk products from other dairy farmers or from any source other than a pool plant and receipts from pool plants shall not be in excess of 11,000 pounds per month or, any person who processes and packages certified milk from his own farm production and disposes of such milk to another plant and who receives no milk from any source except his certified herd: *Provided*, That any person who desires to qualify as a producer-handler shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding receipts from pool plants) is the personal enterprise of and at the personal risk of such person and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of the same person.

(b) In the case of a producer-handler of certified milk, the certified dairy herd and the milk plant in which the certified milk is handled shall be considered one business unit and shall not include milk which is delivered to other handlers' plants from a noncertified herd maintained on the same farm.

(c) A governmental agency which operates a milk, or filled milk plant shall be considered a producer-handler: *Provided*, That the plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant which is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for one month and thereafter resumes the status of a nonpool plant it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

### § 1138.11 [Reserved]

### § 1138.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is:

(1) Received at a pool plant; or

(2) Diverted for the account of the diverting handler from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(i) A cooperative association may divert for its account the milk of any member producer, whose milk is received at a distributing pool plant for at least 3 days during the month, without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 25 percent in the months of March, April, May, June, July, and December and 15 percent in other months of its member producer milk received at all pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers provided each association has filed such a request in writing with the market administrator;

(ii) A handler in his capacity as the operator of a distributing pool plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a)(2)(i) of this section, whose milk is received at his pool plant for at least 3 days during the month, without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 25 percent in the months of March, April, May, June, July, and December and 15 percent in other months of the milk received at such pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)

(2)(i) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk;

(iii) For purposes of the requirements of § 1138.7, milk diverted for the account of the operator of a pool plant shall be included in the receipts of the pool plant from which diverted; and

(iv) For the purposes of location adjustments pursuant to §§ 1138.52 and 1138.75, milk diverted to a nonpool plant shall be considered to have been received at the location of the pool plant from which diverted when the farm on which the milk is produced is located within the marketing area and at the location of the nonpool plant where received when the farm on which the milk is produced is located outside the marketing area.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1138.44(a)(8)(iii) and the corresponding step of § 1138.44(b); and

(3) Any person with respect to milk produced by him which is 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.

### § 1138.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer and received at a pool plant directly from producers or diverted pursuant to § 1138.12. Milk received at a pool plant from a handler described in § 1138.9(c) shall be considered under this part as producer milk of the pool plant operator. Milk received from producers by a handler described in § 1138.9(c) but not delivered to a pool plant shall be considered under this part as producer milk of such handler.

### § 1138.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1138.40(b)(1) from any source other than producers, handlers described in § 1138.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1138.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1138.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1138.40(b)(1) for which the handler fails to establish a disposition.

### § 1138.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1138.40 (b) or (c)(1) (i) through (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.

### § 1138.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

### § 1138.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

### § 1138.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members; and

(c) Has its entire activities under the control of its members.

### § 1138.19 Accounting periods.

A handler may account for receipts, utilization and classification of skim milk and butterfat at his pool plant(s) for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not less than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

## Handler Reports

### § 1138.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1138.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1138.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1138.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

### § 1138.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1138.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in

the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1138.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1138.32 Other reports.

In addition to the reports required pursuant to §§ 1138.30 and 1138.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1138.40 Classes of utilization.

Except as provided in § 1138.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1138.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form 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 § 1138.15; and

(6) In shrinkage assigned pursuant to § 1138.41(a) to the receipts specified in § 1138.41(a) (2) and in shrinkage specified in § 1138.41 (b) and (c).

§ 1138.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1138.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product 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 § 1138.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1138.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 § 1138.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1138.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1138.44(a)(12) and the corresponding step of § 1138.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1138.44(a)(7) or the corresponding step of § 1138.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1138.44(a) (11) or (12) or the corresponding steps of § 1138.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1138.40.

(c) *Transfers to producer-handlers.* Skim milk or 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 § 1138.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

**§ 1138.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1138.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1138.30 and shall compute

separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1138.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1138.40, 1138.41, and 1138.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1138.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

**§ 1138.44 Classification of producer milk.**

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1138.9(a) for each of his pool plants separately and of each handler described in § 1138.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1138.41(b);

(2) Subtract in the following order from the total pounds of skim milk in Class I:

(i) The pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(ii) The pounds of skim milk in receipts of packaged certified fluid milk products from a producer-handler if disposed of in the same form as received;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1138.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1138.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1138.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1138.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order that were not subtracted pursuant to paragraph (a) (2) (ii) of this section;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III 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 § 1138.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) 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 § 1138.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (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 § 1138.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

**§ 1138.45 Market administrator's reports and announcements concerning classification.**

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1138.44(a) (12) and the corresponding step of § 1138.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1138.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 13th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

**§ 1138.50 Class prices.**

Subject to the provisions of § 1138.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.35.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

**§ 1138.51 Basic formula price.**

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

**§ 1138.52 Plant location adjustments for handlers.**

(a) For milk received from producers at a pool plant in Zone I (comprising the counties of Bernalillo, Dona Ana, Grant, Guadalupe, Harding, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, and Valencia, all in the State of New Mexico, and El Paso, Tex.), which is classified as Class I milk, the Class I price shall be the price computed pursuant to § 1138.50(a).

(b) For milk received from producers at a pool plant in Zone II (comprising the counties of Archuleta, La Plata, and Montezuma, Colorado, and San Juan, N. Mex.), and in Zone III (comprising the counties of Eddy, Chaves, Curry, De Baca, Lea, Quay, and Roosevelt, N. Mex.), which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (d) of this section, the Class I price shall be the price computed pursuant to § 1138.50 (a) minus 15 cents.

(c) For milk received from producers at a pool plant located outside the marketing area and more than 100 miles by the shortest highway distance, as determined by the market administrator, from the nearest of the county courthouses in Bernalillo or Santa Fe Counties, N. Mex., or El Paso, Tex., and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (d) of this section, the price computed pursuant to § 1138.50(a) shall be reduced by 15 cents and by an additional cent for each 10 miles or fraction thereof, that such distance calculated from the Bernalillo, Santa Fe, or El Paso County Courthouse, whichever is nearer, exceeds 110 miles.

(d) For purposes of calculating such adjustment, bulk transfers of fluid milk products between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(e) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (b) and (c) of this section, except that the adjusted Class I price shall not be less than the Class III price.

**§ 1138.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1138.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

**§ 1138.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1138.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1138.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1138.44(a)(14) and the corresponding step of § 1138.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1138.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1138.44(a)(9) and the corresponding step of § 1138.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (i) through (iv) and the corresponding step of § 1138.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (v) and (vi) and the corresponding step of § 1138.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(11) and the corresponding step of § 1138.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

**§ 1138.61 Computation of uniform price.**

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1138.60 for all handlers who filed the reports prescribed by § 1138.30 for the month and who made the payments pursuant to §§ 1138.71 and 1138.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions for location adjustments computed pursuant to § 1138.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1138.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

**§ 1138.62 Announcement of uniform price and butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

**§ 1138.70 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into

which he shall deposit all payments made by handlers pursuant to §§ 1138.71, 1138.76 and 1138.77 and from which he shall make all payments pursuant to §§ 1138.72 and 1138.77: *Provided,* That any payments due any handler shall be offset by any payments due from such handler.

**§ 1138.71 Payments to the producer-settlement fund.**

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1138.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1138.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1138.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

**§ 1138.72 Payments from the producer-settlement fund.**

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1138.71(a)(2) exceeds the amount computed pursuant to § 1138.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

**§ 1138.73 Payments to producers and to cooperative associations.**

Except as provided in paragraphs (c) and (e) of this section, each handler, except a cooperative association, shall make payment to each producer from whom milk is received as specified in paragraphs (a) and (b) of this section:

(a) On or before the last day of the month, to each producer who had not discontinued shipping milk to such handler before the 28th day of the month, a partial payment equal to the uniform price for the preceding month multiplied by the hundredweight of milk delivered during the first 15 days of the current month less authorized deductions.

(b) On or before the 16th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1138.61, as adjusted pursuant to §§ 1138.74 and 1138.75, plus or minus adjustments for errors made in previous payments to such producers and less (1) payments made pursuant to paragraph (a) of this section, (2) deductions for marketing services pursuant to § 1138.86 and (3) proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment for such delivery period pursuant to § 1138.72 he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the second day prior to the date of payment to producers in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this order;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

(e) Each handler who receives milk from a handler described in § 1138.9(c), shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment in the amount specified in paragraph (a) of this section; and

(2) In making final settlement, the value of such milk at the applicable uniform price as adjusted pursuant to §§ 1138.74 and 1138.75, less the amount of partial payment made on such milk.

(f) Each handler who receives milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (c) of this section shall report on or before the eighth day after the end of the month to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) The days of delivery, the total pounds of milk, and the average butterfat test of milk received from such producer during the month;

(2) The amount or rate and nature of any deductions; and

(3) The amount of any payments due such producer pursuant to § 1138.77.

**§ 1138.74 Butterfat differential.**

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115

times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month.

**§ 1138.75 Plant location adjustments for producers and on nonpool milk.**

(a) For producer milk received at pool plants located in Zones II and III or at pool plants located outside the marketing area and more than 100 miles, as determined by the market administrator, from the nearest of the county courthouses in El Paso County, Tex., or Bernalillo, or Santa Fe Counties, N. Mex., there shall be deducted an adjustment for each such plant for all milk at the rates specified pursuant to § 1138.52.

(b) For purposes of computations pursuant to §§ 1138.71 and 1138.72, the uniform price shall be adjusted at the rates set forth in § 1138.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

**§ 1138.76 Payments by handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1138.30(b) and 1138.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that 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 § 1138.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1138.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1138.60 for such handler shall include, in lieu of the value of other source milk specified in § 1138.60(f) less the value of such other source milk specified in § 1138.71(a)(2)(ii), a value of milk determined pursuant to § 1138.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1138.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1138.30(b) and 1138.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1138.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1138.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated:

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1138.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of an other order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

**§ 1138.77 Adjustment of accounts.**

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in moneys due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

**§ 1138.85 Assessment for order administration.**

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 5 cents per hundred-

weight, or such lesser amount as the Secretary may prescribe, with respect to the milk described in paragraphs (a), (b), and (c) of this section. If a handler elects pursuant to § 1138.19 to use two accounting periods in any month, the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period:

(a) Producer milk including such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1138.44(a) (7) and (11) and the corresponding steps of § 1138.44(b), except such other source milk that is excluded from the computations pursuant to § 1138.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1138.76(a)(2).

**§ 1138.86 Deduction for marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself for milk pursuant to § 1138.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 16th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of milk for producers who are not receiving such services from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 16th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deduction and the quantity of milk on which the deduction was computed from each producer.

ADVERTISING AND PROMOTION PROGRAM

**§ 1138.110 Agency.**

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1138.121 (b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

**§ 1138.111 Composition of Agency.**

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1138.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1138.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1138.113(b), has a majority of the participating producers, representation from such coopeative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

**§ 1138.112 Term of office.**

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

**§ 1138.113 Selection of Agency members.**

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1138.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

**§ 1138.114 Agency operating procedure.**

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

**§ 1138.115 Powers of the Agency.**

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1138.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1138.110 and 1138.117.

**§ 1138.116 Duties of the Agency.**

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1138.110 and 1138.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

**§ 1138.117 Advertising, Research, Education, and Promotion Program.**

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

**§ 1138.118 Limitation of expenditures by the Agency.**

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1138.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in 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.

**§ 1138.119 Personal liability.**

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1138.120 Procedure for requesting refunds.**

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

**§ 1138.121 Duties of the market administrator.**

Except as specified in § 1138.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1138.113(c).

(b) Set aside the amounts subtracted under § 1138.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1138.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1138.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1138.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1138.110 through 1138.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

**§ 1138.122 Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1138.70.

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# OFFICE OF ECONOMIC OPPORTUNITY

■

## Establishment and Eligibility of Community Action Agencies

## Title 45—Public Welfare

## CHAPTER X—OFFICE OF ECONOMIC OPPORTUNITY

## PART 1062—ESTABLISHMENT AND ELIGIBILITY OF COMMUNITY ACTION AGENCIES

*Background.* The 1967 Amendments to the Economic Opportunity Act set forth, among other things, requirements for the establishment of community action agencies (CAAs). In order to implement these new legislative requirements, OEO issued administrative regulations in the form of CA Memo 80 (effective February 15, 1968) and, in February 1971, published a revised version which was issued as OEO Instruction 6302–2, CAAs: Eligibility and Establishment. These documents outlined the powers and authorities of States and local units of government in regard to the designation of an organization as either a public or private non-profit community action agency, to revocate such designation, and to refuse to be served by a CAA. Detailed procedures to accomplish each of these activities also were delineated including the time period allotted for each required action and the official responsible for each. In addition the issuances prescribed eligibility requirements for communities desiring to be served by a CAA and specific responsibilities which such an agency must be able to exercise.

OEO Instruction 6302–2 is now being revised primarily to reduce the time frame required when the status of a CAA changes from private non-profit to public. The revised document retains in large part the provisions found in the initial Instruction with changes being only those necessary to achieve the goal of shortening the timetable for conversion.

The actual activities for conversion remain basically the same as those initially required. The major changes involve combining such activities, compressing funding-office response time, and eliminating certain Regional Office review requirements in order to reduce the conversion period from 125 days to 50 days, e.g. (1) Twenty days have been eliminated from the timetable by requiring that public hearings be held within the same time period granted to all interested parties for comment on the intent to designate; (2) an appeal provision has been added to resolve differences arising in a situation where there is significant community opposition to the change of status; and (3) an additional 30 days have been eliminated by dropping the requirement for a Preliminary Transition Plan and Provisional Recognition and only retaining the requirement for a Final Transition Plan to be followed by Final Recognition.

In addition to the changes, a chart has been added (See Appendix A) which provides a succinct overview of the actions and procedures required when a CAA is being converted to public status.

These regulations are effective April 5, 1974.

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AUTHORITY: Secs. 602, 623, Pub. L. 88-452, 78 Stat. 528 as amended, 86 Stat. 696 (42 U.S.C 2942(n), 2971b).

REFERENCES: Economic Opportunity Act of 1964 as amended, Sections 210, 211, 212.

OEO Instruction 6320–1, "The Mission of the Community Action Agency".

OEO Instruction 6400–01 (Formerly Community Action Memo 81) "The Organization of Community Action Agency Boards and Committees under the 1967 Amendments to the Economic Opportunity Act (Section 211)".

### Subpart A—General

#### § 1062.1 Definition of terms used in this part.

(a) "Community"—The geographic area and population to be served by a community action agency. Section 210 (c) of the Act provides that:

"For the purpose of this title, a community may be a city, county, multicity, or multicounty unit, an Indian reservation, or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed for a community action program * * *."

(b) "State"—The 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(c) "Political Subdivision"—or "Subdivision"—A unit of general local government for a specific geographic area within a State. Normally a county, township, metropolitan or regional government, city, town, or village. The term also includes the tribal government of a State or Federal Indian reservation. It does not include specialized governmental agencies, such as school boards, conservation districts, or separate park or police authorities.

(d) "Designation"—Selection of a proposed community action agency, or a revocation or change in such a previous selection, by a State, a political subdivision, a combination of political subdivisions, or by OEO itself. A State, subdivision, or combination of political divisions may either (a) designate itself or (b) designate a separate public agency or a private non-profit organization. The designated agency may then apply for recognition by OEO in accordance with this part.

(e) "Recognition"—Approval by OEO of a community action agency to serve a particular community. Under Section 210(a), OEO recognition of a community action agency follows designation of that agency by a State or by one or more political subdivisions.

(f) "Existing Community Action Agency" and "Proposed Community Action Agency"—An "existing community

action agency" is one already recognized and funded to serve any portion of a community at the time an application for recognition of a new community action agency to serve that community is submitted to OEO in accordance with this part. In a case where an application is made for OEO recognition of a new community action agency, the agency named in the application is a "proposed community action agency."

(g) "Governing Officials"—Normally, (1) the governor and legislature of any of the 50 States, the Commonwealth of Puerto Rico, or a self-governing territory, or (2) the chief elected or duly appointed officials of a local political subdivision, of the District of Columbia, or of a non self-governing territory, who collectively possess the power to adopt and carry out local laws or ordinances. However, if the Attorney General or other chief legal officer of the political jurisdiction certifies in writing that the governor, mayor or other chief executive official, or a specific group of the officials described above possesses the power either (i) to plan, conduct, administer, and evaluate a community action program, or (ii) to designate a separate public agency or private non-profit organization as a community action agency, then that official or group of officials may be considered the "governing officials" for that purpose.

(h) "Opting Out"—A decision, made under Section 210(e) of the Act, by the governing officials of a political subdivision not to be included in the community action program of a community action agency which has been designated pursuant to Section 210(a) by the State or by one or more other political subdivisions.

(i) "Separate Public Agency"—A public agency which is not itself a State, a political subdivision, or a combination of political subdivisions and which has a governing board that by law possesses the same powers as this part requires of a public agency.

### § 1062.2 Kinds of Community Action Agencies.

(a) If a State or local government wishes to designate a new CAA, or to change the designation of an existing CAA, it may either:

(1) Designate itself or a combination of subdivisions; or

(2) Designate another agency, which, in turn, may be either a separate public agency or a private non-profit organization.

(b) The basic difference between these two approaches lies in the degree to which the State or local government wishes to be formally involved in the work of the CAA. The distinctions are as follows:

(1) *A government CAA.* (i) Such a CAA may be a State, a political subdivision, or a combination of political subdivisions. Where a government CAA is a combination of political subdivisions, the governing officials of the CAA must, however, by law possess the powers required by this Instruction for a public agency.

(ii) A government CAA serves the entire jurisdiction served by that government (minus any opting-out political subdivisions). A government CAA reserves to its own governing officials major policy and decision-making powers, sharing certain powers with, or delegating them to, a representative community action *administering board* (see OEO Instruction 6400–01).

(2) *A separate agency.* Such a CAA may be either a separate public agency or a private non-profit organization. It may serve an entire State, a single political subdivision, or a combination of political subdivisions. It has a representative community action governing board with independent powers (see OEO Instruction 6400–01).

### § 1062.3 Introduction and purpose.

(a) This Part speaks only to the requirements under Section 210 of the Economic Opportunity Act for the establishment of community action agencies (CAAs) and does not discuss in detail the closely related subjects of the mission of CAAs or of the powers and structure of CAA Boards. These subjects are covered in OEO Instruction 6320–1 and Community Action Memo 81, respectively. In addition, CAAs are subject to a variety of policy requirements governing financial and personnel management, funding procedures, and other aspects of grantee operations. Public officials wishing to make designations should therefore obtain from the appropriate OEO Regional or Headquarters office copies of the two aforementioned issuances as well as other principal issuances relating to CAA operations.

(b) Section 210 of the Act provides for the designation of CAAs by the State, a political subdivision of the State, or a combination of such political subdivisions. Following the designation of a CAA by a State or local government, OEO must then recognize the CAA as meeting certain legislative and administrative requirements before the designation can take effect. In the absence of a State or local designation of a CAA, OEO may itself directly designate a CAA.

(c) Section 210 uses the term "designate" to mean both the selection of a CAA by a State or local government and the approval of such a selection by OEO. This Instruction uses the term "recognize" to mean such approval by OEO so as to distinguish it both from State or local designation and from direct designation by OEO where there is no State or local designation.

(d) Section 210 of the Act further provides that a political subdivision may choose not to be served by a CAA which is designated by a State or local government. This right to "opt out" is integrally related to the procedures for designation and recognition of CAAs.

(e) All existing CAAs have been duly designated and recognized in accordance with the requirements of Section 210. Designations are not required annually. No further action is required by existing CAAs to maintain their status. This part does not require existing CAAs to be redesignated by their State or local governing officials or to reapply to OEO for recognition. Rather, this part sets forth the procedures to be followed if State or local officials wish to designate new CAAs or to change, revoke, or opt out of the designations of existing CAAs.

(f) OEO's experience to date has demonstrated that CAAs can have a significant impact on local poverty when they can secure an adequate level of assistance under Title II of the Economic Opportunity Act or from alternate funding sources. Therefore, when applications are received for recognition of new CAAs or requests are submitted for the geographic expansion of existing CAAs, these requests shall be reviewed concurrently by the appropriate Regional Office and Headquarters staff.

## Subpart B—Powers of a Community Action Agency

### § 1062.20 General.

(a) In determining the kind of CAA to be designated, or whether a designation or change in designation should be made at all, a State or local government must carefully consider whether State or local law permits them to exercise the powers which a CAA must be able to exercise.

(b) Section 210(a) provides that a CAA must "be capable of planning, conducting, administering and evaluating a community action program * * * which includes or is designed to include a sufficient number of projects or components to provide, in sum, a range of services and activities having a measurable and potentially major impact on causes of poverty in the community * * *"

(c) In carrying out this function, a CAA must be able to exercise the powers set forth in §§ 1062.21–1062.32 of this subpart.

### § 1062.21 Legal power.

A CAA must have the legal powers to contract with other agencies and organizations to conduct all operating programs within the community action program where such conduct by another agency would contribute to efficiency or effectiveness or otherwise further program objectives.

### § 1062.22 Delegate agencies.

(a) A CAA must be able, in choosing the best qualified "delegate agencies" to conduct those projects and activities which it does not itself conduct, to contract with, and transfer funds to, any of the following, without limitation:

(1) Private nonprofit organizations, including churches and church-related organizations.

(2) Other private organizations, including business firms.

(3) The State government.

(4) Political subdivisions which are included in the community served by the CAA.

(5) Other specialized State, regional, or local public agencies, such as welfare departments, public schools and school systems, and regional planning agencies.

**§ 1062.23 Procurement.**

A CAA must be able to procure necessary program facilities, goods, and services in a manner which best meets the needs and interests of its program.

**§ 1062.24 Enforcement.**

(a) A CAA must be able to enforce its delegation agreements and procurement contracts by appropriate means, including:

(1) Audit and disallowance of improper costs.

(2) Suspension and termination of the contract.

(3) Court action to require performance.

(4) Court action to recover any funds spent or withheld in violation of a delegation agreement or damages for breach of contract.

**§ 1062.25 Power to receive and disburse funds.**

A CAA must be able to receive, hold, expend, or transfer and account for, Federal and State assistance funds, including all types of assistance which are available under applicable Federal or State law to other similar public or private nonprofit agencies.

**§ 1062.26 Non-Federal share.**

(a) A CAA must be able, since most Federal assistance under the Economic Opportunity Act is provided on a matching basis, to accept, use, and account for, contributions from non-Federal sources of:

(1) Cash.

(2) Space and physical plant facilities.

(3) Goods, materials, and equipment.

(4) Volunteer or paid services.

**§ 1062.27 Matching funds.**

A CAA must also be able to contribute its own property and funds, as necessary, to match Federal assistance.

**§ 1062.28 Acquisition and disposal of property.**

A CAA must be able, to the extent that goods, equipment, or property are acquired for use in the community action program, to hold and dispose of them as directed by the United States in accordance with the conditions of Federal assistance.

**§ 1062.29 Employment in CAA's.**

(a) A CAA must be free, with regard to the community action program and subject to the waiver provision stated below, from employment rules or restrictions which would prevent:

(1) The hiring of any qualified poor person, in preference to other qualified persons who are not poor.

(2) The hiring of any qualified person who lives in the neighborhood or area where the job is to be performed, in preference to other qualified persons who do not live there.

(3) The employment of persons without any fixed upper age limit.

(4) Restriction of non-professional jobs to particular types of persons because of their relationship to the program or its beneficiaries (for example, parents of pre-school children, manpower program trainees, the elderly, tenants of a particular project or block).

(5) The hiring of any person who can perform a non-professional job, even though he lacks a formal education.

(6) The hiring of an otherwise qualified person solely because he has a criminal record, unless such a restriction is required by OEO policies governing the employment of persons with criminal records.

(7) The employment of persons without regard to their race, religion, sex, color, or national origin.

(8) The payment to program employees of the current Federal minimum wage for employment in interstate commerce.

(b) The requirement to be free of restrictions preventing paragraph (a)(1)–(8) of this section shall be waived, by the OEO Regional or Headquarters office recognizing the CAA, for public CAAs (government CAAs or separate public agencies) which are subject to civil service laws or regulations which impose such restrictions, *provided*, That:

(1) The CAA delegate the conduct of all programs and activities funded under the Economic Opportunity Act other than basic central administration to other agencies which, with such exceptions as OEO may agree to for compelling programmatic reasons, are free of such restrictions; and

(2) The CAA commit itself to make every effort to seek changes in such civil service laws or regulations so as to eliminate such restrictions.

