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PART I



HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

ECONOMIC STABILIZATION—CLC exempts certain instruments, and jewelry, silverware, and plated ware from Phase IV price and pay regulations (2 documents); effective 3–5–74 ..... 8921, 8922

LIBRARY RESEARCH AND DEMONSTRATION PROGRAM—
HEW proposes grant regulations; comments by 4–1–74 .. 8927
HEW sets 4–8–74 as application deadline 8946

PRESCRIPTION DRUGS—FDA requests comments by 3–25–74 on label format and content 8946

VETERINARIANS—USDA proposes to revise standards of accreditation; comments by 4–8–74 8938

FUELS AND FUEL ADDITIVES—EPA proposed registration regulations; comments by 4–22–74 8929

APRICOTS—USDA revises and adds grade standards; effective 4–1–74 8908

ESTUARINE SANCTUARIES—Commerce Department proposes grant application procedures and selection criteria; comments by 4–8–74 8924

U.S. CITIZEN IDENTIFICATION CARD—Justice Department proposes use of single form; comments by 4–6–74 8924

PETROLEUM—FEO proposes reconsideration of price controls on products leased or sold by State or local governments; public hearing 3–13–74 8996

RAILROADS—FRA establishes guidelines for agreements with railroads in reorganization; effective 3–4–74 8919

(Continued inside)

PART II:

MILK ORDERS—USDA decision on classification and pricing for 11 marketing districts 9011

PART III:

SAVINGS AND LOANS—FHLBB regulations governing conversion from mutual to stock ownership (3 documents); effective 4–8–74 9141

March 7, 1974—Pages 8897–9166

REMINDERS

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

This list includes only rules that were published in the FEDERAL REGISTER after October 1, 1972.

page no. and date

DoT/NHTSA—New pneumatic tires, tire selection and rims for passenger cars. 4664; 2–6–74

FDA—Change of moisture determination for zinc bacitracin-neomycin-polymyxin..... 4570; 2–5–74

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MEETINGS—
DoD: Army Historical Advisory Committee, 4–5–74 8941
Interior Department: Land Management Bureau, New Mexico Multiple Use Advisory Board, 3–19, 3–20, and 3–21–74 8944
National Park Service, Golden Gate National Recreation Area Advisory Commission, 3–16–74 8944
USDA: Forest Service, Coconino National Forest Advisory Committee, 3–29–74 8945
San Juan National Forest Multiple Use Advisory Committee, 4–5–74 8945
Rio Grande National Forest Grazing Advisory Board, 4–5–74 8945
Uinta National Forest G–10 Grazing Advisory Board, 4–1–74 8945
Commerce Department: National Bureau of Standards, Federal Information Processing Standards Coordinating and Advisory