(c) With regard to the condition indicated in paragraph (b)(2) of this section, the waiver shall be extended beyond a year only upon receipt of documentation by the CAA that adequate efforts to change restrictive regulations have, in fact, been made.

**§ 1062.30 Program participation.**

(a) A CAA must also be free, with regard to the community action program, from any rules or restrictions which would prevent:

(1) Restriction of program participation to persons who qualify under OEO income eligibility guidelines.

(2) Restriction of program participation to persons who are residents of particular neighborhoods or areas.

(3) Restriction of program participation to particular groups or classes of poor or low income persons in accordance with specific program guidelines (for example, the elderly, members of specific neighborhood organizations or cooperatives, and students in specific schools).

(4) Free participation in the program by persons who are currently living in the community, whether or not they qualify as legal or permanent residents.

(5) Participation by all eligible persons without regard to race, religion, sex, color, or national origin.

**§ 1062.31 Conduct of programs across political boundaries.**

The CAA's governing laws, charter, or by-laws must not artificially restrict its ability to conduct the community action program within all political subdivisions included in the community, in accordance with the program and fiscal policies, plans and priorities set by the CAA. For example, if the CAA is an agency which is a combination of two or more political subdivisions or is a public agency jointly formed or designated by two or more subdivisions, it must be able in appropriate cases to use contributions of funds, equipment, or services from one subdivision for approved projects in another subdivision.

**§ 1062.32 Representative boards.**

The CAA must be able to meet all applicable requirements of OEO Instruction 6400–01 which deals with the powers, structure, composition and procedures of representative boards.

## Subpart C—Community Eligibility

**§ 1062.50 Minimum tests of community eligibility.**

(a) To be eligible to be served by a CAA a community must provide a suitable organizational base and possess a commonality of interest. At a minimum, an eligible community must be one of the following:

(1) A state.

(2) A city or other municipality, or a group of municipalities, with a population of at least 100,000 people, according to the most recent available census data.

(3) A county, group of counties or predominantly rural part or parts of one or more counties. A minimum of 50,000 persons according to the most available recent census data will apply in each of these cases.

(4) One or more Federal Indian reservations.

(5) An area which does not satisfy any of the tests in subparagraphs (1), (2), or (3) of this paragraph, but which is substantially the same geographically as a community served by a CAA which was recognized by OEO prior to February 1, 1969, *Provided*, That the political subdivisions within the area and the existing CAA have not rejected a reasonable opportunity to combine the area with other areas so as to enable the combined areas to satisfy one of the tests in subparagraphs (1), (2), or (3) of this paragraph.

**§ 1062.51 Loss of eligibility.**

(a) If because of opt-outs or loss of population the population of a community previously eligible under § 1062.50 (a)(2) of this subpart falls below 100,000 people, the community will lose its eligibility to be served by a CAA.

(b) If because of opt-outs or loss of population the population of a community previously eligible under § 1062.50 (a)(3) of this subpart falls below 50,000 people, the community will similarly lose its eligibility.

(c) When a community loses its eligibility, the appropriate governing officials

with the power to designate (see § 1062.71 and § 1062.72 of this chapter) may designate a CAA serving another community to serve the ineligible community. Where the appropriate governing officials fail to make such a designation, OEO may itself make such a designation (see § 1062.77 of this chapter). If neither the appropriate governing officials nor OEO make such a designation within 12 months of the loss of eligibility, OEO recognition of the CAA shall be withdrawn.

(d) When another CAA is designated to serve a community which has been rendered ineligible, the funds currently available for the ineligible community will be allocated to the CAA so designated. If a previously eligible community is rendered ineligible and another CAA is not designated to serve it, the loss of eligibility will not preclude OEO from providing Title II assistance for appropriate limited purpose projects within the area. OEO will attempt to make an equitable allocation of the funds currently available for the community.

## Subpart D—Revocations of Designations and Opting-Out

### § 1062.60 Authority and rights of State and local governments.

(a) Section 210 of the Economic Opportunity Act gives State and local governing officials the authority to select the CAA which will serve a given community. Section 210 does not, however, give governing officials the final authority to determine whether or not the community shall have a CAA, since it authorizes OEO to designate a CAA when State or local officials choose not to make a designation at all. This basic principle applies equally to both revocations and opt-outs.

(b) The authority to designate a CAA includes the authority to revoke a designation. Accordingly, the appropriate State or local governing officials may revoke, in accordance with Subpart E, a designation which they had previously made. When they revoke such a designation they may designate a new or existing CAA to serve the community or they may make no new designation. If they make no new designation, however, OEO may designate a CAA to serve the community.

(c) A political subdivision may also opt-out from—i.e., choose not to be served by—a CAA designated by a State, one or more other political subdivisions, or OEO. If the CAA from which the subdivision opts-out was designated by a State or another subdivision, the opting-out subdivision may designate a new or existing CAA to serve the subdivision (see § 1062.61(a) (1) and (2) of this subpart) or it may make no new designation. If the subdivision makes no new designation, however, OEO may designate a CAA to serve it.

(d) When a CAA has been designated by OEO, a subdivision's right to revoke the designation or opt-out of the designation is limited to cases in which the subdivision makes a valid designation of another CAA.

### § 1062.61 Procedures for opting out.

(a) The procedure to be followed by an opting out subdivision depends on the nature of the situation, as follows:

(1) *The opting-out from the CAA now serving the community.* If the opting out subdivision, together with any other subdivisions which also opt out, meets community eligibility requirements, it may then make its own designation in accordance with Subpart E. If it does not constitute an eligible community, and hence cannot designate its own CAA, it could not be served by any CAA unless it is combined with other areas so as to satisfy the eligibility requirements in § 1062.50 of Subpart C.

(2) *The opting-out from a CAA designated to replace the CAA now serving the community.* If the opting out subdivision wishes to continue to be served by the CAA which is now serving it, it need take no further action provided it, together with other subdivisions which also opt out from the new designation, constitutes a community which meets eligibility requirements.

(b) When a political subdivision exercises its right to opt out it has no guarantee that it may at a later date rejoin the community from which it opted out, since the remaining political subdivisions may themselves opt-out from the reconstituted community.

## Subpart E—Designation Process

### § 1062.70 Governmental jurisdictions.

The procedures outlined in §§ 1062.71–1062.76 of this subpart are applicable, unless otherwise specified, to all State and local designations, revocations, and opt-outs. Section 1062.77 of this subpart outlines the procedures governing designations by OEO.

### Procedures

### § 1062.71 What government may designate.

(a) A designation may be made by a State or by one or more political subdivisions. OEO shall maintain strict neutrality in recognizing designations and shall not give preference to designations of any particular political jurisdiction.

(b) Generally, a designation is made by any government (or combination of governments) which has jurisdiction over the entire community to be served by the CAA. Accordingly, a State may always designate, whereas a political subdivision (or combination of subdivisions) normally may designate only for a community which lies wholly within its (their) boundaries. In two groups of cases, however, a political subdivision may designate a separate public CAA or a private non-profit CAA to serve a community which extends beyond the boundaries of the designating subdivision:

(1) *Where no appropriate government is willing to designate.* (i) If neither the State nor group of counties is willing to designate a multi-county CAA, a county within the multi-county area may make a multi-county designation.

(ii) If neither the State nor the county is willing to designate, a municipality within the county may make a county-wide designation.

(2) *Where there is no general county government and the State is unwilling to designate.* In such cases, it may be burdensome for all municipalities within the county to make designations. A municipality within the county may accordingly make a county-wide designation.

(c) In all cases, however, the community to be served (as opposed to the subdivision making the designation) must meet the eligibility standards specified in Subpart C.

(d) When a political subdivision makes a designation for a community extending beyond its boundaries, any political subdivision within that larger community may, of course, exercise its right to opt-out. However, where, for example, a county opts-out from a county-wide designation made by a municipality, the opt-out applies only to that portion of the county outside the designating municipality. If the latter (together with any other municipalities which may wish to join it) has a population of 100,000 or more, its designation may still be recognized.

(e) When two or more political jurisdictions make simultaneous designations for all or part of the same community, the designation of the smallest jurisdiction shall take precedence, since its designation shall be considered as equivalent to an opt-out from the designation of the larger jurisdiction(s). For example, if a State designates itself as the CAA and one or more counties make their own designations, the county designations shall be recognized by OEO and the State CAA will serve only that portion of the State outside those counties.

(f) This does not preclude a political jurisdiction from later making a new designation for a community where a previous designation by a subdivision has already been recognized by OEO. For example, if OEO has recognized a CAA designated by a county, the State may at a later date designate itself or another CAA to serve the county. The county, however, may opt out of the new designation if it wishes its current designation to continue.

### § 1062.72 Who designates on behalf of a government.

The designation of a CAA must be by the governing officials of the State or political subdivision(s) making the designation (see § 1062.1(g) of this chapter). The power to designate may not be delegated.

### § 1062.73 When a designation may be made.

(a) A designation may be made at anytime. However, revocations or changes in the designation of a CAA may cause serious disruptions in program operations with resulting hardships to program beneficiaries and weakening of program impact. OEO's experience has proved that the best time to complete major

reorganizations or program transfers is at the beginning of a CAA's program year. Accordingly, wherever possible, revocations or changes in designations should be timed to take effect at the start of the CAA's next program year.

(b) In no event, however, shall a revocation or change in designation take effect except in accordance with a closedown or transition plan, submitted to and approved by OEO (see Subparts F and G of this chapter), which provides for a reasonable time period for orderly termination or changeover of program operations. Where a change in designation takes effect in the course of a CAA's program year, the approved program for the existing CAA will continue in operation for the balance of the program year unless the new CAA applies and receives approval for a program amendment in accordance with regular OEO grant application procedures. Moreover, even where a change of designation takes effect at the start of the CAA's program year, if the new CAA was not organized early enough to develop and submit its program plans for the new program year it may have to operate under the approved program of its predecessor until such time as it can submit its plans and apply and receive approval for a program amendment.

**§ 1062.74 Manner of designation.**

(a) The appropriate governing officials shall make a designation in the same manner as they normally exercise their legislative or major executive powers. This would either be by:

(1) Act, ordinance, or resolution of a legislative body subject to any concurrence or veto power of the chief executive; or

(2) Executive order or proclamation of the chief executive, if the chief legal officer certifies in writing that the chief executive possesses the power to make the designation on behalf of the State or local government in question.

**§ 1062.75 Public hearing prior to designation.**

(a) Before a State or political subdivision makes a designation, or changes, opts out from, or revokes an existing designation, the governing officials have 30 days within which they shall conduct public hearings in the community at which interested persons and organizations are given a reasonable opportunity to express publicly their views on the question and to submit written comments. (This time frame includes the 10 day notice described in paragraph (c) (1) of this section.) However, in those cases where significant community opposition is indicated which cannot be resolved at the community level to the satisfaction of all parties concerned, 15 additional days will be granted during which time a representative of the OEO-funding office will mediate the differences.

(b) A public hearing is not required when a subdivision opts out from a change in designation in order to maintain an existing designation.

(c) The procedures for the public hearing, including written comment, shall be in accordance with those prescribed by law for other important matters to be decided by the governing officials, subject to the following requirements in all cases:

(1) At least 10 days before the public hearing, written notice of the hearing shall be posted in a place (or places) which is (are) available to all interested persons or organizations, and shall be mailed to each political subdivision, any existing CAA currently serving any part of the community in question, each delegate agency of any such CAA, and each board or council or neighborhood-based organization under any such CAA.

(i) In the event that the designation is by a State, hearings shall be held in the county seat of each county and in each municipality with a population of at least 100,000 and, if possible, all on the same day. Ten days prior to the public hearings, notice of such hearings will be mailed by county officials to each political subdivision, any existing CAA currently serving any part of the community, each delegate agency of any such CAA and each board or council or neighborhood-based organization under any such CAA. In addition, public notices will be placed in the news media in the same manner prescribed by law for other important matters.

(2) The notice shall clearly indicate that the question of designating a CAA (or changing, revoking, or opting out from a designation) is being considered and shall also indicate any specific proposal or tentative decision which has already been made on the question.

**§ 1062.76 Notification to the State and political subdivisions of intent to designate.**

Notice of intent to designate must be given to the State and/or other political subdivisions in accordance with the following requirements:

(a) *Notice of intent to designate.* (1) At least 30 days before designation and 35 days prior to submitting to OEO an application for recognition of a change in designation, the designating government shall send written notice of its intent to designate to every political subdivision within the community, which has not already given its written endorsement of the designation, and affected CAA(s). If the designating government is not itself a State, the designating government shall also simultaneously send notice to the State Economic Opportunity Office (SEOO).

(i) In the event that the designation is by a State, written notice need be mailed only to governing officials of county governments and municipalities with populations of at least 100,000, plus any existing CAA(s). In addition, state-wide public notices shall be published in the news media in the same manner as that prescribed by law for other important matters.

(2) Written notice to political subdivisions shall consist of an OEO Form 374, "Notice to Political Subdivision" (see Appendix B Item 4), a CAP Form 5, "Community Information" (if the area served is other than that presently served) (see Appendix B Item 6).

(3) Written notice to the SEOO and affected CAA(s) shall consist of a letter advising the SEOO and CAA(s) of their right to submit to the designating government within 30 days their written comments and will include all the above-noted documents.

(b) *Notice of a revocation or opt-out of a proposed designation with no new designation.* (1) At the same time as it reports to OEO its revocation or opt-out from the proposed designation, the revoking or opting-out government shall send written notice to every other other subdivision in the community and to the SEOO.

(2) Written notice to political subdivisions and the SEOO shall consist of a letter advising them of the revocation or opt-out, the revocation or opt-out document (e.g., act, ordinance, or proclamation) and a Closedown Plan (see Appendix B Item 8).

(c) *Responses to a Notice of Intent To Designate.* (1) Within 30 days of receipt of notice of intent to designate, the government receiving the notice shall submit a written response to the designating government. If no response is made within 30 days, the government receiving the notice shall be assumed to have approved the change in designation.

(2) Where both the designating and responding governments are political subdivisions, the responding government shall also simultaneously submit a copy of its written response to the SEOO.

(3) Responses to a notice of intent to designate may consist of comments, recommended modifications, an endorsement, or an opt-out and/or a new designation. Where the response is an opt-out, a copy of the opting-out document (e.g., act, ordinance or proclamation) should be included in the written response. Where the responding government makes its own designation, its response should conform to the requirements of paragraph (a) of this section. Where the responding government opts out of a change in designation and wishes to continue to be served by an existing CAA it need not make a new designation (see § 1062.76(b) of this section).

(d) *Responses to a Notice of Revocation or Opt-Out of a Designation*

The governments receiving notice of a revocation or opt-out of a designation need not respond to the revoking or opting-out government where the latter does not make a new designation. If the government receiving such a notice is eligible it may, of course, make its own designation, conforming to the notification requirements in paragraph (a) of this section.

**§ 1062.77 Designations by OEO.**

(a) OEO will make a designation (not to be confused with OEO recognition of a CAA designated by a State or political subdivision) only in unusual circumstances and only after it has failed to

secure a valid State or local designation. OEO may also designate when an existing designation is revoked or when a political subdivision opts out of a CAA, and no other valid State or local designation is made. In no event shall OEO make a designation that would not have been recognized by OEO if it had been made by a State or local government, i.e., a designation which fails to meet eligibility criteria, funding limitations, or other requirements.

(b) Except where a public hearing has already been held by a State or local government, the appropriate OEO Regional or Headquarters Office shall hold a public hearing, in accordance with the requirements in § 1062.75 of this subpart, prior to making an OEO designation. Copies of the notices of such hearings shall be sent to the relevant public officials, and a press release announcing the hearing shall be sent to appropriate local newspapers and radio and television stations.

(c) Where OEO designates an existing CAA, which has already met all requirements for recognition, OEO designation will also constitute OEO recognition. Where OEO designates a new CAA, the latter must formally apply for recognition in the same manner as would a CAA designated by a State or local government and must comply, prior to application, with the notification requirements in § 1062.76 of this subpart. Where OEO designation also constitutes OEO recognition, application for recognition is not necessary and OEO or the CAA shall notify the appropriate State and local governments at the time of recognition.

## Subpart F—Reporting Revocations and Opt-Outs

### § 1062.90 Reporting a revocation or opt-out of a designation with no new designation.

(a) When a State or local government revokes the designation or opts out of an existing CAA without making a new designation, the revoking or opting out government should within 30 days report its action to the appropriate OEO Regional or Headquarters office. The report shall consist of two copies of each of the following:

(1) *The revocation or opt-out document.* (e.g., act, ordinance, or proclamation—see § 1062.74 of Subpart E). If the chief executive takes the revocation or opt-out action, the certification of the chief legal officer referred to in § 1062.74 (a)(2) of Subpart E must be included.

(2) *Notice of Public Hearing* (except in the case of an opt-out to maintain an existing designation—see § 1062.75 of Subpart E). A copy of the notice of the public hearing held prior to the revocation or opt-out should be submitted. A list of all locations where the notice was posted shall be attached to the notice. Copies of the minutes of the hearing and all written statements or comments received in connection with the hearing need not be attached, but must be retained and made available to OEO upon request.

(3) *Notice of Revocation or Opt-Out to Political Subdivisions* (where applicable—see § 1062.76(b) of Subpart E). Copies of each letter of notification need not be attached, but a list of all subdivisions notified shall be attached.

(4) *Notice of Revocation or Opt-Out to State Economic Opportunity Office.* Where the government making a revocation is itself a State, this is not applicable.

(5) *Closedown Plan* (see Appendix B Item 8)

(b) In no event shall the revocation or opt-out take effect until OEO has approved the Closedown Plan.

### § 1062.91 Reporting opt-outs of a change in designation.

(a) When a political subdivision opts out from a change in designation, the opting out subdivision should submit a report of its opt-out to the appropriate OEO Regional or Headquarters office at the same time as it responds to the designating government (see § 1062.76 (b) of Subpart E). The report shall consist of the opting-out document (e.g., act, ordinance, or proclamation) and any attached comments.

(b) Where the opting out subdivision wishes to continue to be served by the CAA serving it prior to the change in designation, its report to OEO should so indicate. It need not, however, make a new designation or apply for recognition.

## Subpart G—Applying for Recognition [1]

### § 1062.100 Procedures.

(a) When a State or local government makes a change in designation the designating government shall submit to the appropriate OEO Regional or Headquarters office an original and one copy of OEO Form 370, "Application for Recognition of a Community Action Agency," (see Appendix B Item 1) together with two copies of each of the following attachments.

[NOTE: One copy of all items, for information purposes only, will also be sent to all political subdivisions to be served.]

(1) *The designation document,* e.g., act, ordinance, or proclamation (see § 1062.74 of Subpart E). If the chief executive makes the designation, the certification of the chief legal officer referred to in § 1062.74(a)(2) of Subpart E, must be included.

(2) *Notice of public hearing.* (See § 1062.75 of Subpart E.) A copy of the notice of the public hearing held prior to the designation should be submitted. A list of all locations where the notice was posted shall be attached to the notice. Copies of the minutes of the hearing and all written statements or comments received in connection with the hearing need not be attached, but must be retained and made available to OEO upon request.

(3) *Notice of intent to designate, together with copies of their responses.* (See § 1062.76.) The applicant need not attach copies of each OEO Form 374, "Notice to Political Subdivision" (Appendix B, Item 4) sent out. However, copies of all written endorsements received from subdivisions prior to the designation, a list of all other subdivisions which were notified, and copies of each response received shall be attached.

(4) *Notice to the State Economic Opportunity Office, together with a copy of its response.* (See § 1062.76.) Where the designating government is itself a State, this is not applicable.

(5) *OEO Form 372, "Attorney's Certification"* (Appendix B, Item 2) *and governing legal documents.* This form must be completed by the designating government's chief legal officer or the new CAA's attorney.

(6) *OEO Form 373, "Local Civil Service Agency's Certification"* (Appendix B, Item 3). This form is required if the proposed CAA's personnel policies are subject to regulation by a State or local civil service system. The form should be completed by the State or local civil service agency. If the State or local civil service laws or regulations impose the restrictions prohibited in § 1062.29 of Subpart B above, the OEO Form 373 must be accompanied by a written request for a waiver from the requirements of that Part, together with a plan and timetable for seeking changes in such restrictive laws or regulations and a certification that all program operations will be delegated to agencies which are free from such restrictions.

(7) *OEO Form 375, "Certification of Compliance with Section 211"* (Appendix B. Item 5; see also OEO Instruction 6400–01).

(8) *A Map and CAP Form 5, "Community Information"* (Appendix B, Item 6 required only when the community to be served is changed.) The map should be large enough and colored, shaded, or otherwise marked to show clearly and in reasonable detail all geographic areas and political subdivisions in the proposed community and all immediately adjacent areas and subdivisions in the same county or counties or the same inclusive subdivisions which are not in the proposed community.

(9) *CAP Form 11, "Assurance of Civil Rights Compliance"* (Appendix B, Item 7.) This form is to be executed by the appropriate official of the new CAA.

(10) *Transition Plan* (See Appendix B, Item 8).

## Subpart H—Recognition of Designations and Approval of Revocations and Opt-Outs

### § 1062.110 General.

In response to an application for recognition of a new or changed designation, or of a report of revocation or opt-out from an existing designation, the appropriate OEO Regional or Headquarters office will take action as indicated in §§ 1062.111–1062.114.

[1] All OEO Forms required by this subpart may be requested from the appropriate OEO Regional or Headquarters Office.

**§ 1062.111 Designation of a new CAA.**

Where an existing CAA is replaced by a new CAA, the designation will either receive final recognition or will be disapproved. During the 30 day notification period the proposed CAA will have proceeded to organize itself, to select and appoint the members of its governing or administering board, to formally adopt bylaws, and to otherwise prepare itself for recognition. The status of these activities will be so reported to OEO along with submission of the Transition Plan at the time of application for recognition. If OEO is satisfied that all actions and plans are in order, it shall give the new CAA full recognition.

**§ 1062.112 Designation of an existing CAA.**

Where an existing CAA is designated to replace another CAA, the designation will generally either receive full recognition or will be disapproved.

**§ 1062.113 Revocation or opting out from an existing CAA's designation.**

Where a government revokes or opts out from an existing CAA's designation, and makes no new designation OEO may make its own designation, in which case it will disapprove the Closedown Plan. If OEO does not make its own designation, it will approve the Closedown Plan provided it is satisfactory. If the plan is disapproved, the revoking or opting-out government shall resubmit it with changes, as required. If OEO is satisfied that the plan is in order, it shall then approve the plan.

**§ 1062.114 Opting out from a change in designation.**

If the opting out government wishes to continue to be served by the CAA serving it prior to the change in designation, and is eligible to do so, OEO approval of the opt-out is not necessary. If the opting out government proceeds to itself make a new designation it must, of course, submit an application for recognition, which shall be acted upon in accordance with § 1062.111 and 106.112 of this subpart.

**Subpart I—Withdrawal of OEO Recognition**

**§ 1062.120 What constitutes withdrawal of recognition.**

(a) Where OEO terminates all assistance to a CAA for cause, such actions shall constitute a withdrawal of OEO's recognition of the agency as a CAA. Where OEO suspends, terminates, or refuses to refund less than all assistance to a CAA, such action may constitute a withdrawal of OEO recognition of the agency as a CAA if the OEO office responsible for recogniton so determines. However, in such cases OEO may continue to fund the agency as a limited purpose agency. OEO regulations concerning suspension and termination are found in OEO Inst. 6730–2; regulations concerning refusal to refund are found in OEO Instruction 6730–1.

(b) In exceptional cases, OEO may withdraw recognition of an agency as a CAA and continue funding it as a limited purpose agency without suspending, terminating or refusing to refund any assistance. In such cases the grantee shall have an opportunity to show cause why recognition should not be withdrawn, in the manner provided for in OEO's refusal to refund regulations, OEO Instruction 6730–1.

ALVIN J. ARNETT,
*Director,*
*Office of Economic Opportunity.*

**Appendix A—Work Plan—Chronology of Activities**

| Days prior to effective date | Activity No. | Action to be taken | How | By whom |
|---|---|---|---|---|
| 50 | 1 | Notice of intent to designate—draft preliminary documents to initiate change of status. | OEO Form 374, "Notice to Political Subdivision", CAP Form 5, "Community Information" (only when community to be served is changed). | Designating governing officials (DGO) with input from any existing grantee. |
| 43 | 2 | Notice of intent to designate—issue. | Issue the documents listed above to State and/or other political subdivisions within the community and SEOO to which they have 30 days to reply. | Designating governing officials. |
| 43–13 | 3 | Public hearings | Within the 30-day response period, affected political subdivisions hold public hearings in all appropriate communities, which will be brought about as follows: | |
| | | a. Design public hearing notice. | Same as those prescribed by law for other important matters to be decided by the governing officials. | DGO |
| | | b. Issue 10-day notice of public hearing. | Post in places available to all interested persons and organizations. | DGO |
| | | | Mail to: Each political subdivision; any existing CAA currently serving any part of the community in question; each delegate agency of any such CAA; and each board or council or neighborhood organization. | DGO |
| | | | Inform appropriate regional office field representative and SEOO of time and place of hearing. | Community action agencies. |
| | | c. Hold public hearing(s) in all appropriate communities. | | Designating governing officials in all appropriate communities. |
| 43–13 | 4 | Application for recognition to OEO; begin work on. | Do preliminary work on: | |
| | | | OEO Form 372, attorney's certification and governing legal documents. | Designating governing officials. |
| | | | OEO Form 373, "Local Civil Service Agency's Certif." | DGO |
| | | | A detailed map showing all geographic areas and political subdivisions in the proposed community and all immediately adjacent areas and subdivisions in the same county or counties which are not in the proposed community. | DGO |
| | | | Successor-in-interest agreement or transition plan as appropriate. | DGO |
| | | | Select and provisionally appoint board members (see OEO Instruction 6400–01, formerly CA Memo 81). | DGO/new grantee board. |
| | | | By-laws revision (if appropriate) | DGO |
| | | | Personnel policies (if appropriate) | DGO |
| 13 | 5 | Responses to notice by State and/or subdivisions. (If no response by this date assume approval.) | Written communication | |
| | 5a | If a political subdivision indicates that it is opting-out (i.e., choosing not to be, served by the newly designated public CAA), copy of opt-out document must be sent to OEO Regional Office and SEOO. | Submit copy of opt-out document (act, ordinance, proclamation, etc.) and any additional comments to OEO Regional Office and SEOO. | Designating governing officials. |
| | 5b | If the opting-out political subdivision wishes to continue to be served by the CAA serving it prior to the change in designation and it fulfills the eligibility requirements, it should so report to OEO. (No new designation or application for recognition is required.) | When submitting the document noted above. | DGO |
| | | However: If the opting-out political subdivision wishes to redesignate the existing CAA as a public agency under its aegis, the DGO must follow the designation/recognition process beginning with activity No. 1. | See activity No. 1. | DGO |
| 13–8 | 6 | Make designation | 1. Act, ordinance or resolution of legislative body subject to any concurrence or veto power of the chief executive. | DGO |
| | | | Or | |
| | | | 2. Executive order or proclamation of the chief executive (if the chief legal officer certifies in writing that the chief executive possesses the power to make the designation on behalf of the State or local government in question). | Chief executive. |

| Days prior to effective date | Activity No. | Action to be taken | How | By whom |
|---|---|---|---|---|
| 13-8 | 7 | Application for recognition; draft final documents re. | Two copies of each of the following will be required: | |
| | | | a. OEO Form 370 | Designating governing officials. |
| | | | b. Designation document | DGO |
| | | | c. Notice of public hearing and list of all locations where posted. | DGO |
| | | | d. List of all subdivisions notified and copies of each response received. | DGO |
| | | | e. Notice to SEOO and affected CAA(s) and their responses. | DGO |
| | | | f. OEO Form 372, "Attorney's Certification" and governing legal documents. | DGO |
| | | | g. OEO Form 373, "Local Civil Service Agency's Certification." | DGO |
| | | | h. A detailed map showing all geographic areas and political subdivisions in the proposed community and all immediately adjacent areas and subdivisions in the same county or counties which are not in the proposed community. | DGO |
| | | | i. CAP Form 5; "Community Information." | DGO with input from new grantee. |
| | | | j. CAP Form 11, "Assurance of Civil Rights Compliance." | DGO and new grantee. |
| | | | k. Transition plan or Successor-in-interest. | Designating governing officials. |
| | | | l. OEO Form 375, "Certification of Compliance with Section 211". | DGO |
| 8 | 8 | Application for recognition to OEO; submission of documents. | Submit all items listed above to OEO plus an information copy of all items to each political subdivision being served. | DGO |
| 7 | 9 | OEO reviews application for recognition. | | OEO regional office. |
| 0 | 10 | OEO grants recognition | Written comments | OEO Regional Office |

## Appendix B

FORMS AND DOCUMENTS FOR DESIGNATION AND RECOGNITION OF COMMUNITY ACTION AGENCIES

Item B.1 OEO Form 370 "Application for Recognition of a Community Action Agency"

Item B.2 OEO Form 372, "Attorney's Certification"

Item B.3 OEO Form 373, "Local Civil Service Agency's Certification"

Item B.4 OEO Form 374, "Notice to Political Subdivision"

Item B.5 OEO Form 375, "Certification of Compliance with Section 211"

Item B.6 CAP Form 5, "Community Information"

Item B.7 CAP Form 11, "Assurance of Civil Rights Compliance"

Item B.8 Transition and Closedown Plans

Appendix B.1

## APPLICATION FOR RECOGNITION OF A COMMUNITY ACTION AGENCY

*Form Approved. OMB No. 116-R0190*

**SECTION I. GENERAL INFORMATION**

1. PROPOSED NAME OF COMMUNITY ACTION AGENCY

2. MAILING ADDRESS *(If available)*

| A. NO. AND STREET | B. CITY | C. STATE | D. ZIP CODE |
|---|---|---|---|
| | | | |

3. NAME OF PERSON TO CONTACT

4. TELEPHONE NO. *(Include Area Code)*

5. NAME(S) OF POLITICAL JURISDICTION(S) DESIGNATING COMMUNITY ACTION AGENCY

6. IS THE DESIGNATED CAA ONE CURRENTLY APPROVED BY OEO?

☐ YES ☐ NO

7. IS THE DESIGNATED CAA

☐ A STATE OR LOCAL GOVERNMENT, ☐ SEPARATE PUBLIC AGENCY,

☐ A PRIVATE NONPROFIT AGENCY, ☐ TRIBAL COUNCIL?

8. NAME(S) OF THE COMMUNITY ACTION AGENCY WHICH WILL BE REPLACED BY THE DESIGNATED CAA:

9. DATE PROPOSED FOR ACTIVATION OF CAA

10. PUBLIC HEARING

| A. DATE PUBLIC NOTICE OF HEARING WAS GIVEN | B. DATE PUBLIC HEARING WAS HELD |
|---|---|
| | |

C. FORM IN WHICH NOTICE OF HEARING WAS GIVEN

D. WAS EXISTING CAA NOTIFIED OF HEARING?

☐ YES ☐ NO

11. NOTICE OF DESIGNATION TO SEOO AND POLITICAL SUBDIVISIONS

A. HAVE THE SEOO *(where designating jurisdiction is not a State)* AND ALL POLITICAL SUBDIVISIONS WITHIN THE AREA TO BE SERVED BY THE CAA BEEN NOTIFIED OF THIS DESIGNATION?

☐ YES ☐ NO *(Explain on separate sheet of paper.)*

B. DATE(S) NOTICE OF DESIGNATION WAS SENT

OEO FORM 370 JAN 71 REPLACES CAP FORM 70, DATED FEB 68, WHICH IS OBSOLETE. *(Continue on reverse.)*

Appendix B.1.

SECTION II. ATTACHMENTS TO APPLICATION

Two copies of the following attachments should be submitted with the application, as required by OEO Instruction 6302-2, Part H.

1. The designation documents (e.g., act, ordinance, or proclamation) together with the chief legal officer's certification where the chief executive has made the designation.
2. The notice of the public hearing together with a list of all locations where it was posted.
3. A list of all political subdivisions notified of the designation together with copies of their responses.
4. The notice of the designation sent to the SEOO together with its response.
5. OEO Form 372, "Attorney's Certification," together with governing legal documents.
6. OEO Form 373, "Local Civil Service Agency's Certification" (required for public CAAs only), together with the request for waiver, plan, and certification, as required by OEO Instruction 6302-2, Part H.6.
7. OEO Form 375, "Certification of Compliance with Section 211 of EOA."
8. A map and CAP Form 5, "Community Information."
9. CAP Form 11, "Assurance of Civil Rights Compliance."
10. Preliminary Transition Plan.

CERTIFICATION

I CERTIFY that all the requirements of OEO Instruction 6302-2 have been complied with and that this application contains all of the information and documents called for by those requirements. I further CERTIFY that the proposed Community Action Agency is able and willing to carry out the requirements of Section 201 of the Economic Opportunity Act and is willing to comply with present OEO policies, regulations, and procedures as well as with those that may subsequently be promulgated pursuant to law.

TYPED NAME AND TITLE OF OFFICIAL SUBMITTING APPLICATION

SIGNATURE | DATE

Appendix B.2

## APPLICATION FOR RECOGNITION OF A COMMUNITY ACTION AGENCY ATTORNEY'S CERTIFICATION

*Form Approved. OMB No. 116-R0190*

1. FORMAL NAME OF PROPOSED COMMUNITY ACTION AGENCY *(called "the Applicant" throughout this form)*

2. ADDRESS OF APPLICANT *(No. and street, city, state, Zip Code)*

3. THE APPLICANT IS *(Check applicable block):*

- ☐ A. STATE *(or Territorial)* GOVERNMENT
- ☐ B. POLITICAL SUBDIVISION OF THE STATE *(If so, specify type below.)*
  ☐ COUNTY ☐ CITY ☐ TOWN ☐ OTHER *(Specify)*
- ☐ C. AN AGENCY WHICH IS A COMBINATION OF POLITICAL SUBDIVISIONS *(If so, list all component subdivisions)*
- ☐ D. OTHER TYPE OF PUBLIC AGENCY *(If so, specify what type and whether it derives its authority from State (or Territorial) or local law.)*
- ☐ E. PRIVATE NONPROFIT ORGANIZATION
  IF SO, IS IT ☐ INCORPORATED OR ☐ UNINCORPORATED
  *(If incorporated, give date and State of incorporation)* DATE _____ STATE _____
- ☐ F. TRIBAL COUNCIL OR GOVERNMENT OF A FEDERAL INDIAN RESERVATION
- ☐ G. OTHER *(Specify)*

4. IF THE APPLICANT IS A PRIVATE NONPROFIT ORGANIZATION:

A. HAS IT RECEIVED A RULING FROM THE U. S. INTERNAL REVENUE SERVICE THAT IT IS TAX-EXEMPT AND CAPABLE OR RECEIVING TAX-DEDUCTIBLE CONTRIBUTIONS?
☐ YES ☐ NO

B. IF THE ANSWER TO 4a IS "YES", GIVE THE DATE OF RULING. DATE _____

C. IF THE TAX-EXEMPT STATUS WAS AFFECTED BY THE TAX REFORM ACT OF 1969, HAS THE AGENCY APPLIED FOR AND RECEIVED A SUBSEQUENT RULING OF TAX-EXEMPT STATUS?
☐ YES ☐ NO

D. IF THE ANSWER TO 4a IS "NO", HAS THE APPLICANT APPLIED FOR SUCH A RULING?
☐ YES ☐ NO
IF "YES", GIVE DATE OF APPLICATION. DATE _____

E. IF THE ANSWER TO 4a IS "NO", IN YOUR OPINION IS THE APPLICANT ENTITLED TO SUCH A RULING?
☐ YES ☐ NO

F. IS THE APPLICANT A POLITICAL PARTY OR ORGANIZATION?
☐ YES ☐ NO

5a. IN YOUR OPINION, IS THE APPLICANT SUBJECT TO ANY LEGAL LIMITATIONS WHICH MIGHT PREVENT, QUALIFY, OR RESTRICT ITS ABILITY TO PERFORM ANY OF THE POWERS AND FUNCTIONS LISTED IN THE ATTACHED "STATEMENT OF THE POWERS AND FUNCTIONS OF A COMMUNITY ACTION AGENCY?"
☐ YES ☐ NO

5b. IF YOUR ANSWER TO 5a IS "YES", PLEASE ATTACH A SEPARATE EXPLANATION, INCLUDING A BRIEF STATEMENT OF LEGAL AUTHORITIES, FOR EACH SEPARATE POINT ON WHICH YOU BASE THAT ANSWER. PLEASE CITE OR QUOTE ANY RELEVANT LAWS, REGULATIONS, OR DECISIONS.

**OEO FORM 372** JAN 71 REPLACES CAP FORM 72, DATED FEB 68, WHICH IS OBSOLETE. -1-

Appendix B.2

6a. IN ANY OTHER RESPECT DO YOU BELIEVE THAT APPLICABLE LEGAL LIMITATIONS WOULD PREVENT THE APPLICANT FROM SERVING AS A COMMUNITY ACTION AGENCY IN ACCORDANCE WITH THE PROVISIONS OF TITLE II OF THE ECONOMIC OPPORTUNITY ACT?

☐ YES ☐ NO

6b. IF YOUR ANSWER TO 6a IS "YES", PLEASE FOLLOW THE INSTRUCTIONS IN 5b.

7. PLEASE ATTACH COPIES OF THE GOVERNING LEGAL DOCUMENTS REFERRED TO IN THE "INSTRUCTIONS TO CERTIFYING ATTORNEY."

## CERTIFICATION

I, , hereby CERTIFY that I am a duly licensed member of the bar of , that I am the attorney for the agency referred to above as the Applicant, and that to the best of my information and belief the foregoing answers and information are complete and correct.

| TYPED NAME OF ATTORNEY | SIGNATURE | DATE |
|---|---|---|
| | | |

ADDRESS *(No., street, city, state, Zip Code)*

Item B.2

INSTRUCTIONS TO CERTIFYING ATTORNEY

This form is to be completed and signed by the attorney for a community action agency as part of an application to the Office of Economic Opportunity (OEO) for recognition of the community action agency under Title II of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2781 et seq.). Instructions concerning the application requirements and procedures are contained in OEO Instruction 6302–2. The applicant agency should have a copy of that Instruction as well as the full text of Title II of the Economic Opportunity Act, as amended, and a copy of OEO Instruction 6400–01 referred to in § 1062.32 of Title 45 of the Code of Federal Regulations.

Before completing this form, the certifying attorney should be familiar with the application which the certification supports, the provisions of Title II of the Act, and Subpart B of Part 1062 of Title 45, Code of Federal Regulations "Powers of a Community Action Agency," which is excerpted from OEO Instruction 6302–2. Subpart B lists a number of powers and functions which every community action agency must be able to exercise in order to obtain OEO recognition and assistance under Title II. Many of these are particularly important in the case of applicants which are State or local governments or public agencies subject to State or local legal requirements. Please note that Question 5 relates to Subpart B and asks the certifying attorney to attach a brief explanation and statement of points and authorities in any case where he believes that the applicant's ability to exercise a power or function listed in Subpart B is either doubtful, qualified, or limited as a matter of law.

Under Question 6 should be listed any other legal obstacles or limitations which may prevent the applicant from serving as a community action agency in accordance with Title II of the Act.

Question 7 calls for the attachment of legal documents which would specifically govern the applicant's operations as a community action agency. If the applicant is a State or local government it is not necessary to attach provisions of State law or the local government's charter unless particular provisions of these are relevant to any legal limitations identified in the attorney's certification. However, copies of any special laws, orders, or rules which will directly govern the operations or internal distribution of authority, in the case of a community action agency which is a State or local government or a separate public agency, should be included, together with any special charter or organic (establishing) law of a specially created public agency.

In the case of a private nonprofit organization, copies of the charter or articles of incorporation and the bylaws should be attached.

Appendix B.3

## APPLICATION FOR RECOGNITION OF A COMMUNITY ACTION AGENCY
## LOCAL CIVIL SERVICE AGENCY'S CERTIFICATION

*Form Approved.*
*OMB No. 116-R0190*

The *(Formal name of proposed community action agency)* _____ intends to apply for recognition as a designated community action agency *(CAA)*. Your agency is one which administers employment rules, regulations, and minimum qualification standards or other hiring restrictions which may affect our ability and authority to comply with the Federal statutory requirement involving the hiring of resident poor and elderly for community action agency program components. Therefore, it is requested that the following information and certification be furnished:

1. To your knowledge, is the above named proposed community action agency subject to any employment rules, regulations, minimum qualification standards or other hiring and promotion restrictions administered by any agency other than yours?

   ☐ YES *(If so, specify agency and extent of jurisdiction as it imposes limitations on coverage of Item 2 below.)* ☐ NO

2. To the extent modified by the limitations specified in Item 1 above, is the CAA subject to any employment rules, regulations, minimum qualification standards, or other hiring or promotion restrictions administered by your agency which would:

   a. Prevent the hiring or advancement, including advancement to a supervisory position, of any person who can perform a nonprofessional job, even though he or she lacks formal education? ☐ YES* ☐ NO

   b. Prevent the hiring of an otherwise qualified person solely because he has a criminal record? ☐ YES* ☐ NO

   c. Prevent the hiring of qualified poor persons in preference to other qualified persons? ☐ YES* ☐ NO

   d. Prevent the hiring of qualified persons who live in the neighborhoods where the job is to be performed in preference to other qualified persons? ☐ YES* ☐ NO

   e. Prevent the hiring of qualified persons over age 55? ☐ YES* ☐ NO

   f. Prevent the payment of Federal minimum wage to any employee? ☐ YES* ☐ NO

   g. Prevent the giving of preference in nonprofessional jobs to the beneficiaries of the programs in which those jobs are to be performed *(e.g., parents of pre-school children, manpower program trainees, the elderly, tenants of a particular project)*? ☐ YES* ☐ NO

* *Whenever "Yes" box is checked, attach on a separate sheet of paper an explanation with a brief statement of justification for the limitations and/or the possibility of waiver or relaxation of such limitations. Letter the explanation the same as the question.*

## CERTIFICATION

The *(Name of civil service agency)* _____

hereby CERTIFIES that the foregoing answers to questions in Item 2 above, are true and complete to the best of this agency's information and belief.

| TYPED NAME AND TITLE OF CERTIFYING OFFICIAL | SIGNATURE | DATE |
|---|---|---|
| | | |

OEO FORM 373 JAN 71 REPLACES CAP FORM 73, DATED FEB 68, WHICH IS OBSOLETE.

Appendix B.4

**APPLICATION FOR RECOGNITION OF A COMMUNITY ACTION AGENCY**
**NOTICE TO POLITICAL SUBDIVISION**

*Form Approved.*
*OMB No. 116-R0190*

To the _____ [1] of _____

_____, _____ [2]

Accompanying this notice is a summary of a proposed application to the U. S. Office of Economic Opportunity (OEO) for recognition of a community action agency under Section 210(a) of the Economic Opportunity Act of 1964, as amended *(42 U.S.C. 2781).*

As proposed in the application, the community action agency would plan, conduct, administer, and evaluate *(with OEO assistance)* local anti-poverty programs for an area and population which includes your jurisdiction and its residents. The application will be submitted to OEO, together with any response which you make to this notice.

This notice is being sent to you in connection with Section 210(e) of the Economic Opportunity Act, which is quoted in full in the attached statement prepared by OEO. You should read the attached statement carefully before responding to this notice.

Please note that Section 210(e) refers to a decision of "the governing officials" of a political subdivision of a State, which OEO has interpreted to mean the members of the governing council or board plus the Mayor or other chief elected executive officials of such a subdivision.

The governing officials of your jurisdiction should promptly consider the attached summary and decide whether they do or do not wish to be included in the program of the proposed community action agency and should notify the undersigned of their decision so that their response can be submitted to OEO together with the application. A copy of the response should also be sent to the proper OEO Office shown on the attached list.

We would appreciate having your response within 30 days so that it can be submitted to OEO together with the application.

*The lack of any response will be treated as an acceptance of the application and agreement to be included in the proposed community action program.*

If you wish further information concerning the application which is summarized in the attached, please contact the undersigned.

NAME, ADDRESS, AND TELEPHONE NO. OF THE STATE OR POLITICAL SUBDIVISION WHICH IS SENDING THE NOTICE

TYPED NAME AND TITLE OF RESPONSIBLE, AUTHORIZED OFFICIAL OF THE ABOVE STATE OR POLITICAL SUBDIVISION

| SIGNATURE | DATE NOTICE IS MAILED TO ADDRESSEE |
|---|---|
| | |

[1] Name *(if known)* and official title of the chairman or secretary of the government or of the governing board or council of the subdivision to which the notice is being sent *(e.g., "Chairman of the Board of Supervisors" or "Secretary of the City Council").*

[2] Insert formal name of subdivision and State or Territory in which it is located *(e.g., "Center County, Kansas," or "the City of Zenith, Minnesota").*

OEO FORM 374 JAN 71 REPLACES CAP FORM 74, DATED FEB 68, WHICH IS OBSOLETE. -1-

Item B.4

OFFICE OF ECONOMIC OPPORTUNITY

STATEMENT REGARDING SECTION 210(e) OF THE ECONOMIC OPPORTUNITY ACT

Under Section 210(a) of the Economic Opportunity Act, as amended in 1967, a State, a political subdivision of a State, or a combination of such subdivisions, may designate itself or a separate public agency or private nonprofit organization as a community action agency to receive assistance under Title II of the Act and to provide community action program anti-poverty benefits for its residents.

However, Section 210(e) of the Act provides that:

"No political subdivision of a State shall be included in the community action program of a community action agency designated under Section 210(a) if the elected or duly appointed governing officials of such political subdivision do not wish to be so included. Such political subdivision, and any public or private nonprofit organization or agency designated by it, shall be eligible for designation as a community action agency on the same basis as other political subdivisions and their designees."

In accordance with this provision, when a State or local government or a group of local governments designates a community action agency to serve an area, OEO requires that at least 45 days before application is made to OEO to recognize that agency, the designating government will notify every other political subdivision within the area to be served by the agency and will allow at least 30 days for each such subdivision to respond to the notice.

The governing officials of a subdivision receiving such a notice may agree to the inclusion in the community action program of the proposed community action agency or, under Section 210(e), they may elect not to be included. (A decision not to be included is referred to in OEO guidelines and in this statement as "opting out"). *The lack of any response to such a notice within the 30 day period will be treated as acceptance of the designation and agreement to be included in the proposed community action program.*

The summary of the application sent to the subdivision with a section 210(e) notice provides information regarding the proposed community action agency. Further information can be obtained from the sender of the notice.

The possible consequences of "opting out" under Section 210(e) should be clearly understood by the governing officials of a political subdivision before they decide whether or not to do so. The following questions and answers may be helpful in that connection:

1. (Q) Will a subdivision which "opts out" be eligible to seek OEO recognition and assistance for its own community action agency?

(A) Only if the subdivision, either alone or in combination with other subdivisions, can meet one of the following community eligibility tests:

a. A state.

b. A city or other municipality, or a group of municipalities, with a population of at least 100,000 people, according to the most recent available census data.

c. A county, group of counties or predominantly rural part or parts of one or more counties. A minimum of 50,000 persons according to the most available recent census data will apply in each of these cases.

d. One or more Federal Indian reservations.

e. An area which does not satisfy any of the tests in "a", "b", or "c" above, but which is substantially the same geographically as a community served by CAA which was recognized by OEO prior to February 1, 1969, *provided* that the political subdivisions within the area and the existing CAA have not rejected a reasonable opportunity to combine the area with other areas so as to enable the combined area to satisfy one of the tests in "a", "b", or "c" above.

2. (Q) If the "opting out" subdivision is currently served by a CAA may it continue to be served by that CAA?

(A) If the "opting out" subdivision, alone or together with any other subdivisions, meets the eligibility requirements under 1 (A), it may continue to be served by the CAA currently serving it.

3. (Q) What if the "opting out" subdivision does not want to designate its own CAA, or (where applicable) does not want to continue to be served by the CAA currently serving it, even though it would be eligible to do so under 1(A)?

(A) Under a separate provision of Title II, OEO could, in its discretion, directly designate and recognize a community action agency to serve a community which is eligible under 1(A), above, even though there has been no prior local government designation of that agency. It might also extend assistance to specific limited-purpose projects. See 4(A) below.

4. (Q) What if the "opting out" subdivision is not eligible to designate its own community action agency under 1(A)?

(A) Even though a community does not meet the eligibility standards in 1(A), it will be eligible to receive limited purpose assistance for specific anti-poverty projects, (such as Legal Services) under Title II. However, extension of such assistance will depend on the current availability of funds and the merit of specific proposals in comparison to other proposals for Title II assistance.

5. (Q) Where a subdivision "opts out" of a community previously served by a community action agency, what if the remaining part of the proposed community thereby becomes unable to meet the tests in 1(A), above?

(A) The remaining part will lose its eligibility to designate a community action agency, but not its eligibility to get limited purpose assistance in accordance with 4(A).

6. (Q) If one or more subdivisions "opts out" of a community previously served by a community action agency, how will the funds previously allocated to that agency be divided?

(A) There is no set formula. OEO will attempt to make an equitable allocation of the funds currently available for all parts of the community, taking into account all the circumstances, including the eligibility and relative merit of proposals to fund one or more community action agencies or limited purpose projects within the various parts of the community.

Appendix B.5

# CERTIFICATION OF COMPLIANCE WITH SECTION 211 ECONOMIC OPPORTUNITY ACT

*Form Approved.*
*OMB No. 116-R0190*

DATE PREPARED

**SECTION I. IDENTIFICATION**

1. NAME OF CAA *(or proposed CAA*)*

2. MAILING ADDRESS

| NO. AND STREET | CITY | STATE | ZIP CODE |
|---|---|---|---|
| | | | |

3. NAME OF PRINCIPAL REPRESENTATIVE BOARD

**SECTION II. POWERS OF PRINCIPAL REPRESENTATIVE BOARD**

4. PRINCIPAL REPRESENTATIVE BOARD IS

☐ A GOVERNING BOARD ☐ AN ADMINISTERING BOARD

5. IF A GOVERNING BOARD

a. Does it have as a minimum the following powers? ☐ YES ☐ NO *(If "No", attach explanation.)*

(1) Appointment of the staff director of the CAA

(2) Determination, subject to OEO regulations and policies, of major personnel, fiscal, and program policies

(3) Determination of overall program plans and priorities

(4) Final approval of all program proposals and budgets

(5) Enforcement of compliance with all conditions of OEO grants

(6) Determination, subject to OEO regulations and policies, of rules of procedure for the governing board

(7) Selection of the officers and executive committee *(if any)* of the governing board

b. Are any of the above powers subject to concurrence, veto, or modification by any other local official or authority, other than by delegation of the powers by the governing board?

☐ YES ☐ NO *(If "Yes", explain)*

c. Are any of the above powers delegated? ☐ YES ☐ NO *(If "Yes", explain.)*

6. IF AN ADMINISTERING BOARD:

a. Who are the governing officials of the state or political subdivision who have authority to act for the community action agency?

* *In the case of proposed CAAs prior to provisional recognition by OEO, questions should be answered as fully as possible based on present plans for board powers, composition, selection, etc. once recognition is granted.*

OEO FORM 375 JAN 71 REPLACES CAP FORM 75, DATED MAY 68, WHICH IS OBSOLETE.

Appendix B.5

6. IF AN ADMINISTERING BOARD *(Continued)*

b. Do these governing officials exercise all of the powers listed in Item 5a. above? ☐ YES ☐ NO
*(If "No", state which ones are delegated and whether to the administering board or to an area board or council.)*

c. Does the administering board have as a minimum the following powers ☐ YES ☐ NO *(If "No", attach explanation.)*

(1) The right to reasonable advance notice of, and an opportunity to make recommendations to the governing officials concerning the exercise of all powers listed in Item 5a. which those officials have not delegated to the administering board or to an area board or council.

(2) Supervision of the administration of all OEO policies and standards and of all program, administrative, and financial policies and rules adopted by the governing officials, including elaboration, supervision, and enforcement in the first instance, of all such policies and rules.

(3) Selection of its own officers, executive committee (if any), and other committees.

7. State specifically what policies and procedures the governing board or administering board and governing officials have established to insure full and meaningful participation of the poor and area residents in the planning, development, implementation, and evaluation of programs, as required in Section 211(f) and CAP Memo 81.
*(Attach separate sheet if necessary.)*

SECTION III. BOARD COMPOSITION AND SELECTION

8. The total number of seats on the Board is _____ .

9. Representatives of the poor:

a. The number of seats reserved for representatives of the poor who reside outside of specified target areas is:

NO. OF SEATS RESERVED _____

Appendix B.5

9. Representatives of the poor: *(Continued)*

b. The number of seats reserved for representatives of the poor in specified areas of the community, as detailed below, is:

NO. OF SEATS RESERVED _____

| NO. OF SEATS | AREA REPRESENTED | NO. OF SEATS | AREA REPRESENTED |
|---|---|---|---|
| | | | |

c. Describe the methods of democratic selection of the area and non-area representatives of the poor.

10. Public officials and their representatives:

a. Total number of seats is _____ . If a number of seats are being kept vacant because of unavailability of officials willing and able to serve, explain and state number of vacancies that will be reserved for chief elected public officials.

b. Describe the method by which the public officials are selected for representation on the board and list the title and political jurisdiction or agency of officials who will be represented. *(Use additional sheet if necessary.)*

Appendix B.5

11. Private organizations and interests:

a. Total number of seats reserved is _____

b. List the private organizations and interests finally represented.

| TITLE OF REPRESENTATIVE | ORGANIZATION OR GROUP |
|---|---|
| | |

c. How are the representatives of each group selected, once those groups have been determined?

d. How and by whom were the groups to be represented selected? List the names of all groups which were considered and rejected. State the criteria for selection and the reasons for rejecting any groups of significance in the community.

12. Does every board member who is selected to represent a specific geographic area within the community reside in the area he represents?

☐ YES ☐ NO *(If "No", explain.)*

13. Do the agency by-laws or charter include provision for petitions for inclusion on the board by other representative groups of the poor or other community agencies as required by Section 211(d) (2) and CAP Memo 81, and does this provision allow for expansion of the board *(subject to the 51 member limitation)* or revision of the make-up of the board in the event of approval of such a petition? ☐ YES ☐ NO *(If "No", explain.)*

*(Attach a separate further explanation where sufficient space has not been provided to explain fully any response above.)*

**SECTION IV. REQUIREMENTS FOR OTHER REPRESENTATIVE BOARDS AND COMMITTEES**

14a. List the names of any executive or steering committees.

14b. Is each of the above committees in compliance with the requirements of CAP Memo 81, concerning composition and quorum? ☐ YES ☐ NO *(If "No", explain how and when compliance will be achieved.)*

15a. List the names of any area policy boards and councils with major policy responsibilities as set forth in Section 211(c) and CAP Memo 81 and briefly describe their powers.

15b. Is each area board or council in compliance with the representation requirements of CAP Memo 81?
☐ YES ☐ NO *(If "No", state deficiencies and explain how and when compliance will be achieved.)*

16. If a multi-county CAA, does each county have its own board for program activities within that county?
☐ YES ☐ NO If "Yes", are the county boards in compliance with the composition requirements of CAP Memo 81? ☐ YES ☐ NO *(If "No", explain.)*

**SECTION V. BY-LAWS, CHARTER, ETC.**

17. Are the board requirements of CAP Memo 81 provided for in the charter, by-laws, or other basic written rules of the CAA? ☐ YES ☐ NO *(If "No", explain.)*

18. Attach a current copy of the by-laws, charter, or other documents.

19. What is the procedure for amending this document?

**SECTION VI. CERTIFICATION OF COMPLIANCE** *(Sign applicable certification below.)*

**20. FOR AGENCY SEEKING PROVISIONAL RECOGNITION AS NEW CAA:**

The information provided in OEO Form 375 concerning present plans is accurate and complete. At such time as the proposed Community Action Agency has received provisional recognition by OEO and is prepared to commence operations and assume responsibility for the community action program, it will be in full compliance with the requirements of CAP Memo 81 and Section 211 of the Economic Opportunity Act as amended.

TYPED NAME AND TITLE OF OFFICIAL SUBMITTING CERTIFICATION

SIGNATURE | DATE

**21. FOR PROVISIONALLY RECOGNIZED CAAs SEEKING FULL RECOGNITION**

The information provided in OEO Form 375 is accurate and complete.

*(Name of CAA)* _____ is in compliance with the requirements of CAP Memo 81 and Section 211 of the Economic Opportunity Act as amended, except as may otherwise be explained in the form. The information and documentation set forth will be updated to OEO as changes occur or upon request from OEO.

TYPED NAME AND TITLE OF OFFICIAL SUBMITTING CERTIFICATION

SIGNATURE | DATE

Appendix B.6

**Office of Economic Opportunity**
**APPLICATION FOR COMMUNITY ACTION PROGRAM**

FORM APPROVED.
BUDGET BUREAU NO. 116-R019

**CAP 5. COMMUNITY INFORMATION**

NAME OF APPLICANT AGENCY

DO NOT FILL IN: *(For Administrative Use)*

5.1 COMMUNITY TO BE SERVED *Describe community boundaries in terms of city(ies), county(ies), state(s), Indian reservation(s), etc., which are included. Attach a map showing the boundaries of the community.*

5.2 COMMUNITY SUBDIVISIONS *Have you divided the community into an area or areas with heavy concentration of poverty? If so, indicate such areas as "A", "B", "C", "D", etc. on the above specified map and state below the basis for deciding on the boundaries of such areas. For example, are the areas Census tracts, enumeration districts, school attendance districts, planning areas, etc.?*

5.3 INCIDENCE OF POVERTY *Provide the latest readily available information on the community with respect to as many of the following categories as feasible. If you have subdivided the community into areas, as described above, also provide the information for each area. Substitute or add other categories and related statistics as necessary to demonstrate the incidence of poverty.*

*Attach a statement describing the sources and time period of the information. Information obtained from the 1960 U. S. Census of Population and Housing may be noted by placing an asterisk (*) to the right of the ITEM name below. See the CAP GUIDE for suggested sources of information.*

| | ITEM | COMMUNITY TOTAL | AREA "A" | AREA "B" | AREA "C" |
|---|---|---|---|---|---|
| 5.3.1 POP. | TOTAL POPULATION | | | | |
| | PERCENT OF POPULATION LIVING IN RURAL AREAS | % | % | % | % |
| 5.3.2 FAMILY INCOME | TOTAL NUMBER OF FAMILIES | | | | |
| | TOTAL NUMBER OF FAMILIES WITH INCOME LESS THAN $3,000 | | | | |
| | PERCENT OF ALL FAMILIES WITH INCOME LESS THAN $3,000 | % | % | % | % |
| | FAMILIES WITH INCOME LESS THAN $1,000 | | | | |
| | FAMILIES WITH INCOME FROM $1,000 - $1,999 | | | | |
| | FAMILIES WITH INCOME FROM $2,000 - $2,999 | | | | |
| | | | | | |
| 5.3.3 UNEMPLOYMENT | MALES 14 AND OVER IN CIVILIAN LABOR FORCE | | | | |
| | PERCENT OF SUCH MALES WHO ARE UNEMPLOYED | % | % | % | % |
| | FEMALES 14 AND OVER IN CIVILIAN LABOR FORCE | | | | |
| | PERCENT OF SUCH FEMALES WHO ARE UNEMPLOYED | % | % | % | % |
| | | | | | |
| 5.3.4 WELFARE | PERSONS UNDER 21 | | | | |
| | PERCENT OF PERSONS UNDER 21 RECEIVING A.F.D.C. PAYMENTS | % | % | % | % |
| | PERSONS AGED 65 AND OVER | | | | |
| | PERCENT OF PERSONS 65 AND OVER RECEIVING OLD-AGE ASSISTANCE | % | % | % | % |
| | | | | | |

*(Continued on Page 2 of this form.)*

CAP FORM 5 (Page 1 of 2) JAN 65

Appendix B.6

**CAP 5. COMMUNITY INFORMATION** *(Continued)*

| NAME OF APPLICANT AGENCY | DO NOT FILL IN: *(For Administrative Use)* |
|---|---|
| | |

| | ITEM | COMMUNITY TOTAL | AREA "A" | AREA "B" | AREA "C" |
|---|---|---|---|---|---|
| 5.3.5 EDUCATION | PERCENT OF PERSONS ENROLLED IN SCHOOL *(14 and 15 years old)* | % | % | % | % |
| | PERCENT OF PERSONS ENROLLED IN SCHOOL *(16 and 17 years old)* | % | % | % | % |
| | TOTAL NUMBER OF PERSONS 25 YEARS OLD AND OVER | | | | |
| | PERSONS 25 AND OVER WITH LESS THAN 8 YEARS OF EDUCATION | | | | |
| | PERCENT OF PERSONS 25 AND OVER WITH LESS THAN 8 YEARS OF EDUCATION | % | % | % | % |
| | | | | | |
| 5.3.6 SELECTIVE SERVICE | PERSONS AGED 18 TO 25 WHO WERE EXAMINED BY SELECTIVE SERVICE | | | | |
| | PERSONS REJECTED BY SELECTIVE SERVICE *(4F and 1Y)* | | | | |
| | PERCENT OF PERSONS EXAMINED WHO WERE REJECTED BY SELECTIVE SERVICE *(4F and 1Y)* | % | % | % | % |
| | | | | | |
| 5.3.7 HEALTH | BIRTHS PER YEAR | | | | |
| | DEATHS PER YEAR OF INFANTS UNDER 12 MONTHS | | | | |
| | INFANT DEATHS AS A PERCENT OF BIRTHS PER YEAR | % | % | % | % |
| | | | | | |
| 5.3.8 HOUSING | ALL HOUSING UNITS | | | | |
| | NUMBER OF HOUSING UNITS WHICH ARE SUBSTANDARD | | | | |
| | PERCENT OF ALL HOUSING UNITS WHICH ARE SUBSTANDARD | % | % | % | % |
| | | | | | |
| 5.3.9 MINORITY GROUPS | *(Specify group and number of persons in each.)* | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 5.3.10 OTHER | *(Specify category and number of persons in each.)* | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

CAP FORM 5 (Page 2 of 2) JAN 65 GSA DC 65-11591

## OFFICE OF ECONOMIC OPPORTUNITY

### Community Action Program

# Assurance of Compliance with the Office of Economic Opportunity's Regulations under Title VI of the Civil Rights Act of 1964

_____ (hereinafter called the "Applicant")
(Name of Applicant or Delegate Agency)

AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the Regulations of the Office of Economic Opportunity issued pursuant to that title (45 C.F.R. Part 1010), to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance either directly or indirectly from the Office of Economic Opportunity; and HEREBY GIVES ASSURANCE THAT it will immediately, in all phases and levels of programs and activities, install an affirmative action program to achieve equal opportunities for participation, with provisions for effective periodic self-evaluation.

In the case where the Federal financial assistance is to provide or improve or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the Applicant, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the Applicant retains ownership or possession of the property, whichever is longer. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining either directly or indirectly any and all Federal grants, loans, contracts, property, or discounts, the referral or assignment of VISTA volunteers, or other Federal financial assistance extended after the date hereof to the Applicant by the Office of Economic Opportunity, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Date _____ _____
(Name of Applicant or Delegate Agency)

By _____
(President, Chairman of Board, or comparable authorized official)

_____

_____

_____
(Mailing Address)

CAP FORM 11 (REV. JUN 69) PREVIOUS EDITIONS ARE OBSOLETE.

ITEM B.8

TRANSITION AND CLOSEDOWN PLANS

1. *Transition Plans.* Transition plans are required as part of an application for recognition of a new CAA which will replace one or more existing CAAs currently funded by OEO to serve all or part of the proposed community. The purpose of such a plan is to insure an orderly transfer of the OEO-funded program functions, obligations, records, authority, and funds from the existing CAA(s) to the new CAA so as to minimize disruption or other problems. Where the new CAA will replace an existing CAA that also serves areas outside of the proposed community, the transfer shall apply only as directed by OEO.

In the case of conversion of an existing private non-profit CAA to public status, the designating governing officials may wish to make use of a Successor-in-Interest Agreement which would replace the requirement for a Transition Plan.

Transition plans should not be the vehicle for making major changes in the existing CAA's programs and activities. Such changes should be accomplished through the new CAA's grant application process. No such changes shall be made except as approved by OEO in response to a formal funding or amendment request submitted by the new CAA in accordance with OEO Instruction 6710–1.

b. *Transition Plans.* The new CAA shall submit a transition plan. Full recognition by OEO is contingent upon submission of a satisfactory transition plan. Such a plan, at a minimum, shall include arrangements for the following actions affecting the *OEO-funded* portions of the CAA's operations:

(1) Assumption of the existing CAA's delegate agency agreements and other obligations.

(2) Transfer of Federal and matching non-Federal funds in the possession, custody, or control of the existing CAA.

(3) Transfer of outstanding grants and grant actions.

(4) Transfer of program property in the possession, custody, or control of the existing CAA in which the Federal Government holds an interest or a residual power of disposition. Provision should be made for a joint inventory of the property by both agencies at the time of transfer.

(5) Assurance that the new community action agency will accept as obligations for the protection of the existing staff of the old CAA all reasonable employment rights clearly expressed in personnel policies which have been adopted by the old grantee in good faith and not in anticipation of the takeover, and which have been filed with OEO. Such assurance need not guarantee job tenure, but must guarantee any reasonable provisions covering without limitation, matters of termination notice, terminal leave, terminal pay, vested pension plan rights, accrued seniority, accrued annual leave, and carry over of accrued compensation time not to exceed 160 hours.

Within twelve months from the date the new CAA assumes responsibility for the operation of the grant, the new CAA shall adopt and issue to employees and file with OEO as required by OEO Instruction 6900–01, formerly CAP Memo 23–A, personnel policies which shall apply to all employees. In order to protect the accrued rights of the individuals employed by the old CAA, however, there shall be a reasonable transition period, during which the personnel policies of the old CAA shall continue to apply to employees of the old CAA retained by the new CAA. Reasonable notice, normally at least 30 days, must be given to such employees before changes which would adversely affect them become effective, and all changes must be nondiscriminatory.

(6) Transfer or payment of accounts payable and other obligations incurred by the existing CAA prior to takeover by the new CAA.

(7) Transfer of accounts receivable and other claims acquired by the existing CAA prior to takeover by the new CAA. Alternatively, the two agencies may agree on procedures for the existing CAA to collect those accounts and claims and make an accounting to the new CAA.

(8) Transfer of insurance policies held by the existing CAA.

(9) Transfer of authority to draw against Federal letters of credit.

(10) Transfer of leases held by the existing CAA.

(11) Transfer of the records of the existing CAA, with appropriate procedures to ensure the latter access to and the right to duplicate any portion of those records.

(12) Permitting persons enrolled in limited-term programs at the time of transfer to complete those programs.

(13) An audited or agreed upon balance sheet as of the time of the transfer.

2. *Closedown Plans.* Closedown plans are required as part of a report to OEO of the revocation or opt-out of the designation of an existing CAA where no new (or other existing) CAA is designated to replace it. The plans must be approved by OEO before the revocation or opt-out can take effect. The purpose of such a plan is to insure the orderly closedown of OEO-funded program operations, the fulfillment of all contractual obligations, and the proper disposition of records and property.

Where the designation of a CAA is revoked, the closedown plan must cover all of the CAA's OEO-funded operations. Where a political subdivision opts out of a CAA serving a larger jurisdiction, the closedown plan will apply only to those CAA programs and activities operating within the opting out subdivision.

A closedown plan, at a minimum, shall include arrangements and a timetable for the following actions affecting OEO-funded operations:

(1) The phase-out of program operations and the provision, if necessary, for the extension of program or staff operations into the next program year to permit an orderly phase-out.

(2) Permitting persons enrolled in limited-term programs at the time of revocation or opt-out to complete those programs.

(3) Determination of the balance of funds required to cover closedown costs and the liquidation of liabilities, and the preparation if necessary, of funding requests to extend operations into the next program year and/or apply for additional funds to complete closedown.

(4) Protection of all employment rights of employees of the CAA which have accrued in accordance with those provisions of the CAA's personnel policies which were in effect at the time or revocation or opt-out, including final disposition of leave and retirement fund payments.

(5) Termination of all contracts and subcontracts.

(6) Settling of all outstanding liabilities and claims.

(7) Cancellation of all leases for equipment or property.

(8) Cancellation of all insurance policies and bonds.

(9) An inventory of all property purchased with OEO grant funds, and the taking of measures necessary to safeguard all such property pending disposition instructions from OEO.

(10) Preparation and submission with 60 days of termination of financial statements, in accordance with OEO Manual 2410–1.

(11) A final audit, with the report available within 90 days of termination.

(12) Maintenance of all financial and accounting records, including supporting documentation, for a period of five years following termination, to be made available for inspection as necessary.

[FR Doc.74–5273 Filed 3–5–74;8:45 am]

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PART IV

# COST OF LIVING COUNCIL

■

# PHASE IV PRICE REGULATIONS

## Revision of Form CLC-22

## Title 6—Economic Stabilization

## CHAPTER I—COST OF LIVING COUNCIL

## PART 150—COST OF LIVING COUNCIL PHASE IV PRICE REGULATIONS

### Revision of Form CLC–22

The purpose of this amendment to Appendix A (which is at the end of Part 150 of Title 6) is to revise the Form CLC–22, and its supporting Schedules C, F, R, and T.

Appendix A was estabilshed, and Form CLC–22 placed within it (along with Schedules C, F, R, and T) on January 17, 1974, 39 FR 2704 (January 23, 1974). On January 17, the Council also issued CLC Notice No. 74–2, 39 FR 2730 (January 23, 1974) which contained a notice of proposed rulemaking concerning a proposed revision of Form CLC–22 and supporting Schedules C, F, R, and T. That notice set out revised instructions, and invited written comment upon them. The notice also referred to a meeting of the Business Advisory Council, to be held on January 30, 1974, for the purpose of receiving comments on the proposed revisions.

The Business Advisory Council meeting, which was open to the public, produced numerous suggestions. In addition, written comments were received. These written and oral comments have been considered by the Council staff, and have resulted in a number of alterations in the proposed Form CLC–22 and supporting schedules.

Since CLC Notice No. 74–2 set out in considerable detail the differences between that proposal and the Form CLC–22 as it then stood, this preamble will discuss only the ways in which the Form CLC–22 and supporting schedules, as they are set out herein, differ from the proposals set out in CLC Notice No. 74–2.

The first change occurs in the General Instructions at the end of the second paragraph under B, "Who Must Use Form CLC–22", where a new paragraph is inserted to say that institutional and non-institutional providers of health services subject to Subpart O of Part 150 do not need to submit Form CLC–22 either to prenotify or to report price increases for health services. This is not a change in Council requirements and is inserted at this point for the sake of clarity.

The "Certification of No Price Increase" in paragraph B is altered by the substitution of the word "or" for the word "and" in item (5) of the first paragraph of the Certification. This change is to conform the first with the second paragraph.

Item 7, "Prenotification by Refiners" in paragraph B is amended by changing the heading to "Prenotification by Refiners Selling Covered Products" in order to make the heading more descriptive of the applicability of the paragraph which follows it.

Item 8. "Certification that Public Disclosure Not Required" is amended by the addition of the phrase "as defined in 6 CFR 150.53" to specify what is meant by the term substantial product as it is used in Item 8.

Paragraph C, "When to Submit Form CLC–22" and paragraph D, "What to Submit or Prepare", are amended by the substitution of the word "file" for the word "submit" when a time period is being imposed, to make it clear that receipt of the document by the Council or IRS must occur within the specified time. The Council's procedural regulations in Part 155 of Title 6, which discuss the computation of time, are written in terms of filing documents rather than of submitting them.

Paragraph G, "Rounding" is amended so that its provisions specifically refer to the related schedules as well as the Form CLC–22 proper. This change is in response to a comment that the instructions to the supporting schedules C, F, R, and T contain no discussion of rounding.

The first paragraph of Part II "Calculation of Base Period Profit Margin" is amended to make it clear, as is provided in the regulations, that a firm which wishes to use as a base year a year in which it exceeded its base period profit margin must reduce its operating income (but not its sales) to the level which would not result in a profit margin excess. The amendment is designed to remove an ambiguity from the instructions and to conform the instructions to the regulations.

In Part V, the "Special Instructions for the Preparation of Form CLC–22 as a Prenotification Document" is amended in Item 3 in two places to make it clear that Item 3 refers only to firms prenotifying under the provisions of Subpart L (Petroleum and Petroleum Products).

In Part VI—"Price/Cost Information" the last sentence in the introduction has been deleted to reflect the amendment to 6 CFR 150.151(a) in 38 FR 34859 (December 20, 1973).

The paragraph titled "Loss and Low Profit Firms" in Part VI is amended by replacing the term "firm" by the term "entity" in the body of the paragraph. This change is designed to show that loss or low profit treatment is accorded to an entity rather than to the broader aggregation of a firm.

A new section entitled "Price Category II firms with Eating and Drinking Places" is added to Part VI in order to set out the modified reporting requirements for such firms as provided for in the preamble to 6 CFR 150.54 at 39 FR 4557 (February 5, 1974).

In "Specific Instructions" the instructions for Item 24 are amended by the addition of a new paragraph at the end of the instructions for Column (a). The amendment requires a firm, when using the Form CLC–22 for prenotification purposes, to include in Column (a) the weighted average percentage above base price contained in the most recent prenotification which the firm has submitted and on which the 30 day prenotification period has expired. This will place on one form information which the Council needs in order to consider prenotifications, and which otherwise would require comparisons between prior and present submissions, which are not always retained in the same place.

Item 24, Column (c) is amended by adding a sentence to the paragraph to provide that if items or sales are made exempt by Council action during a reporting period, such sales or sales for such items for the entire reporting period are nevertheless included in Item 24 Column (c) and not in Item 38.

Item 24, Column (g), is amended to make the reporting requirements consistent with the compliance test. Previously, a firm had to report the highest percentage price increase over base price. Since the compliance test is the higher of base price or adjusted freeze price, the Council is now requiring reporting of the highest percentage price increase over the greater of base price or adjusted freeze price. In addition, the prenotification instructions for Column (g) are being changed to comply with the reporting requirements. (There is no compliance test for prenotification; the Council uses realized figures contained in quarterly reports, rather than estimates contained in prenotifications, in measuring compliance.)

The Specific Instructions for Item 38 are amended to set out more clearly the sales entered in that item and to require a supporting schedule citing the regulation section which causes each product or service line to be included within Item 38, as well as describing each product or service line and the amount of net sales or revenues for it.

Item 39 is amended to make it clear that the total in Column (c) should be reconciled to the entity's sales or revenues for the reporting period as reported on its financial statements.

#### Instructions for Preparation of Schedule C

In "Specific Instructions, PART II—Calculation of Cost Justification", the last sentence of the first paragraph is amended to conform the instructions to the amendment to 6 CFR 150.133 contained in 39 FR 5183 (Feb. 11, 1974), relating to the accounting month used as the current cost period.

The instructions for "Food Manufacturing" in Part II are amended in the last paragraph to delete the statement that volume offsets are not required. This is not a change in Council policy, but it is in response to comments that using the output method in calculating cost justification, as the Council sometimes requires, has the effect of producing a volume offset. The instructions are also amended to say that the volume used in calculating current costs must be the volume in the current cost period or the volume used in calculating base costs, whichever is greater.

The last paragraph in the instructions for "Allowable Costs" in Part II is slightly rewritten for the sake of clarity.

The instructions for Item 14, "Current Cost Period" is amended to conform to the regulation change in 6 CFR 150.133 discussed above, which requires a certification concerning the figures used.

INSTRUCTIONS FOR PREPARATION OF SCHEDULE F REPORT OR RECORD OF FOOD MANUFACTURING REVENUES

There are no changes in Schedule F.

INSTRUCTIONS FOR PREPARATION OF SCHEDULE R RECONCILIATION OF FORMS 10-K, 10-Q, OR OTHER FINANCIAL STATEMENTS TO FORM CLC-22

The Specific Instructions for "Line 5 Adjustments" are amended to replace an incorrect reference to 6 CFR 150.456 with a reference to 6 CFR 150.454.

INSTRUCTIONS FOR THE PREPARATION TO SCHEDULE T REPORT OF RETAILING AND WHOLESALING MARKUPS OR GROSS MARGINS

In the "General Instructions", A, "Purpose" is amended by the addition, at its end, of a sentence stating that no Schedule T need be filed for reporting periods beginning on or after February 1, 1974 with regard to retail activities exempt under the retail exemption of 6 CFR 150.54(ff), which became effective February 1, 1974.

A paragraph titled "Automobile Wholesalers and Retailers" is added to the end of the "General Instructions" to refer sellers of new cars or trucks to the Special Rule applicable to them which is found in the Appendix to Subpart K of Part 150.

In B, "Definitions", Item 3, "Customary Initial Percentage Markup" is amended by changing the denominator of the formula from "Cost" to "Initial Price or Cost". Similarly, Item 5, "Gross Margin" is amended by changing the denominator from "Cost" to "Revenues or Cost". These amendments conform the definitions to the amendment to 6 CFR 150.303 published in 38 FR 22119 (August 16, 1973).

In C, "Who Must File", Item 2, "Quarterly Report" is amended by the addition of a reference to the retail exemption contained in 6 CFR 150.54(ff).

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

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11730, 39 FR 19345; Cost of Living Council Order Number 14, 38 FR 1489).

In consideration of the foregoing the Instructions for the Preparation of Form CLC-22, and the Instructions for the Preparation of Schedules C, F, R, and T in Appendix A to Part 150 of Title 6 of the Code of Federal Regulations are amended to read as set forth below. This amendment is effective, for purposes of quarterly reporting, for reporting periods ending after February 28, 1974, and for purposes of prenotification for all prenotification documents filed after March 31, 1974.

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

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

1. In Appendix A at the end of Part 150 of Title 6 of the Code of Federal Regulations, the "Instructions for the Preparation of Form CLC-22 Prenotification, Report, or Record of Prices, Costs, and Profits" and the Instructions for the Preparation of Schedules C, F, R, and T are amended to read as set forth below:

INSTRUCTIONS FOR THE PREPARATION OF FORM CLC-22 PRENOTIFICATION, REPORT, OR RECORD OF PRICES, COSTS, AND PROFITS

GENERAL INSTRUCTIONS

*A. Purpose.*

1. Form CLC-22 is designed to provide the data necessary for the Cost of Living Council (CLC) and the Internal Revenue Service (IRS) to execute their role in monitoring the performance of the economy pursuant to Executive Order 11730.

2. Form CLC-22 provides the means by which certain firms subject in whole or in part to 6 CFR Part 150, prenotify and report quarterly certain price adjustments and related costs and profits. Form CLC-22 also provides the means by which certain firms engaged in food manufacturing and subject to 6 CFR 150.606 report on a monthly and quarterly basis.

*B. Who Must Use Form CLC-22.*

1. Each price category I or II firm, as defined in 6 CFR, Part 150, Subpart C, must submit quarterly reports on Form CLC-22 and each price category I firm shall prenotify price increases on Form CLC-22 to the IRS in accordance with regulations issued by the CLC.

In addition, each price category I and II firm engaged in food manufacturing must submit monthly reports unless the firm derives both less than 20% and less than $50 million of its annual sales or revenues from food manufacturing and elects to price with respect to its food manufacturing activities in accordance with 6 CFR Part 150, Subpart E. The "adjusted freeze price" as defined in 6 CFR Part 150, Subpart Q applies to firms making this election.

Institutional and non-institutional providers of health services subject to 6 CFR, Part 150, Subpart O need not submit Form CLC-22 to prenotify or report price increases for health services.

2. All firms are encouraged to prepare and maintain Form CLC-22 in the firm's records to assist in complying with Phase IV regulations.

3. *General Rules.*—The following rules apply for the purpose of determining who must use Form CLC-22:

a. *Determination of "Firm."*—If a firm is not directly or indirectly controlled by another firm, that firm is called a "parent" for the purposes of this Form CLC-22. The parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls taken all together, constitute the "firm" for the purpose of paragraphs B.1, B.2 and B.8.

b. *Parent and Consolidated Entities.*—Once the prenotification or reporting status is determined, only the sales or revenues of the parent and the sales or revenues of the controlled entities (if any), consolidated with the parent in its financial statements prepared in accordance with generally accepted accounting principles are combined for purposes of preparation of the Form CLC-22 applicable to the "Parent and Consolidated Entities." The Form CLC-22 is prepared by the parent for and on behalf of the entire consolidated group for submission to the IRS.

c. *Unconsolidated Entity.*—In addition to preparing Form CLC-22 for and on behalf of the entire consolidated group, the parent must prepare a separate Form CLC-22 for and on behalf of each unconsolidated entity with annual sales or revenues of $10 million or more. An "unconsolidated entity" is any entity directly or indirectly controlled by a parent but not consolidated with the parent for purposes of financial statements prepared in accordance with generally accepted accounting principles. An "unconsolidated entity" includes any entity consolidated with that unconsolidated entity for purposes of financial statements prepared in accordance with generally accepted accounting principles.

d. *Entity.*—For purposes of this form and all supporting schedules, entity means the "parent and consolidated entities" or an "unconsolidated entity."

4. *Certification of No Price Increase.*—Any entity that would otherwise be required to file the Form CLC-22 on a quarterly basis which has not, since August 12, 1973, for a non-exempt item, (1) charged a price in excess of the greater of the base price (6 CFR, Part 150, Subpart F) or the adjusted freeze price (6 CFR, Part 150, Subpart E or Subpart K, as applicable) except as allowed by 6 CFR 150.76 or 6 CFR 150.312(b) for prices specified in certain contracts; (2) charged a price in excess of the "current price" or reflecting an increased "base rate" as defined in 6 CFR 150.206 for firms engaged in broadcasting and pricing in accordance with the audience size method, except as allowed by 6 CFR 150.206(c)(1)(i); (3) charged a price for a custom product or service unless it meets the de minimus rule set forth in 6 CFR 150.11(d)(3); (4) charged a price pursuant to the volatility provisions of 6 CFR 150.156; (5) charged a price for a covered product as defined in 6 CFR, Part 150, Subpart L or (6) become subject to a profit margin limitation by virtue of 6 CFR 150.604(b)(3), 150.605(b), or 150.606(c)(3) may submit, within 30 days of the end of the entity's fiscal quarter, a Form CLC-22 with Parts I, IV, and V completed in accordance with these instructions, and with the following certification typed in Part VI, Item 24, Lines (1) through (33), in lieu of filling out Part VI as is otherwise required:

I certify that, to the best of my knowledge and belief, as of (a), (b) has not at any time since August 12, 1973: (1) Charged a price in excess of the greater of the adjusted freeze price defined in accordance with 6 CFR Part 150, Subpart E, or Subpart K, as applicable, or the base price established in accordance with 6 CFR Part 150, Subpart F or 6 CFR 150.207, as applicable, except as allowed by 6 CFR 150.76 or 6 CFR 150.312(b); (2) charged a price in excess of the current price or charged a price reflecting an increased base rate, pursuant to 6 CFR 150.206, except as allowed by 6 CFR 150.206(c)(1)(i); (3) charged a price for any custom product or service as defined by 6 CFR 150.-104, or, if it has charged such a price, that the annual sales or revenues attributable to all its custom products or services will represent less than $10 million or less than 1 percent of the entity's annual sales or revenues, whichever is greater; (4) charged a price pursuant to the special rule for volatility in 6 CFR 150.156; (5) charged a price for a covered product as defined in 6 CFR, Part 150, Subpart L; or (6) become subject to a profit margin limitation by virtue of

§ 150.604(b)(3), § 150.605(b), or § 150.606(c)(3) applicable to food activities.

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*Chief Executive Officer (or other authorized executive officer)*

The following information is entered in the appropriate blanks of the certification:

(a) The reporting period ending date.

(b) The name of the entity to which the Form CLC–22 applies.

5. *Quarterly Reporting for petroleum and Petroleum Products.*—Each "refiner", and each "retailer", "reseller", or "producer" (of domestic crude petroleum as an operator) which derives $50 million or more in annual sales or revenues from the sale of "covered products" as those terms are defined in 6 CFR 150.352, must prepare a Form CLC–22 as a quarterly report completed in accordance with these instructions.

6. *Recordkeeping for Petroleum and Petroleum Products.*—Each firm which derives less than $50 million but more than $1 million in annual sales or revenues from the retailing or reselling of covered products must prepare and maintain at its principal place of business, a Form CLC–22 as a quarterly report completed in accordance with these instructions.

7. *Prenotification by Refiners Selling Covered Products.*—Each refiner subject to the prenotification requirements in 6 CFR 150.-355 must prenotify price increases on a Form CLC–22 used as a prenotification document in accordance with these instructions.

8. *Certification that Public Disclosure Not Required.* Any firm, as defined in these instructions, which has annual sales or revenues of $250 million or more and which has not charged a price for a substantial product, as defined in 6 CFR 150.53, which exceeds by more than 1.5% the price lawfully in effect for such product on January 10, 1973, or on the date 12 months preceding the end of the quarterly reporting period whichever is later, must submit as a supporting document to any Form CLC–22 filed as a quarterly report two copies of the following certification:

Certification that Public Disclosure Not Required:

I certify that, to the best of my knowledge and belief, (a) and all entities which it controls have not at any time during the reporting period ending (b) charged a price for a substantial product which exceeds by more than 1.5% the price lawfully in effect on (c).

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*Chief Executive Officer (or authorized officer)*

The following information is entered in the appropriate blanks of this certification:

(a) The name of the parent.

(b) The reporting period ending date.

(c) January 10, 1973, or the date 12 months preceding the reporting period ending date, whichever is later.

C. *When to Submit Form CLC–22*

Firms required to prenotify price increases must file a Form CLC–22 at least 30 days prior to charging a price for which prenotification is required pursuant to 6 CFR, Part 150, Subpart H. Firms required to submit Form CLC–22 as a report of price adjustments, and related costs and profits, must file such report with the IRS not later than 45 days after the last day in the entity's fiscal quarter and 90 days after the last day in the entity's fiscal year.

In addition, firms engaged in food manufacturing and pricing in accordance with the gross margin rule must file a Form CLC–22 as a monthly report with the IRS not later than 30 days after the close of each accounting month except the month which concludes a fiscal quarter of the entity. This Form CLC–22 submitted as a monthly report must have a completed Schedule F attached.

D. *What to Submit or Prepare*

This form and instructions require only basic information. However, the CLC and the IRS may request additional data in particular cases. Firms must submit 2 copies of the Form CLC–22, Schedules C, R, F and T, as required, and all other supporting schedules and documentation indicated in the instructions. Firms which submit a Form CLC–22 which contains incomplete or incorrect information will be required to submit a corrected Form CLC–22 and will be considered in violation of the reporting requirements if a complete and correct form is not filed within the time period prescribed.

E. *Where to Submit*

Firms required to file must forward Form CLC–22 and attachments to the IRS office designated in the table at the end of these instructions.

F. *Suggestions for Improvement*

The CLC welcomes suggestions for improving this and other forms, and seeks ways of obtaining the information it needs to exercise its responsibilities under Phase IV of the Economic Stabilization Program with the minimum amount of public burden. Suggestions should be submitted to:

Cost of Living Council
Office of the Executive Secretariat
2000 M Street, N.W.
Washington, D.C. 20508

G. *Rounding*

For purposes of this form and related schedules, all percentages must be expressed to the nearest two decimal places (such as 15.92%). All dollar entries must be rounded to the nearest $1000 and the 000 should be omitted (such as $1,750,803, entered as $1,751).

H. *Sanctions*

The timely submission of a Form CLC–22 by a firm as a report or prenotifictaion is a mandatory requirement under the Phase IV regulations. Late filing, failure to file, failure to keep records, or failure otherwise to comply with these instructions, may result in criminal fines, civil penalties, and other sanctions as provided by law.

SPECIFIC INSTRUCTIONS

*PART I—Identification Data*

*Item 1a or b. Organization/Status.*—Check the box which indicates the status of the organization to which this form applies.

*Item 2. Type of Submission—Prenotification.*—Check box (a) if Form CLC–22 is used to prenotify a price adjustment.

*Quarterly Report*—Check box (b) if Form CLC–22 is used to make a quarterly report.

*Certification*—Check box (c) if a Certification of No Price Increase is to be typed in Part VI (See General Instructions, paragraph B4).

*Other*—Check box (d) if Form CLC–22 is used for purposes other than in 2(a), (b), or (c) and explain the purpose on the line provided. If the Form CLC–22 is being used as a public disclosure document, enter the words "Public Disclosure Required" and complete the form as required by 6 CFR Part 102, Subpart F.

*Item 3. Name, Address, and Chief Executive Officer—Name.*—If item 1(a) is checked enter the legal name of the parent. If item 1(b) is checked enter the legal name of the unconsolidated entity.

*Address.*—Enter the address of the executive office.

*Chief Executive Officer.*—Enter the name and title of the Chief Executive Officer.

*Parent.*—If item 1(b) is checked, enter the legal name of the parent.

*Item 4. Is this a resubmission?*—Answer Item 4 "yes" if you are supplying additional information or are resubmitting a report. In either case, the form must be completed in its entirety.

*Item 5. Ending date of most recently completed fiscal year.*—Enter the date of the last day of the most recently completed fiscal year of the entity. If the fiscal year ending date has changed, enter the word "change" and attach a letter explaining the change.

*Item 6. Reporting Period Ending Date.*—Enter the date of the last day in the reporting period. The reporting period must conform with the entity's most recently completed fiscal quarter.

If the Form CLC–22 is being prepared for submission with a Schedule F as a monthly report, the reporting period is the entity's most recently completed accounting month.

*Item 7. Annual Sales or Revenues* (To be completed by Parent only).—Enter for the most recently completed fiscal year, the total of the annual sales or revenues (as defined in 6 CFR, Part 150, Subpart B) of the parent and its consolidated and unconsolidated controlled firms.

*PART II—Calculation of Base Period Profit Margin*

This part must be completed each time the Form CLC–22 is prepared except that for purposes of monthly reporting pursuant to 6 CFR Part 150, Subpart Q, leave Part II blank. If the firm received an order granting a request for an exception affecting its base period profit margin, it may use the provisions of such an order in calculating the base period profit margin in accordance with the instructions to this Part. In such cases, the firm must enclose a copy of the exception order and document its use and dollar effect. The term "base period" means any two, at the option of the entity, of that entity's fiscal years ending on or after August 15, 1968, other than the fiscal year for which compliance is being measured. A fiscal year in which it is determined that the entity unlawfully exceeded its base period profit margin can be a base period fiscal year except that operating income for that year must be adjusted so as to be reduced to the maximum level of operating income which the entity would have obtained for that fiscal year had it not exceeded its base period profit margin. In determining a base profit period for the purpose of computing a base period profit margin a weighted average of profits during the two years chosen must be used. Except where the data required in Part II is identical to the data in Part II of the Form CLC–22 most recently submitted by the entity, the entries made in Items 8, 9, 11, and 12 must be reconciled on the Schedule R to Form CLC–22 with the corresponding entries reported on the supporting Form 10–K or other financial statements required in the Instructions to the Schedule R. Any required Schedule R must be attached to the Form CLC–22.

For any prenotification document submitted by an entity within 90 days after the end of its most recently completed fiscal year, the entity may, in selecting its base period, elect to use such fiscal year in the calculation of its base period profit margin. An entity which uses its most recently completed fiscal year in calculating its base period profit margin need not submit a Schedule R for that fiscal year with a Form CLC–22 submitted as a prenotification document within 90 days after the end of that year.

*Items 8 and 9. Net Sales.*—Enter, from the appropriate Schedule R, the amount on Line 12.

*Item 10. Total.*—Enter the sum of Items 8 and 9.

*Items 11 and 12. Operating Income.*—Enter, from the appropriate Schedule R, the amount on Line 13.

*Item 13. Total.*—Enter the sum of Items 11 and 12.

*Item 14. Base Period Profit Margin.*—The base period profit margin is calculated by dividing Item 13 by Item 10.

*PART III—Calculation of Profit Variation*

This part must be completed by the entity each time Form CLC–22 is prepared except that for purposes of monthly reporting pursuant to 6 CFR, Part 150, Subpart Q, leave Part III blank. Except for a prenotification document the Part III of which is identical to Part III of the Form CLC–22 most recently submitted by the entity, the entries made in Items 15 and 18 must be reconciled on the Schedule R to Form CLC–22 with the corresponding entries reported on the supporting Form 10–K, Form 10–Q, or other financial statements required (see instructions to Schedule R). Any required Schedule R must be attached to the Form CLC–22. If the entry in Item 19 shows the Cumulative Period Profit over the Target Profit, the entity must attach an explanation as to why it does not appear to be conforming with the general price rules in 6 CFR, Part 150, Subpart E and Subpart K.

*Item 15. Net Sales.*—Enter, from appropriate Schedule R, the amount in Line 12.

*Item 16. Base Period Profit Margin.*—Enter the base period profit margin from Part II, Item 14.

If the entity is allowed a profit margin pursuant to the Loss and Low Base Period Profit Margin rule of 6 CFR 150.202, it should enter that profit margin in Item 16 and attach a supporting schedule to document the computation of the capital turnover ratio using net sales determined in accordance with 6 CFR 150.202. However, the completion of Part II, Form CLC–22, in accordance with the instructions, continues to be a requirement.

*Item 17. Target Cumulative Period Profit.*—Enter the target amount of cumulative period profit determined by multiplying item 15 by item 16.

*Item 18. Actual Operating Income.*—Enter from appropriate Schedule R, the amount on Line 13.

*Item 19. Cumulative Period Profit Under (Over) Target Profit.*—This entry is determined by subtracting Item 18 from Item 17.

*PART IV—Additional Information—*

Self explanatory.

*PART V—Certification*

Type the name and title of the individual who has signed the certification and the date of signing. The individual who signs and certifies this Form CLC–22 must be the Chief Executive Officer of the Parent or such other executive officer of the entity as authorized by the Chief Executive Officer to sign for him for this purpose. Such authorization in the following format must be received by the appropriate IRS office as indicated in the table at the end of these instructions.

DELEGATION OF AUTHORITY TO SIGN AND CERTIFY

_____
(Typed date of signing)

_____
(Name of parent)

I, _____
(Name)

hereby certify that I am the _____
(Title)

of the above-named parent; and that, as such, I am authorized to sign documents and to certify, on behalf of said parent, the accuracy and completeness of all the information in such documents. Pursuant to the power vested in me, I hereby delegate all or, to the extent indicated below, a portion of that authority to the person(s) listed below, who is (are) executive officers of the above-named parent or entity of the firm. This delegation is effective until it is revoked in writing, and the Internal Revenue Service is so notified.

_____ _____
(Date) (Signature)

AUTHORIZED INDIVIDUALS

| *Name and Title* | *Extent of Authorization* |
|---|---|
| | |
| | |

*Special Instructions for the Preparation of Form CLC–22 as a Prenotification Document.*—1. The prenotification requirement is determined according to the annual sales or revenues of the parent and the consolidated and unconsolidated entities it directly or indirectly controls. Once it has been determined that prenotification is required, an entity must prenotify regardless of the amount of its own sales and revenues, unless the entity is an unconsolidated entity with less than $10 million or unless the prenotification requirement is modified by the Council pursuant 6 CFR, Part 150, Subpart H.

2. When prenotifying a price increase items 27 through 39 in Part VI are not required to be completed. Firms need only show product lines or service lines for which a price increase is being requested. In no case may prenotification be made as a part of the required quarterly report.

3. Firms prenotifying a price increase pursuant to 6 CFR Part 150, Subpart L (Petroleum and Petroleum Products), must use a separate Form CLC–22 to prenotify price purposes of a Form CLC–22 used to prenotify price increases on covered products, the terms "base price" used in computing the entries in columns (d), (e), and (g) and "base cost" used in computing the entry in column (f) are as defined in 6 CFR 150.352 and 150.355 respectively. However, the adjusted freeze price may not be used in calculating the entry in column (g) on the separate Form CLC–22.

4. Firms prenotifying a price increase pursuant to 6 CFR Part 150, Subpart Q must use a separate Form CLC–22 to prenotify such price increases and include in Part VI of the form only product lines which are "food" as defined in that subpart. For purposes of a Form CLC–22 used to prenotify price increases "base cost period" used in computing the entry in column (f) is as defined in 6 CFR 150.607.

*PART VI—Price/Cost Information*

*Introduction.*—This part is used to report or prenotify weighted average price adjustments by product line. For purposes of this form, "product line" means product, product line, service or service line. Any price adjustments which have been made by means of change in quantity, quality, specifications or characteristics must be taken into account when reporting price adjustments.

*Alternative Treatment of Operations of Entity.*—A firm which is subject to 6 CFR Part 150, Subpart E and which is also engaged in wholesaling or retailing, or both, is subject to the requirements of Subpart K or this part with respect to its wholesaling and retailing operations. However, if the sales or revenues derived from wholesaling and retailing activities amounted to both less than $50 million and less than 10% of the firm's total manufacturing or service revenues subject to 6 CFR Part 150, Subpart E in the most recently ended fiscal year, the firm may, at its option, treat its wholesale and retail operations for pricing and reporting purposes as manufacturing or service activities.

As an alternative to the method for prenotifying, a firm which is subject to 6 CFR Part 150, Subpart K and which also engages in manufacturing or service activities, or both, is subject to the requirements of Subpart E of Part 150 with respect to its manufacturing and service activities. However, if the sales or revenues derived by the firm or pricing entity concerned from manufacturing and service activities were less than 15% of the firm's or pricing entity's total retailing or wholesaling revenues for the most recently completed fiscal year, the firm may include its integrated manufacturing and service activities in its merchandising pricing plan (see Instructions to Schedule T to Form CLC–22). When manufacturing or service activities are so included, customary initial percentage markups and gross margins shall be computed, in the case of manufacturing activities, on the basis of direct material costs and, in the case of service activities, on the basis of direct material and direct labor costs.

*Food Manufacturing.*—For purposes of prenotifying data on "food" products pursuant to 6 CFR Part 150, Subpart Q:

(1) An entity subject to prenotification may not charge a price increase, on any item in a product line, supported by cost other than "food raw materials costs" without prenotifying such an increase to the IRS.

(2) Columns (d), (e) and (g) of Item 24 are left blank.

(3) The base cost period for purposes of completing column (f) and the required Schedule C is the base cost period as defined in 6 CFR Part 150, Subpart Q.

(4) Enter in column (f) a percentage not greater than the percentage cost justification shown on line 12, Schedule C.

For purposes of monthly reporting pursuant to 6 CFR Part 150, Subpart Q, leave Part VI blank. For purposes of quarterly reporting, firms pricing in accordance with the gross margin rule include in Line 38 the total of Column (g), Item 5, Schedule F. For those firms, food product lines are not entered in line 1–33 of item 24 of the Form CLC–22 filed as a quarterly report.

*Petroleum and Petroleum Products.*—For purposes of reporting price and cost data on covered products as defined in 6 CFR, Part 150, Subpart L:

(1) the base price for purposes of calculating the entries in columns (d), (e), and (g) is the base price as defined in 6 CFR, Part 150, Subpart L,

(2) the base cost period for purposes of completing column (f) and the required Schedules C is the base cost period as defined in 6 CFR, Part 150, Subpart L,

(3) the adjusted freeze price may not be used in calculating the entry in column (g),

(4) price and cost data on covered products that the entity sells as a refiner are entered in item 24.

(5) only the data required for columns (a), (b), and (c) of item 24 need be entered for the covered products that the entity sells as a producer, and

(6) Sales of the entity from reselling and retailing activities are included in Item 28. If the entry in Item 28 includes sales of other than covered products a supporting schedule must be attached which provides the dollar amount of sales of covered products that is included in the entry in Item 28.

*Broadcasting.*—"Current price" and "base rate", as defined in 6 CFR 150.206, are to be used to determine the price which may be charged for advertising units by firms engaged in television, radio broadcasting, or both, which are required, or have elected, to use the audience size method and to price in accordance with 6 CFR 150.206.

In reporting quarterly, such firms must attach a supporting schedule which provides for each advertising unit, the base rate, the audience size and the current price charged during the reporting period.

*Loss and Low Profit Firms.*—As long as an entity qualifies for authority to price as a loss or low profit firm pursuant to 6 CFR 150.201, it need not submit the following CLC forms or portions of forms in connection with quarterly reporting:

1. Columns (d), (f) and (g) of Part VI, Form CLC–22
2. Schedule C: Entire form
3. Schedule F: Entire form
4. Schedule T: Entire form

In addition, qualifying loss or low profit firms engaged in food manufacturing need not submit monthly reports pursuant to 6 CFR, Part 150, Subpart Q.

*Capital Goods Manufacturers and Textile Manufacturers.*—In calculating base prices and adjusted freeze prices for manufacturing activities subject to 6 CFR 150.207 a firm may elect to use the following definition of transaction: "Transaction" means an arms-length sale or lease between unrelated persons and is considered to occur at the time a binding contract is entered into between the parties. A firm may use contract prices pursuant to the preceding sentence only to the extent that those prices reflect costs which have been incurred or nonlabor costs committed to be incurred in the future under fixed price supplier contracts.

In calculating base costs under 6 CFR Part 150, Subpart G for manufacturing activities subject to 6 CFR 150.207, a firm which elects to use the optional contract definition of transaction must include those costs which are reflected in contract prices used as base prices and which otherwise would not be included in the calculation of base costs.

*Price Category II Firms with Eating and Drinking Places.*—Price category II firms need not submit for quarters beginning after February 1, 1974, the following CLC forms or portions of forms in connection with quarterly reporting with respect to the food service activities within the scope of SIC major group 58 (Eating and Drinking Places):

1. Columns (d), (f) and (g) of Part VI, Form CLC–22
2. Schedule C: Entire form
3. Schedule F: Entire form
4. Schedule T: Entire form

*Calculations Required in Completing Part VI, Form CLC–22.*—In order to arrive at the weighted average percentage price adjustment required in Part VI, Form CLC–22, the entity must:

(1) Calculate base prices,

(2) Calculate current prices; and

(3) Weight the difference between each current price and base price by the quantity of the respective items sold.

The explanations and examples below are standards for the correct computation of the base price, current price, and weighted average percentage price adjustment (price adjustment). In selecting its method for computing its price adjustment, the entity may use alternative techniques which, when applied in a consistent and unbiased manner, result in a percentage which is not materially different from the percentage derived using the standards below. Some of these alternative techniques are mentioned in the explanation below.

*Computation of Base Price and Current Price.*—An item is a product or service unit sold, leased or offered for sale or lease to class of purchaser.

The base price of an item is the average unit price of that item computed for the firm's last fiscal quarter ended prior to January 11, 1973 in which transactions occurred with respect to the item and class of purchaser concerned. The average unit price of an item for a period is determined by dividing the net sales of the item for the period by the quantity of the item sold for that period. Prices charged pursuant to temporary special deals or temporary special allowances may be excluded in computing the base price of an item.

The current price of an item is the average unit price of that item computed for the reporting period for Form CLC–22. The following is an example of the calculation of a base price. The computation of a current price is identical except the sales and quantity data are taken from the reporting period and not the base price period.

Firm A's fiscal year end is November 30. The base price period is the fiscal quarter ended 11/30/72.

During that period product B sold as follows:

| | | |
|---|---|---|
| 100 units | $1.00 | $100 |
| 100 units | 1.05 | 105 |
| 200 units | 1.10 | 220 |
| 400 units | | $425 |

$$\text{Base price for item B} = \frac{\text{net sales}}{\text{units sold}} = \frac{\$425}{400} = \$1.06$$

The base price must be determined for each item. Firms which cannot reasonably calculate base prices for each item may employ valid sampling techniques.

*Computation of Weighted Average Percentage Price Adjustment Above (Below) Base Price.*—The calculation of the weighted average percentage price adjustment is necessary to complete Part VI, Item 24 (d) and (e), regardless of whether the adjustment is above or below (set off by parenthesis) base price.

The weighted average percentage price adjustment is the difference between current revenues and base price revenues for the product line all over base price revenues. The result is multiplied by 100 to convert to a percentage. Current revenues are net sales of the product for the reporting period (average unit price times quantity sold). Base price revenues are the revenues that would have been derived during the reporting period if all prices had been at base price (i.e. base price times quantity sold during the reporting period).

Although the calculation of the weighted average percentage price adjustment requires determination of price changes at the item level, it may not be feasible to compute and record the percentage price changes at this level of detail. In such cases, it may be permissible to use a sampling, averaging, exceptions, or other valid technique to calculate a weighted average percentage price adjustment. Where these techniques are used, the entity must adhere to accepted standards with regard to materiality, sampling validity, and consistency. In all cases, the entity must maintain documentation which outlines the type of techniques used in calculating the weighted average percentage price adjustment.

The entity must weight its price changes according to one of the following methods:

(1) The quantity sold during the reporting period (as shown in the formula and illustration below);

(2) The quantity sold during the base price period providing the entity can demonstrate that there is no material difference in product mix between the base price period and the reporting period;

(3) The value of the sales to which a price change applies as a proportion of the total sales for which the weighted average is computed.

All methods of weighting must take into account price increases and decreases from base price.

The weighted average price adjustment above (below) base price can be computed using the following formula:

$$\frac{\text{(Current revenues)} - \text{(Base price revenues)}}{\text{(Base price revenues)}} \times 100 = \text{Weighted average percentage price adjustment.}$$

*Illustration of Computing the Weighted Average Percentage Price Adjustment.*—The steps for computing the weighted average percentage price adjustment using weighting by quantity sold during the reporting period (method (1) above) are:

1. Multiply the quantity of each item sold during the reporting period by its base price. The result is the base price revenues for each item.

2. Total the base revenues (Column 5) for the individual items to arrive at the total base price revenues (sum of Column 5).

3. Divide the total base price revenues computed in step (2) above into the difference between total current revenues (sum of column 6) and total base price revenues and multiply the result by 100 to convert to a percentage.

*Sample calculation of weighted average percentage price adjustment*

| (1) Item | (2) Base price | (3) Average price reporting period—col. (6)÷col. (4) | (4) Quantity sold during reporting period (in thousands) | (5) Base price revenues (in thousands)—col. (2) × col. (4) | (6) Current revenues (in thousands) |
|---|---|---|---|---|---|
| A | $5 | $4.80 | 40 | $200 | $192 |
| B | 6 | 6.10 | 60 | 360 | 366 |
| C | 3 | 3.20 | 50 | 150 | 160 |
| D | 10 | 10.00 | 15 | 150 | 150 |
| E | 8 | 8.25 | 40 | 320 | 330 |
| Total | | | | 1,180 | 1,198 |

$$\text{Weighted average percentage price adjustment} = \frac{1198-1180}{1180} \times 100 = 1.53\%$$

*Specific Instructions—Item 22.*—Enter the name of the parent or unconsolidated entity as shown in Part 1, Item 3(a), Form CLC–22.

*Item 23.*—If CLC–22 is used to prenotify price increases, enter the dates of the first day and last day of the current cost period for prenotification purposes as defined in 6 CFR Part 150, Subpart G.

If CLC–22 is used as a quarterly report enter the beginning and ending dates of the fiscal quarter to which the CLC–22 applies.

*Item 24.*—Lines (1) through (33) are provided for the prenotification and the reporting of price and cost information. An entity subject to prenotification may not charge a price on any item in a product line above the higher of the adjusted freeze price or the base price as defined above without prenotifying such an increase to the IRS pursuant to 6 CFR Part 150, Subpart H, even though the weighted average percentage price adjustment with respect to all base prices within the product line is zero or less.

Col (a)—For reporting purposes, list all product lines on lines (1)–(33), accounting for all entity sales except the sales applicable to Items 27–38. For prenotification purposes, list the product lines in which a prenotified price increase will be made. Price adjustments and supporting cost justification must be recorded for each product line categorized by a 4-digit Standard Industrial Classification (SIC) Code if that is the entity's customary pricing unit (e.g., cost or profit center) for that product line. If a customary pricing unit includes more than one 4-digit SIC code, such pricing unit may be used and a listing of 4-digit SIC codes included within that pricing unit must be attached to the form. The listing of SIC codes must be in decreasing order of sales within the pricing unit. If the customary pricing unit is at a level of aggregation which is less than one 4-digit SIC code, the entity may record price adjustments and supporting cost justification at that level. A customary pricing unit is that unit which has been historically and continually applied. When preparing Form CLC–22 as a prenotification document, include in Item 24, Column (a), at the end of the product or service line description concerned and immediately adjacent to Column (b), the weighted average, percentage above base price authorized pursuant to the most recent previous prenotification submission, if any, for which the 30-day prenotification period has expired.

Col (b)—Enter the applicable 4-digit SIC code for each product line listed in Column (a).

Col (c)—All entries in this column must be net of intercompany sales but must include any sales or transfers to a retailing or wholesaling pricing entity of the firm. For prenotification purposes, enter annual sales or revenues at present prices projected for the twelve months following the last day of the current cost period (entered in Item 23) for the product line listed in Column (a). The amount entered in column (c) on a prenotification document must not include sales of the type which are required to be entered in Items 27 through 38 on a quarterly report including sales of products included in certain contracts provided for in 6 CFR 150.76 and 6 CFR 150.312(b). If Part VI is being used for reporting purposes, enter the applicable sales for each product line for the reporting period. For items or sales which became exempt during the reporting period, include sales for the entire reporting period.

Col (d)—For prenotification purposes, enter the weighted average percentage price adjustment requested by the entity. The prenotified percentage price increase for the product line may not be charged until 30 days after the Form CLC–22 used for prenotification has been filed with the IRS. For any subsequent Form CLC–22 submitted as a report, the last prenotified percentage must not be exceeded for that product line by the percentage in Column (e), Item 24, Part VI, Form CLC–22. For reporting purposes price category I firms must enter the weighted average percentage above base price which was authorized pursuant to the most recent pre-notification submission for which the 30-day prenotification period has expired. For each entry, the firm shall provide a supporting schedule showing (1) the date the prenotification was filed, and (2) the IRS control number.

Col (e)—For reporting purposes, enter the weighted average percentage price adjustment above (below) base price for the reporting period. An entity which submits a Form CLC–22 as a prenotification document during a reporting period in accordance with 6 CFR, Part 150, Subpart H may not exceed the prenotified price adjustment during that reporting period or any subsequent period (see instructions to Column (d) above). Accordingly, any entry in Column (e), Part VI, Form CLC–22 used as a report, which is greater than the latest entry in Column (d), Part VI, Form CLC–22 used as a prenotification document during or prior to the reporting period must be accompanied by an explanation as to why the entity does not appear to be complying with the prices rules in 6 CFR, Part 150, Subpart E.

For prenotification purposes enter the weighted average percentage price adjustment above (below) base price for the most recently completed accounting month. In calculating the percentage, current revenues are net sales of the product line for the accounting month (average unit price times quantity sold). Base price revenues are the revenues that would have been derived during the accounting month if all prices had been at base price (i.e., base price times quantity sold during the period).

Col (f)—For those product lines with amounts in Column (d) (prenotifying) or (e) (reporting) that are greater than zero, enter the percentage cost justification from Schedule C, Line 12 unless the entity has not charged a price for an item in the product line above the adjusted freeze price. Schedule C must be attached for each amount entered in this Column where the entity has charged a price in excess of the adjusted freeze price or the base price, whichever is higher and the weighted average percentage price adjustment entered in Column (e) is greater than zero. If the percentage cost justification in this column is less than the percentage entered in Column (e) Part VI), the entity must furnish documentation explaining why the price increase exceeds the cost justification. For example, if the price of a product has been increased in accordance with a historical seasonable fluctuation (6 CFR 150.203) and the price (Col. e) exceeds cost justification (Col. f) the entity must demonstrate its qualification for the seasonality provision on an attached document.

If prices have been increased pursuant to volatile pricing authority granted the entity, a copy of the order granting the authority and a supporting schedule must be attached to the Form CLC–22 displaying the cost of the volatile material and corresponding price of product during the reporting period. If the entity increased prices only in response to increases in volatile materials, such supporting documentation may be in lieu of the entry in this column and the supporting Schedule C for the product line in Column (a).

Col (g)—For prenotification purposes, enter the highest percentage price increase over the greater of the base price or the adjusted freeze price which will be made for any item in the product line. For reporting purposes, enter the highest percentage price increase over the greater of the base price or the adjusted freeze price which was charged for any item in the product line during the reporting period. The maximum price which may be charged for any one item in that line may not exceed 110% of the base price or 110% of the adjusted freeze price of that item (whichever is greater) plus the amount which results from multiplying the base price or the adjusted freeze price of that item (whichever is greater) by the percentage of cost justification determined in accordance with this part with respect to that product line or service line.

EXAMPLES OF CALCULATION OF ITEM MAXIMUM PRICE LIMITATION

Example 1:
Base Price ..... $5.00
Adjusted Freeze Price ..... $5.20
Cost Justification ..... 8%
Maximum Price Limitation = $5.20 + $5.20 (10% + 8%)
$5.20 + $.94 = $6.14 (or 118% of the adjusted freeze price).

Example 2:
Base Price ..... $2.50
Adjusted Freeze Price ..... $2.40
Cost Justification ..... 12%
Maximum Price Limitation = $2.50 + $2.50 (10% + 12%) = $2.50 + $.55 = $3.05 (or 122% of the base price).

If the entry in this column exceeds the maximum price increase limitation as described in 6 CFR, Part 150, Subpart E, the entity must attach an explanation as to why it has exceeded the maximum price limitation.

*Item 25.*—Enter total sales reflected on attached continuation schedules. Use additional copies of Part VI, Form CLC–22 for any continuation schedule.

*Item 26.*—Enter the total for Item 24, Lines (1)–(33) and Item 25.

NOTE: Items 27 through 39 need not be completed for prenotification purposes.

*Item 27.*—New Items—Enter sales or revenues for the reporting period of all new items whose price has not been increased above a price determined in accordance with 6 CFR, Part 150, Subpart F. An entity which has projected sales and revenues for its current fiscal year of $10 million or more derived from the sale or lease of new items must attach documentation demonstrating that with respect to each new item with projected annual sales of $1 million or more which is offered for sale or lease for the first time during the quarter concerned, that the item qualified as a new item as defined in 6 CFR 150.103 and that the base price of that item has been determined in accordance with that section. For each such item, the entity must include the following information:

1. Name and description of item (attach sufficient documentation so that a comparison with the most nearly similar item can be made).
2. Base price of item.
3. Expected sales or revenues for 12 months following the last day of the reporting period.
4. Date first offered.
5. Method used to determine base price (Average Price, Net Operating Profit Markup, Customary Initial Percentage Markup, or Customary Practice).
6. Documentation supporting the determination of base price.
7. Description of new market, if applicable.
8. Cost of improving or restoring an item for lease and amount of 3 month's rent, if applicable.
9. Estimated sales and revenues from sales and leases of all new items for the current fiscal year including sales and revenues before August 12, 1973.

*Item 28.*—Enter sales or revenues for the reporting period for wholesaling and retailing activities.

*Item 29.*—Enter sales or revenues for the reporting period from operation of a public utility as defined in 6 CFR, Part 150, Subpart B.

*Item 30.*—Enter sales or revenues for the reporting period from providers of health services subject to 6 CFR, Part 130, Subpart G.

*Item 31.*—Enter sales or revenues for the reporting period from all insurance operations covered by 6 CFR, Subpart M.

*Item 32.*—Enter sales or revenues for the reporting period from construction operations as defined in 6 CFR, Part 150, Subpart N.

*Item 33.*—Enter sales or revenues for the reporting period from the sales of agricultural products exempt in 6 CFR, Part 150, Subpart D.

*Item 34.*—Enter sales or revenues for the reporting period of foreign operations. To determine sales or revenues of foreign operations, refer to the foreign operations exclusion in the definition of "annual sales or revenues" in 6 CFR, Part 150, Subpart B.

*Item 35.*—Enter the amount of export sales for the reporting period.

*Item 36.*—Enter sales or revenues of custom products for the reporting period as defined in 6 CFR, Part 150, Subpart F.

*Item 37.*—Enter sales or revenues for the reporting period of lumber and related products defined in 6 CFR, Part 150, Subpart D.

*Item 38.*—Enter sales or revenues for the reporting period resulting from (1) prices which were specified in certain contracts provided for in 6 CFR 150.76 or 150.312(b); (2) Food Manufacturing Activities (Item 5, Column (g), Schedule F) for firms pricing in accordance with the gross margin rule in 6 CFR Part 150, Subpart Q; or (3) the sale of items, or sales, which have been exempted in 6 CFR Part 150, Subpart D for the entire reporting period. For any entry made in this item attach a schedule listing by section and sub-paragraph of the regulations a description of the product or service lines and the amount of net sales or revenues for each line entry.

*Item 39.*—Total Column (c) Items 26 through 38. This total should be reconciled in a supporting schedule to the sales or revenues for the reporting period as shown in the entity's financial statements.

*Where to file form CLC-22 and related schedules*

| If the parent of the firm is located in this area of the United States | Because its Internal Revenue Service district office is— | Then entities of the firm must file forms with this Internal Revenue Service Stabilization key district |
|---|---|---|
| Central | Cincinnati, Ohio; Louisville, Ky | P.O. Box 1637, Cincinnati, Ohio 45201, Telephone 513-684-2397. |
| | Cleveland, Ohio; Parkersburg, W. Va | P.O. Box 99184, Cleveland, Ohio 44199, Telephone 216-522-3200. |
| | Detroit, Mich | P.O. Box 1487, Detroit, Mich. 48231, Telephone 313-226-7672. |
| | Indianapolis, Ind | P.O. Box 44587, Indianapolis, Ind., Telephone 317-633-8660. |
| Mid-Atlantic | Baltimore, Md | P.O. Box 1456, Baltimore, Md. 21203, Telephone 301-962-2428. |
| | Newark, N.J | P.O. Box 940, Newark, N.J. 07101, Telephone 201-645-6277. |
| | Philadelphia, Pa., Wilmington, Del | P.O. Box 58, Philadelphia, Pa. 19105, Telephone 215-597-9688. |
| | Pittsburgh, Pa | P.O. Box 2529, Pittsburgh, Pa. 15230, Telephone 412-644-5604. |
| | Richmond, Va | P.O. Box 10165, Richmond, Va. 23240, Telephone 804-782-2392. |
| Midwest | Aberdeen, S. Dak., Fargo, N. Dak., St. Paul, Minn. | P.O. Box 3450, St. Paul, Minn. 55165, Telephone 612-725-7133. |
| | Chicago, Ill | P.O. Box 1193, Chicago, Ill. 60690, Telephone 312-353-5187. |
| | Des Moines, Iowa; Omaha, Nebr | P.O. Box 797, Des Moines, Iowa 50303, Telephone 515-284-4070. |
| | Milwaukee, Wis | P.O. Box 91247, Milwaukee, Wis. 53202, Telephone 414-224-3350. |
| | Springfield, Ill.; St. Louis, Mo | Postal Drawer 1087, Central Station, St. Louis, Mo. 63188, Telephone 314-622-5084. |
| North Atlantic | Albany, N.Y.; Buffalo, N.Y | P.O. Box 271, Niagara Square Station, Buffalo, N.Y. 14201, Telephone 716-842-3812. |
| | Augusta, Maine; Boston, Mass.; Burlington, Vt.; Portsmouth, N.H. | P.O. Box 9084, J. F. Kennedy Post Office, Boston, Mass. 02203, Telephone 617-223-4750. |
| | Brooklyn, N.Y | P.O. Box 40 GPO, Brooklyn, N.Y. 11202, Telephone 212-855-4994. |
| | Hartford, Conn.; Providence, R.I | P.O. Box 1379, Hartford, Conn. 06101, Telephone 203-244-3245. |
| | Manhattan, N.Y | P.O. Box 698, Canal Street Station, New York, N.Y. 10013, Telephone 212-466-1600. |
| Southeast | Atlanta, Ga.; Birmingham, Ala | P.O. Box 1067, Atlanta, Ga. 30301, Telephone 404-526-4301. |
| | Columbia, S.C.; Greensboro, N.C | P.O. Box 20541, Greensboro, N.C. 27420, Telephone 919-275-9111 Extension 613. |
| | Jackson, Miss.; Nashville, Tenn | P.O. Box 15806, Nashville, Tenn. 37215, Telephone 615-749-7151. |
| | Jacksonville, Fla | P.O. Box 35045, Jacksonville, Fla. 32202, Telephone 904-791-3552. |
| Southwest | Albuquerque, N. Mex.; Dallas, Tex | 1100 Commerce St., Code 305, Dallas, Tex. 75202, Telephone 214-749-1876. |
| | Austin, Tex.; New Orleans, La | P.O. Box 1398, Austin, Tex. 78767, Telephone 512-397-5621. |
| | Cheyenne, Wyo.; Denver, Colo.; Little Rock, Ark.; Oklahoma City, Okla.; Wichita, Kans. | P.O. Box 66, Oklahoma City, Okla. 73101, Telephone 405-231-4127. |
| Western | Los Angeles, Calif.; Phoenix, Ariz | P.O. Box 3231, 300 North Los Angeles St., Los Angeles, Calif. 90053, Telephone 213-688-2381. |
| | Reno, Nev.; Salt Lake City, Utah; San Francisco, Calif. | P.O. Box 36011, 450 Golden Gate Ave., San Francisco, Calif. 94102, Telephone 415-556-8839. |
| | Boise, Idaho; Helena, Mont.; Portland, Oreg.; Seattle, Wash. | P.O. Box 20166, 2200 Sixth Ave., Seattle, Wash. 98121. Telephone 206-442-1024. |
| | Anchorage, Alaska | P.O. Box 20166, 2200 Sixth Ave., Seattle, Wash. 98121, Telephone 206-442-1024. |
| | Honolulu, Hawaii | P.O. Box 3231, 300 North Los Angeles St., Los Angeles Calif. 90053, Telephone 213-688-2381. |

## INSTRUCTIONS FOR PREPARATION OF SCHEDULE C

## CALCULATION OF COST JUSTIFICATION TO SUPPORT NET PRICE INCREASES ON FORM CLC-22

### GENERAL INSTRUCTIONS

Schedule C to Form CLC-22 provides the means by which firms calculate cost justification for charging a price increase pursuant to the general price rules, 6 CFR, Part 150, Subpart E. This schedule must be prepared for each product line in Column (a), Part VI, Form CLC-22 for which a weighted average price increase is being prenotified (Column (d), Part VI) or reported (Column (e), Part VI), unless:

(1) The prenotified or reported price adjustment is zero or less for the product line in Column (a), Part VI, Form CLC-22; or

(2) The entity has not charged a price in excess of the higher of the adjusted freeze price or the base price for the product line in Column (a), Part VI, Form CLC-22.

Schedule C to Form CLC-22 also provides the means by which firms calculate cost justification for charging a price increase supported by costs other than "food raw materials costs" pursuant to 6 CFR, Part 150, Subpart Q. This schedule must be prepared for each product line in Column (a), Part VI, Form CLC-22 for which a price increase is being prenotified and for each entry in Column (e). Item 3 of the Schedule F being submitted as a monthly or quarterly report.

### SPECIFIC INSTRUCTIONS

*PART I—Identification Data*

*Item 1.*—(a) Enter the legal name of the parent or unconsolidated entity, as shown in Part I, Item 3(a), Form CLC-22.

(b) Enter address of the entity's executive office.

*Item 2.*—Enter the product or service line description as shown in Item 24, Columns (a) and (b), Part VI, Form CLC-22, for which this schedule is prepared.

*Item 3.*—Enter the date of the last day in the reporting period as shown in Part I, Item 6, Form CLC-22.

*PART II—Calculation of Cost Justification.*

The level of costs from which all cost increases are measured (base costs) is the level of costs incurred during the firm's last fiscal quarter ended prior to January 11, 1973 (base cost period), in which costs were incurred with respect to the product line concerned. The current level of costs (current costs), which are compared with base costs to determine the amount of allowable cost increase for justifying a price increase pursuant to 6 CFR, Part 150, Subpart E, is the level of costs incurred during the current cost period. For purposes of reporting on the Form CLC-22, the current cost period is the last accounting month in the reporting period as defined in the instructions for Item 6, Part I, Form CLC-22. For purposes of prenotification on the Form CLC-22, the current cost period is the last accounting month preceding the date of signature in Part V of the prenotification document for which accurate cost information is available in accordance with the firm's customary cost accounting practices.

*Food Manufacturing.*—For purposes of prenotification and reporting pursuant to 6 CFR, Part 150, Subpart Q the level of costs from which all cost increases, other than food raw materal cost increases, are measured (base costs) is the level of costs incurred during the next succeeding fiscal quarter following the base period as defined in § 150.603 in which costs were incurred with respect to the product line concerned. For purposes of reporting, the level of cost from which all food raw material cost increases are measured (base cost level) is the level of cost incurred during the "base period." The base cost period with respect to a new product is the fiscal quarter in which the new product concerned was first sold in arms-length trading between unrelated persons.

The current level of costs which are compared with base cost to determine the amount of allowable cost increase is the level of costs incurred during the current cost period. For purposes of reporting on the Schedule C supporting a Schedule F, the current cost period is the accounting month or fiscal quarter which is the reporting period as defined in the instructions for Item 6, Part I, Form CLC-22.

There are two primary methods for measurng cost increases—the input method and

the output method. The input method is employed by computing the rates (such as dollars per hour, for labor, dollars per ton, for raw materials, dollars per kilowatt hour) for electricity of cost elements being incurred on the last day of the current cost period. For prenotification purposes for all input costs that can be calculated as of a date certain, the date of signature on the Form CLC–22 may be considered the last full day of the current cost period. These rates are compared with the rates of cost elements being incurred on the first full day of business in the base cost period. The output method is employed by measuring the average cost (cost per equivalent unit of finished goods) incurred throughout the current cost period as it compares to the average cost during the base cost period. Consistent with 6 CFR Part 150, Subpart G, labor cost increases must be calculated using the input method. All other cost increases are measured using the input method when the entity's customary accounting data can reasonably be used to determine the applicable rates. Otherwise, the entity may employ the output method of calculating its non-labor cost increases. However, the Council may, at its discretion, require a firm to compute cost increases for all costs other than labor on either an input or output basis when such computation is necessary to represent accurately the firm's base and current cost levels.

Indicate in Column (a) of Part II whether the cost justification for each cost element was determined by the input or output method by placing an "X" in the applicable column.

In calculating cost increases for cost elements affected by volume, the volume used for calculating current costs must be the volume during the current cost period, but in no case be less than the volume used for calculating base costs. Cost elements must be measured consistently between the base cost level and all current levels for all submissions of the Schedule C to Form CLC–22.

*Allowable Costs* (Items 4 through 7).

Only costs associated with the generation of net sales or revenues and included in the determination of operating income (see the instructions to Schedule R to Form CLC–22) are allowable as justification for a price above base price. Furthermore, allowable costs under Part II are costs that have been incurred, are continuing to be incurred, are necessary and reasonable, and have not been disallowed by the Cost of Living Council. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration must be given to:

1. Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the firm's business;

2. The restraints or requirements imposed by such factors as sound business practice, arm's length bargaining, and Federal and state laws and regulations;

3. The action that a prudent person would take in the circumstances considering his responsibilities to the owners of the business, his employee, his customers, Federal and state government, and the public at large; and

4. Significant deviations from the established practices of the firm.

Each column in Part II must be filled out for each cost element including those elements where there has been no change. If a cost element does not apply enter "NA." Entities which submit a Schedule C which contains incomplete or incorrect information will be required to submit a corrected Schedule C and will be considered to be in violation of the reporting requirements if complete and correct schedules are not submitted within the time periods prescribed.

Since only aggregate cost change is represented for each cost element summarized on Schedule C, supporting documentation must detail by cost item description the composition of cost within each cost element and show the actual comparison of the base cost level and the current cost level.

*Food Manufacturing.*—In computing column (c)—, for reporting and for prenotification purposes, strike the word "cost" from the term Base Cost Period in the column heading and enter the percentage of cost element to total sales during the base period applicable to the product line.

For a price category I firm the percentage increase in costs reported (column b) for each cost element other than food raw material (Item 4), must not exceed the percentage for that cost element which was prenotified and was allowable in the reporting period concerned in accordance with the prenotification regulations. In addition, the percentage increase in other costs reported must be less than the prenotified and otherwise allowable percentage for the cost element concerned to the extent that those costs have decreased since the prenotification document was submitted. Firms engaged in seasonal packing or processing may incur little or no costs during the base cost period and during reporting periods other than those in which production occurs. However, in accordance with the definition of "food raw material costs" in 6 CFR, Part 150, Subpart Q, food raw material costs for the period concerned includes the cost of food raw material in the inventory sold during the period concerned. By the same measure, costs other than food raw material costs in any period may be based on the costs incurred in the production of the inventory. Firms which use this method of cost accounting must apply it consistently and continuously for all periods concerned.

*Item 4. Direct Materials.*—Include materials and material related costs in accordance with accounting procedures normally employed by the firm. Those costs should be further classified by means of a reasonable allocation technique into "Imported" and "Other" as indicated on Lines (a) and (b) of this Item.

"Imported" materials are materials produced outside of the United States where the form of the materials has not changed substantially between the date of its initial sale into United States commerce and the date of its purchase by the firm.

Supporting schedules must be attached to Schedule C listing significant types of direct materials for which cost rates have changed, and the percentage change in each of these materials.

*Food Manufacturing.*—For purposes of prenotification pursuant to 6 CFR, Part 150, Subpart Q enter only "food raw materials costs" in Item 4, and leave blank Columns (a), (b), and (d).

For purposes of reporting pursuant to 6 CFR, Part 150, Subpart Q, enter "NA" in Item 4(a) and enter "food raw material costs" as defined in Subpart Q in Item 4(b). Enter direct material costs, other than food raw material costs in Item 6(b).

Consistent with 6 CFR, Part 150, Subpart Q, the entry in column (b) for Item 4(b) must be calculated using the output method.

The following requirements must be considered in calculating columns (b) and (c):

1. The cost of freight and insurance in connection with the purchase of food raw material ("freight in") must be included or excluded in calculating both the base cost level and current cost level.

2. Any net hedging losses by a firm which uses the futures markets in a non-speculative manner to hedge against price risks with respect to the purchase of food raw material concerned during the base period may be included as a food raw material cost during the base period, and any net hedging gains by that firm with respect to the purchase of food raw material concerned during the base period may be included as an offset to food raw material costs during the base period.

However, a firm which includes any net loss pursuant to this paragraph shall include as an offset any net gain as a result of non-speculative hedging activities in accordance with this paragraph.

3. Any net hedging losses with respect to the food raw material concerned during the reporting period may be included as a food raw material cost for the reporting period and any net hedging gains with respect to the food raw material concerned during the reporting period shall be included as an offset to food raw material costs for the reporting period.

4. A marketing cooperative and a firm engaged in market risk-sharing transactions as defined in 6 CFR 150.204 shall use imputed allowable costs determined in accordance with that section for purposes of computing food raw material costs.

5. Materials and material related costs are to be included in accordance with accounting procedures normally employed by the firm.

Supporting schedules must be attached to Schedule C listing significant types of direct materials for which cost rates have changed, and the percentage change in each of these materials.

6. To the extent that the customary accounting practices and records of the firm concerned permit identification of food or food raw material purchased and resold without change in form, those items or materials shall be excluded in computing food or food raw material units, food raw material costs, and revenues for any reporting period.

*Item 5. Direct Labor.*—Include labor costs in accordance with accounting procedures normally employed by the firm. "Labor" means wages and salaries and includes all forms of direct and indirect remuneration or inducement for personal services which are reasonably subject to valuation as provided for in the definition of "pay adjustment" in 6 CFR 152.2. For this, and for all other labor items for which a cost change is shown, provide supporting detail in an attachment including the following information:

1. Name of employee unit.

2. Number of employees in employee unit.

3. Percentage increase for the employee unit.

4. Implementation date of increase.

If any portion of the labor cost increases shown in Column (c) includes cost increases resulting from any adjustment exceeding 5.5 percent (excluding qualified fringe benefits) for an employee unit for any control year as determined under the applicable wage stabilization rules of the Economic Stabilization Regulations, supporting documentation must be attached to the Schedule C including all data pertaining to the labor increase listed above and the basis for any exception.

*Item 6. Other Manufacturing or Service Costs.*—Other manufacturing or service costs should be segregated as indicated on Lines (a) and (b). Labor categories must include all labor costs; and supporting detail as described for Item 5 must be provided. Supporting schedules must be attached listing the cost elements or functional accounts included, and any basis for allocation.

For purposes of prenotification pursuant to 6 CFR, Part 150, Subpart Q enter in Item

6(b) all materials costs other than "food raw materials costs".

*Item 7. Other Operating Costs.*—Other operating costs must be segregated as indicated on Lines (a), (b), and (c).

Other operating costs include expenses incurred directly and allocated expenses within the firm, if such allocations are consistent with those in prior periods.

Suporting schedules must be attached listing the cost elements or functional accounts covered, the basis for allocation and volume assumptions.

Enter the data required by Columns (b), (c), and (d) for each cost element.

*Item 8. Non-Allowable Costs.*—Include costs other than those described under "Allowable Costs."

*Item 9. Profit (Loss).*—Enter in Column (c) the percentage of profit or loss for the product line so that the sum of all percentages in Column (c) equals 100%.

*Item 10. Subtotal.*—Enter in Column (d) the total of the percentages in Column (d), Items 4–7.

*Item 11. Offset for Productivity Increase.*—Increases in costs must be offset by reduction in costs due to improvements in productivity, regardless of whether labor costs have increased.

The productivity offset for a product line composed of products in no more than one 4-digit SIC code is determined by calculating the sum of all allowable labor costs represented by Column (c), Items 4–7, Part II, Schedule C, dividing that sum by the total sales represented by Column (c), Part II, and multiplying the resulting percentage by the average annual rate of productivity gain applicable for the appropriate industrial category; (1) as set forth in the table in 6 CFR, Part 150, Subpart E for firms engaged in manufacturing and, (2) as determined by the firm (subject to CLC or IRS review) for firms engaged in service activities. If a product line is composed of products in more than one 4-digit SIC code, each resulting percentage in the above calculation for each 4-digit SIC code is weighted by the percentage that estimated sales for the most recently completed fiscal quarter in that 4-digit SIC code is to total sales for the most recently completed fiscal quarter for the product line. If a product line is composed of products with a 4-digit SIC code which is not included in the table, the entity must attach a schedule indicating the manner in which the productivity offset for this product line was determined. In no instance may negative productivity be utilized to justify a price increase.

An example of the calculation of a productivity offset required on a supporting schedule is as follows:

A manufacturer of tobacco products is requesting an increase in the prices of cigarettes (SIC 2111) and cigars (SIC 2121). The sales for the most recently completed fiscal quarter and the corresponding rate of productivity (from the Appendix A to Part 150, Subpart E) for each product is:

| Product | SIC | Productivity rate (in percent) | Sales dollars | Weighted sales |
|---|---|---|---|---|
| Cigarettes | 2111 | 1.9 | $60,000,000 | $1,140,000 |
| Cigars | 2121 | 5.0 | 40,000,000 | 2,000,000 |
| Total | | | 100,000,000 | 3,140,000 |

$$\text{Weighted average rate} = \frac{3,140,000}{100,000,000} \times 100\% = 3.14\%$$

The percent of labor costs to total sales is derived by adding the percents in Items 5, 6(a), and 7(a). In the example above:

| Item | Percent from column (c) (Sched. C) |
|---|---|
| 5 | 18 |
| 6(a) | 5 |
| 7(a) | 2 |
| Total | 25 |

The entry for Item 11 is computed by multiplying the weighted average productivity rate times the percent that labor costs are to total sales:

$$3.14\% \times 25\% = 0.79\%$$

Increases in allowable costs shall be reduced on a Schedule C supporting a prenotification and a monthly, or quarterly report by the annual productivity gain (as provided in 6 CFR 150.77) for that product line multiplied by the number of whole or partial productivity periods included in the period beginning with the first day of the base cost period and ending with the last day of the current cost period. For example, if the period determined is 13 months the annual productivity gain is multiplied by 2.

*Item 12. Weighted Average Percentage Price Increased Justified by this Schedule C.*—This entry is determined by subtracting Item 11 from Item 10, Column (d). The resulting cost justification percentage represents the percentage above the base price that prices may be increased. Enter this percentage on the appropriate line in Part VI. Column (f), Form CLC–22 for the product line or service line for which this Schedule C has been prepared.

For firms engaged in food manufacturing, the result represents, for purposes of prenotification pursuant to 6 CFR, Part 150, Subpart Q, the net allowable increase in costs other than "food raw materials costs" and for purposes of reporting the resulting costs justification precentage plus 100% is entered in Schedule F, Item 3, Column (e).

*Item 13. Base Cost Period.*—Enter the dates of the firm's last fiscal quarter which ended prior to January 11, 1973 in which costs were incurred with respect to the product line concerned.

The base cost period for a new item, as defined in 6 CFR 150.103, is the fiscal quarter in which the new item was first sold or leased in arms-length trading between unrelated persons.

For purposes of prenotification or reporting pursuant to 6 CFR, Part 150, Subpart Q, enter the beginning and ending dates of the next succeeding fiscal quarter following the base period as defined in § 150.603 in which costs were incurred with respect to the product line concerned. The base cost period with respect to a new product is the fiscal quarter in which the new product concerned was first sold in arms-length trading between unrelated persons.

*Item 14. Current Cost Period.*—Enter the beginning and ending dates of the current cost period. For purposes of reporting, other than for food manufacturers pricing in accordance with 6 CFR 150.606, the current cost period is the last accounting month in the reporting period, as defined in the instructions for Item 6, Part I, Form CLC–22. For purposes of prenotification, the current cost period is the last accounting month preceding the date of signature in Part V of the prenotification document for which accurate cost information is available in accordance with the firm's customary cost accounting practices.

An entity which selects as a current cost period for prenotification purposes a month prior to the last month preceding the date of signature of the prenotification document shall submit with that document a statement in which the officer authorized to sign certifies that, to the best of her or his knowledge and belief, the level of costs for the last accounting month preceding the date of signature will not be determined to be lower than the level of costs used to justify the percentage price increase proposed in that prenotification document.

INSTRUCTIONS FOR PREPARATION OF SCHEDULE F REPORT OR RECORD OF FOOD MANUFACTURING REVENUES

GENERAL INSTRUCTIONS

A. *Purpose*

Schedule F provides the means by which certain firms engaged in "food manufacturing" report monthly and quarterly on a product line basis in accordance with the price rules set forth in 6 CFR, Part 150, Subpart Q.

B. *Reporting Requirements*

1. *Who Must File.*—The submission of Schedule F, as a supporting schedule to Form CLC–22, is required by all price category I and II firms engaged in food manufacturing activities, except that a firm which both derives less than 20% of its annual sales or revenues from food manufacturing and less than $50 million of annual sales or revenues from food manufacturing may elect to price with respect to its food manufacturing activities in accordance with 6 CFR, Part 150, Subpart E. Firms making this election do not prepare Schedule F but do prepare Form CLC–22 and required supporting schedules in accordance with the general and specific instructions to Form CLC–22. The "adjusted freeze price" as defined in 6 CFR, Part 150, Subpart Q applies to firms making this election.

2. *Monthly Reports.*—Each price category I and II firm engaged in food manufacturing, and pricing in accordance with the gross margin rule of 6 CFR, 150.606, must submit monthly reports with information on volume, costs and sales on a Schedule F attached to a Form CLC–22. The monthly report shall be submitted within 30 days after the close of each accounting month except no report is required for the month which concludes a fiscal quarter.

3. *Quarterly Reports.*—Each price category I and II firm engaged in food manufacturing and pricing in accordance with the gross margin rule of 6 CFR 150.606 must submit quarterly reports with information on volume, costs and sales on a Schedule F attached to a Form CLC–22. The report shall be submitted within 45 days after the end of the first, second and third fiscal quarters and within 90 days after the end of the fourth quarter which concludes a fiscal year.

4. *Initial Report.*—The initial report, either monthly or quarterly, must be submitted for the accounting month or fiscal quarter which includes September 10, 1973. It shall include, as an attachment, the following statement: "Food raw materials purchased and resold without change in form (were) (were not) included in the computation of aggregate revenue from the sale of food during the base period pursuant to 6 CFR 150.606(c)(4)(i)."

The option regarding—

(1) The election to price in accordance with 6 CFR, Part 150, Subpart E or in accordance with the gross margin rule of 6 CFR 150.606;

(2) The inclusion or exclusion of food raw materials purchased and resold without change in form as reflected in Item 3, Column c, Schedule F;

(3) The determination of base period as indicated in Item 2(d), Schedule F, and;

(4) The basis for determining food or food raw material units in Item 3, column (d), Schedule F—

must be exercised as set forth in the initial report. No change in the exercise of any of these options may be made without the prior written approval of the Council or the Internal Revenue Service.

5. *Where to File.*—Firms required to file Schedule F must forward the schedule and attachments to the IRS office designated in the table at the end of the Form CLC–22 instructions.

6. *Recordkeeping.*—Use of the Schedule F attached to a Form CLC–22 and accompanied by one or more Schedules C by a price category III firm pricing in accordance with the gross margin rule is encouraged in order to ensure that such a firm is meeting the requirement of 6 CFR, Part 150, Subpart Q that it prepare and maintain at its principal place of business sufficient records to determine compliance with the Economic Stabilization regulations.

SPECIFIC INSTRUCTIONS

*Item 1.*—(a) Enter the legal name of the parent or unconsolidated entity, as shown in Part I, item 3(a) of the Form CLC–22 to which the Schedule is attached.

(b) Enter the address of the executive office.

*Item 2.*—(a) and (b) Check one box (a) or (b) to indicate whether the Schedule is a monthly or quarterly report.

(c) Enter the beginning and ending dates for the reporting period checked in Item 2(a) or (b) above. The reporting for Schedule F purposes is, as stated in the Specific Instructions for Item 6 of Form CLC–22, an accounting month or fiscal quarter of the entity.

(d) Enter the beginning and ending dates of the base period for the slaughtering and processing of livestock and the manufacturing of meat products in (1) and for all other food manufacturing activities in (2). With respect to the slaughtering and processing of livestock or the manufacturing of meat products, base period means any four consecutive fiscal quarters of the "entity", as defined in the Form CLC–22 instructions, which began after May 25, 1970, and which ended prior to May 11, 1973. For all other food manufacturing activities base period means any four consecutive fiscal quarters of the "entity" from the eight fiscal quarters which ended prior to May 11, 1973. Only one base period may be selected for each of these two classifications and must be consistently applied to all product lines within each classification. The base period with respect to a new product line is, (1) in the case of a new product line first offered for sale after the end of the last fiscal quarter ended before May 11, 1973, the first fiscal quarter in which a sale occurs; and (2) in the case of a new product line first offered for sale before the end of the last fiscal quarter ended before May 11, 1973, and after the base period selected for the other product lines concerned, the first fiscal quarter in which a sale occurs, plus any immediately ensuing consecutive fiscal quarter or fiscal quarters, not to exceed three, which ended before May 11, 1973.

*Item 3.—Price Rule.*—Except as provided in 6 CFR 150.606, any price may be charged with respect to any item in a product line as long as total sales revenues for that product line for any fiscal quarter ending after September 9, 1973, do not exceed the amount derived by (i) multiplying the total sales revenues in the base period for that product line by the ratio that the volume of food or food raw material units for that product line in the fiscal quarter bears to the volume of food or food raw material units for that product line in the base period, and (ii) multiplying the product of (i) by the net increases in allowable costs since the base cost period plus 100%. This computation is illustrated by the following equation:

$$R_2 = R_1 \times V_2/V_1 \times (C+100\%)$$

For purposes of computing column (f), Item 3, for each product line,

$R_2$ = permissible sales revenue
$R_1$ = aggregate revenue during the base period
$V_2$ = volume of food or food raw material units during the reporting period
$V_1$ = volume of food or food raw material units during the base period
C = net increases in allowable costs since the base cost period

*Column (a)—Product Line Description.*—Enter a brief description of each "food" product line of the entity. Data must be recorded for each product line categorized by a 4-digit Standard Industrial Classification (SIC) Code if that is the entity's customary pricing unit (e.g., cost or profit center) for that product line. If a customary pricing unit includes more than one 4-digit SIC code, such pricing unit may be used and a listing of 4-digit SIC codes included within that pricing unit must be attached to the form. The listing of SIC codes must be in decreasing order of sales within the pricing unit. If the customary pricing unit is at a level of aggregation which is less than one 4-digit SIC code, the entity may record revenues, volume and costs at that level. A customary pricing unit is that unit which has been historically and continually applied.

*Column (b)—4-digit SIC.*—Enter the applicable 1967 4-digit SIC code for each product line. The 1972 "Standard Industrial Classification Manual," which defines such codes, may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402. This edition of the manual has a table for conversion of the 1972 codes to the 1967 codes.

*Column (c)—Base Revenues.*—($R_1$) Enter the total sales revenues in the base period for each product line. Food raw material purchased and sold without change in form may be included or excluded in computing the total sales revenues during the base period, but only in accordance with the option exercised in the initial report unless prior written approval to change the option has been granted by CLC or IRS. The cost of freight and insurance in connection with food sales may either be included in, or excluded from, total sales revenues during the base period, but the treatment of "freight-out" shall be consistent as between the base period and each fiscal quarter ending after September 9, 1973. Any net hedging losses, by a firm which used the futures markets in a non-speculative manner to hedge against price risks, with respect to food sales during the base period may be included as an offset to actual sales revenues during the base period and any net hedging gains by that firm with respect to food sales during the base period may be included as an addition to actual sales revenues during the base period. However, a firm which includes any net loss pursuant to this paragraph shall include as an offset any net gain as a result of non-speculative hedging activities in accordance with this paragraph.

*Column (d)—Volume Ratio* ($V_2/V_1$) Enter the ratio (expressed as a percentage) that the volume of food or food raw material units in the reporting period (whether accounting month or fiscal quarter) bears to the volume of food or food raw material units in the base period. "Food or food raw material units" means, at the option of the firm concerned and calculated in accordance with its customary accounting practices on a consistent basis for both the reporting period and base period, either:

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

(2) the total units of food sold during the period concerned (output basis). To the extent that the customary accounting practices and records of the firm concerned permit identification of food raw material purchased and resold without change in form, that material must be excluded in computing food or food raw material units for the reporting period.

*Column (e)—Cost Justification+100% (C+100%).*—Enter in column (e) the net increase in allowable cost ("C") plus 100%. "C" represents the net increase in allowable costs and is the percentage figure taken from line 12 of Schedule C to Form CLC–22 attached to and in support of the Schedule F. "C" includes increases and decreases in both food raw material costs and other costs.

*Column (f)—Permissible Revenues* ($R_2$).—Enter the product of columns (c) times (d) times (e). The result equals the total permissible revenues for the reporting period.

*Column (g)—Current Revenues.*—Enter the total sales revenue for each product line in the reporting period. To the extent that the customary accounting practices and records of the firm concerned permit identification of food raw material purchased and resold without change in form, that material must be excluded in computing total sales revenues in the reporting period. Any net hedging losses with respect to the food sales during the reporting period may be included as an offset to actual sales revenues during the reporting period and any net hedging gains with respect to food sales during the reporting period must be included as an addition to actual sales revenues during the reporting period. The cost of freight and insurance in connection with food sales (freight out), must be included in column (g) if included in column (c) and excluded from column (g) if excluded from column (c).

*Column (h)—Current Revenues Under (Over).* Enter the difference derived by subtracting current revenues, column (g) from permissible revenues, column (f). Any firm reporting an excess of current revenues over permissible revenues for any product line must demonstrate on supporting schedules, if the excess is to be justified, that the excess is due to seasonal patterns or changes in product mix or is attributable to revenues derived from the sale of exempt items.

INSTRUCTIONS FOR THE PREPARATION OF SCHEDULE R

RECONCILIATION OF FORMS 10–K, 10–Q OR OTHER FINANCIAL STATEMENTS TO FORM CLC–22

GENERAL INSTRUCTIONS

Schedule R is used to reconcile net sales/revenues and net income reported on Forms 10–K and 10–Q, as filed with the Securities and Exchange Commission (SEC) (or other financial statements if Forms 10–K and 10–Q are not required to be filed with the SEC) to net sales and operating income as shown in Parts II and III, Form CLC–22.

Schedule R must be attached to Form CLC–22 for each base year required to be shown in Part II, Form CLC–22 and for each cumulative period in Part III, Form CLC–22.

Entities which file Forms 10–K and 10–Q with the Securities and Exchange Commission must attach to Schedule R a copy of

their Form 10–Q for each fiscal quarter or a copy of their Form 10–K for each fiscal year which ends on the date entered in Item 6, Part I, Form CLC–22. With the first submission, entities must file Form 10–K for each of the two base years, unless such forms were previously filed with the Cost of Living Council as a part of a Form CLC–2 or Form CLC–22 filing.

Entities which do not file Forms 10–K and 10–Q with the Securities and Exchange Commission must, in lieu of such forms, attach to Form CLC–22 a copy of applicable quarterly and annual financial statements prepared in accordance with generally accepted accounting principles. In addition, such entities which do not file Form 10–K with the Securities and Exchange Commission but which have annual financial statements audited by independent public accountants must attach a copy of such audited statements in conformance with the requirements for submitting Form 10–K. Such firms which do not have audited annual financial statements must attach a document explaining why such statements are not available.

An entity which uses its most recently completed fiscal year in calculating its base period profit margin need not submit a Schedule R for that fiscal year with a Form CLC–22 submitted as a prenotification document within 90 days after the end of that year.

SPECIFIC INSTRUCTIONS

*Line 1.*—Enter the name of parent or unconsolidated entity as shown in Part I, Item 3(a), Form CLC–22.

*Line 2 Period Reconciled.*—a. If Schedule R applies to a base year, check box (a) and enter the ending date of the fiscal year appearing in Part II (Item 8 or 9 as applicable) of Form CLC–22.

b. If Schedule R applies to the cumulative period, check box (b) and enter the date of the first day of the current fiscal year and the last day in the reporting period (see Item 6, Form CLC–22).

*Line 3 Net Sales/Revenues.*—Enter the total amount of net sales of tangible products and other revenues reported in Form 10–K, 10–Q or other financial statements as defined in SEC Regulation S–X.

*Line 4 Net Income.*—Enter the amount of net income as shown in Form 10–K, 10–Q or other financial statements as defined in SEC Regulation S–X.

*Line 5 Adjustments.*—Net sales and revenues and corresponding income from public utility operations, foreign operations, insurance operations, agricultural products, and where required, construction operations are excluded from the net sales/revenues figure.

Enter in Column (a) the net sales and revenues and in Column (b) the corresponding income from:

a. public utility operations as defined in the instructions for Item 29, CLC–22.

b. foreign operations, as defined in the instructions for Item 34, Form CLC–22.

c. Insurance operations as defined in the instructions for Item 31, Form CLC–22.

d. construction operations as defined in 6 CFR 150.452 where the entity is subject to 6 CFR Part 150, Subpart N and separates construction operations from non-construction operations for purposes of the profit margin calculation in accordance with 6 CFR 150.454.

e. agricultural products as defined in the instructions to Item 33, Form CLC–22.

Enter in 5 (f) the total of 5 (a) through 5 (e).

*Line 6 Intercompany Sales/Income.*—Sales by any segment of the entity to the operations listed in Lines 5 (a) through 5 (e) above are to be reinstated if eliminated in the consolidated net sales/revenues in Line 3 and net income in Line 4. Enter the amount of such intercompany sales and income on Line 6 and attach supporting detail.

*Line 7 Restatements not previously included*—Enter restatements of net sales/revenues, Line 3, and/or net income, Line 4, in accordance with the following instructions for the base years and/or current period. Accounting changes are of two broad, general types—(1) changes in the composition of a firm and its business entities and (2) changes in accounting principles.

A specific distinction is made between required accounting treatment for price control purposes and the accounting treatment required in periodic financial reports filed with the SEC. In addition to restatements of financial reports for accounting changes as required under generally accepted accounting principles, the Cost of Living Council recognizes restatements reflecting pro forma information that is required to be disclosed in periodic reports filed with the SEC. These restatements should be entered on Line 7.

Changes in the composition of a firm and its business entities include (1) acquisitions accounted for on a "pooling of interests" basis and on a "purchase" basis, and (2) divestitures accounted for as "spin-offs", "split-offs", sales or abandonments of businesses and discontinued operations. Restatement of prior periods is normally required under generally accepted accounting principles for changes in business entities accounted for as a "pooling of interests" and when there has been a "spinoff", a "split-off", or a discontinued, sold or abandoned operation. These changes in firms and business entities are required to be restated in reports filed with the CLC if restatement is required in periodic reports filed with the SEC.

As to acquired entities accounted for on a "purchase" basis, restatement of the financial data for periods prior to the date of purchase is required in reports filed with the CLC provided the firm restates on a basis consistent with the pro forma information required to be disclosed for purchases in periodic reports filed with the SEC. If Form 10–K discloses discontinued or divested operations separately, then appropriate entries should be made on Line 7 to exclude the sales and net income or loss (if indicated in Lines 3 or 6) of such operations. The firm may only restate for purchased or divested entities when their results of operations and activities can be clearly distinguished for financial reporting purposes. Restatement for a divestiture by sale, abandonment or discontinuance will not be permitted for disposal of part of a line of business, the shifting of production or marketing activities for a particular line of business from one location to another, the phasing out of a product line or class of service and other changes occasioned by technological improvements.

Changes in accounting principles should be reflected during all periods affected on Line 7 as a restatement on a basis consistent with the pro forma information required to be disclosed for accounting principle changes in periodic reports filed with the SEC.

Where the reference is made above to periodic reports filed with the SEC, it should be interpreted by firms and entitities not subject to SEC filings to mean would be required by, or required to be disclosed in, SEC filings. A supporting schedule should be filed with Schedule R listing each entity shown on Line 7 which has been either acquired or divested, describing the principle applicable to the restatement of each entity, and the amounts relative to each entity composing the totals shown on Line 7. The schedule should also reflect all other entities, acquired or divested (for which no restatement has been reflected on Line 7), describing the principle applicable to the acquisition or divestiture of each entity and giving the reasons why each such entity has not been reflected as a restatement on Line 7. Additionally, the supporting schedule should describe each accounting principle change and the methods used in determining the effects of such changes in accounting principles. Further, the supporting schedule should describe any accounting principle change which has not been reflected on Line 7 and the reasons that restatement was not entered. These changes in the composition of a firm and its business entities and changes in accounting principles should be reflected on each quarterly Form CLC–22 when such information is available.

*Lines 8, 9, 10, and 11—Excluded Items.*—Items 8, 9, 10, and 11 must be excluded from net income.

*Line 8 Equity Interest in Other Entities.*—When net income includes equity interest in unconsolidated subsidiaries, joint ventures, or other ventures, such amounts must be excluded. Enter in Line 8 the amount of such equity interest as included in the entity's financial statement, whether or not disclosed as a separate line or caption item.

*Line 9 Nonoperating Items.*—Enter and describe on the lines provided (or separate attachment if required) all items of a nonoperating income or nature. Generally, nonoperating income or expense items include, but are not limited to, the following (except where such items are related to the reporting entity's principal business activity): interest income, dividend income, gains or losses on disposition of assets, royalty income and gains or losses on foreign exchange. Interest expense, including interest expense, debt discount and debt expense on long term debt) is considered operating expense for purposes of this report.

*Line 10 Income Tax Expense.*—Enter all taxes based on income as it appears on the entity's financial statements.

*Line 11. Extraordinary Items.*—Enter all items that are not of a normal recurring nature and are not applicable to the regular operations of the entity. Items shown as extraordinary must be in agreement with the corresponding items in the financial statements. Also enter amounts pertaining to cumulative effects of changes in accounting principles, in accordance with SEC Regulation S–X, if shown as a separate line item or caption in the financial statement.

*Line 12 Net Sales.*—Enter the net total of Lines 3 through 7.

*Line 13 Operating Income.*—Enter the net total of Lines 4 through 11.

## INSTRUCTIONS FOR THE PREPARATION OF SCHEDULE T REPORT OF RETAILING AND WHOLESALING MARKUPS OR GROSS MARGINS

### GENERAL INSTRUCTIONS

A. *Purpose*

Schedule T is used by firms engaged in wholesaling/retailing activities (1) to fulfill the one-time requirement to complete a merchandise pricing plan prior to raising prices under Phase IV, and (2) to report quarterly with respect to compliance with customary markup or gross margin limitations.

All firms must complete a merchandise pricing plan before increasing a price above the adjusted freeze price and, in addition, price category I and II firms must file a completed Schedule T along with a merchandise pricing plan with the Internal Revenue Service prior to increasing any price above the adjusted freeze price.

A separate Schedule T must be prepared for each pricing entity. The selection of employing markups or gross margins and the identification of merchandise or customer categories is determined at the pricing entity

level. However, a single pricing entity may employ both markups and gross margins so that some categories are controlled by means of gross margin and others by means of markup.

This Schedule does not apply to retailing or wholesaling covered products subject to 6 CFR, Part 150, Subpart L, Petroleum and Petroleum Products.

For fiscal quarters beginning on or after February 1, 1974, no Schedule T need be filed with respect to retail activities exempt pursuant to 6 CFR 150.54(ff).

*Automobile Wholesalers and Retailers.* Firms engaged in retailing or wholesaling new automobiles or trucks compute the adjusted freeze price for new automobiles and trucks and are controlled on the basis of gross margins received in accordance with the Special Rule for Automobile Wholesalers and Retailers in the Appendix to 6 CFR Part 150, Subpart K.

B. *Definitions*

1. *CLC–22 entity.*—the same organization as the "entity" for purposes of the Form CLC–22 and applicable schedules. The term "CLC–22 entity" is used to distinguish between the entity to which the Form CLC–22 (and required Schedule T) applies and the pricing entity which applies to retailers and wholesalers subject to Subpart K.

2. *Cost.*—total invoice costs of all merchandise within a category plus transportation allocated to that merchandise.

3. *Customary Initial Percentage Markup (Markup)*—

$$\text{Markup} = \frac{\text{Initial Price} - \text{Cost}}{\text{Initial Price or Cost}} \times 100$$

4. *Customer Category.*—a group of related customers distinguished from other customers because of customary pricing differentials between those customers and other customers, which is treated as a single pricing unit irrespective of the products they purchase.

5. *Gross Margin*

$$\text{Gross Margin} = \frac{\text{Revenues} - \text{Cost}}{\text{Revenues or Cost}} \times 100$$

6. *Initial Price.*—total sales prices of all merchandise within a category when first offered for sale.

7. *Merchandise Category.*—A group of related products which is treated as a single pricing unit. A pricing entity which derives 75% or more of its annual sales or revenues from retail food sales may treat all of its sales under one merchandise category.

8. *Pricing base period.*—at the option of the CLC–22 entity, either the last fiscal year ending prior to February 5, 1973 or the most recent four fiscal quarters ending prior to February 5, 1973. A pricing entity which derives 75% or more of its annual sales or revenues from retail food sales may, in addition, use as its pricing base period the fiscal year immediately preceding the last fiscal year ending prior to February 5, 1973.

9. *Pricing Entity.*—the lowest level of organization within a firm at which the initial pricing decisions are made, irrespective of whether these decisions may be modified at a lower level. Various types of such pricing entities are illustrated in the following examples.

Firm A, a nationwide supermarket chain, has established 20 geographical zones for pricing purposes. Basic pricing decisions are made at the zone level, although individual stores have discretion to vary specific prices. Each zone is a pricing entity and merchandise categories will be reported at the zone level.

Firm B is composed of nine divisions. Each division operates a number of general merchandise stores. Basic pricing decisions for individual stores are made at the division level. Each division is a pricing entity which will report merchandise categories.

Firm C, a food wholesaler, operates several large warehouses, each of which serves as a pricing entity. The firm's pricing decisions are made in a manner so as to achieve a stated return on overall sales made at each warehouse. In this case, each warehouse is a pricing entity and customer categories will be reported at the warehouse level.

Firm D, a wholesaler, sells various types of heavy machinery. All pricing decisions are made at the corporate headquarters. Therefore, Firm D is the pricing entity and merchandise categories will be reported on a firm-wide level.

10. *Revenues.*—total revenues realized from the sales of merchandise within a category less returns and credits.

C. *Who Must File*

1. *Pricing Plan.*—Prior to charging the price of any item in excess of its adjusted freeze price each price category I or II firm subject to Subpart K must file a merchandise pricing plan together with Schedule T.

2. *Quarterly Report.*—Each CLC–22 entity of a price category I or II firm with wholesaling or retailing operations (other than retailing or wholesaling of crude petroleum or other petroleum products subject to 6 CFR, Part 150, Subpart L or retail activities exempt pursuant to 6 CFR 150.54(ff)) must attach a Schedule T to its quarterly Form CLC–22 and to its pricing plan for each of its pricing entities. Except for firms engaged in food wholesaling or food retailing or both and subject to 6 CFR Part 150, Subpart Q, if the CLC–22 entity in its operations which are subject to 6 CFR, Part 150, Subpart K has not charged a price in excess of the adjusted freeze price, it must complete items 1, 3, and 6, and type in Item 5 the following certificate:

"(CLC–22 entity) has not charged a price in excess of the adjusted freeze price for those products subject to 6 CFR, Part 150, Subpart K."

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*Chief Executive Officer (or other authorized executive officer)*

D. *What to File*

1. For purposes of the quarterly report and the pricing plan, the CLC–22 entity must attach all supporting information indicated on Schedule T and in these instructions. However, since only basic information is required, a CLC–22 entity may be requested to provide additional data in particular cases.

2. A CLC–22 entity which files Schedules T containing incomplete or incorrect information will be required to submit corrected schedules and may be in violation of the reporting requirements if complete and correct schedules are not submitted within the time prescribed.

E. *When and Where to File*

Each required quarterly and annual Schedule T must be attached to the Form CLC–22 and must be filed with the appropriate Internal Revenue Service Office not later than 45 days after the end of each fiscal quarter or not later than 90 days after the end of the fiscal year.

Pricing plans must be filed in accordance with paragraph F below.

F. *Pricing Plan*

1. CLC–22 entities described in Paragraph C above (Who Must File) must prepare and submit to the Internal Revenue Service a pricing plan before charging a price in excess of the adjusted freeze price. The plan must include the following information:

a. A description of the CLC–22 entity's internal organization as it relates to pricing activities.

b. A list of pricing entities.

c. A completed Schedule T of Form CLC–22 for each pricing entity, including merchandise categories, customer categories, the pricing base period markup or gross margin for each category, and the markup or gross margin realized for each category during each fiscal quarter of the pricing base period. (Do not fill in Columns (g) and (h), Item 5, of Schedule T. Other information required for the pricing plan may be submitted on supplementary sheets attached to Schedule T.)

d. A list of products or product lines carried.

e. A description of the manner in which the pricing entity makes pricing decisions.

2. The Internal Revenue Service, within 60 days after receiving a pricing plan, will review the plan and either approve it or take the action described below.

a. If the information in a pricing plan is incomplete or inaccurate or the plan does not conform to the requirements, the Internal Revenue Service will notify the CLC–22 entity and explain why the plan cannot be approved. The CLC–22 entity will be advised to submit additional data or to modify the plan to meet requirements within a prescribed period of time. When a CLC–22 entity receives a notice of an incomplete or nonconforming plan, it may not put into effect any further price increases until the Internal Revenue Service approves the plan or otherwise advises the CLC–22 entity.

b. If a CLC–22 entity does not submit the required additional information or modifications within the prescribed time limit, or, if after it is submitted, the Internal Revenue Service finds that the pricing plan still does not conform to the requirements, the CLC–22 entity may be ordered to reduce prices to adjusted freeze price or to an appropriate level above adjusted freeze price. A CLC–22 entity may also be ordered to submit a new pricing plan based on new categories or pricing entities specified by the Internal Revenue Service.

3. Approved Plans.

a. When the Internal Revenue Service approves a pricing plan, the CLC–22 entity will be controlled using the categories and pricing entities shown in the approved plan. Those categories and entities will also be the basis for quarterly reporting to the Internal Revenue Service.

b. Any modification of an approved pricing plan either after its submission or approval must receive prior approval by the Internal Revenue Service.

SPECIFIC INSTRUCTIONS

*Items 1(a) and (b).*—Self-explanatory.

*Items 2(a) and (b).*—Self-explanatory.

*Item 2(c).*—Enter the annual sales or revenues of the pricing entity, computed in accordance with the definition in 6 CFR, Part 150, Subpart B.

*Item 3(a).*—Show the date of the last day in the reporting period. The reporting period is the CLC–22 entity's most recently completed fiscal quarter.

*Item 3(b).*—Check one box to indicate whether the Schedule is either a "quarterly report" or a "pricing plan." If the Schedule is a quarterly report, indicate the reporting quarter.

*Item 3(c).*—Check the "yes" box if you are supplying additional information or resubmitting a report to the Internal Revenue Service. In either case, complete the form in its entirety.

*Item 4.*—Check the one box which indicates whether the percentages shown in Item 5 represent markups or gross margins.

*Item 5.*—Enter the beginning and ending dates of the pricing base period in the space provided above Columns (b) through (f).

Column (a)—On each line, briefly describe each customer or merchandise category of control within the pricing entity. Appendix A to 6 CFR, Part 150, Subpart K provides acceptable category descriptions.

Schedule T may be used to report integrated manufacturing and service activities if these activities of the firm or pricing entity (1) are less than 15 percent of the total retail and wholesale sales of the firm or pricing entity concerned for the most recently completed fiscal year; (2) are not used in computing price adjustments on another Economic Stabilization Program form; and (3) if such categories have been specified in a pricing plan approved by the Internal Revenue Service.

If integrated manufacturing or service activities are included on Schedule T, attach a supporting document to show conformance with the requirements for inclusion of these activities.

Column (b)—For each category in Column (a), show the pricing entity's markup applied or gross margin realized during the entire pricing base period.

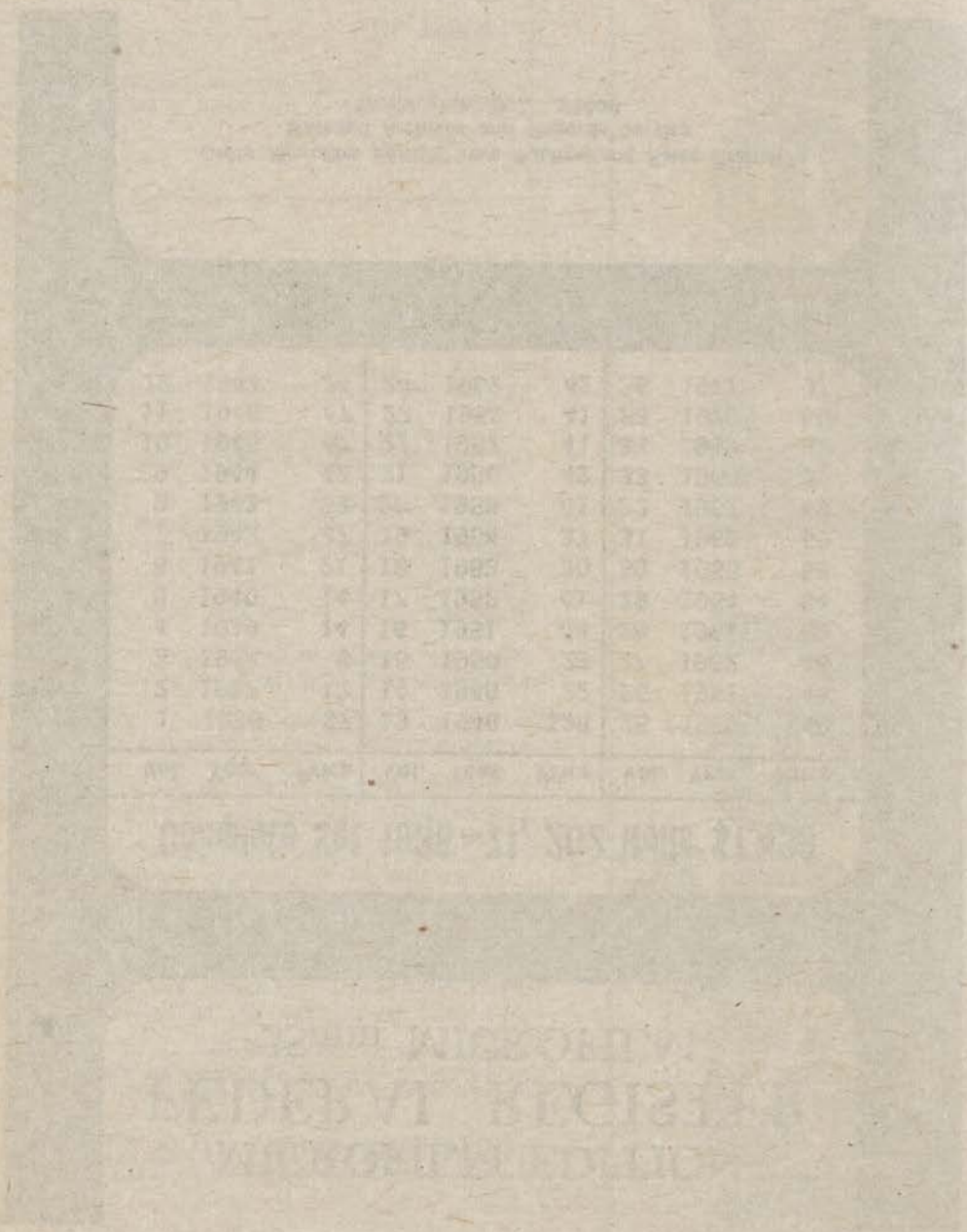
Columns (c) through (f)—For each category in Column (a), show the markup or gross margin realized during each of the pricing entity's four fiscal quarters within the pricing base period.

Column (g)—For each category in Column (a), show the markup or gross margin realized during the pricing entity's most recently completed fiscal quarter.

Column (h)—For each category in Column (a), show the annual markup applied or gross margin realized from the beginning of the pricing entity's current fiscal year through the date shown in item 3(a). Column (h) is completed only for the Schedule T submitted at the end of the fiscal year. The report submitted at that time will contain data for both the fourth quarter as well as the entire fiscal year.

*Item 6 a, b, c, d.*—Self-explanatory.

[FR Doc.74-5167 Filed 3-1-74;4:00 pm]



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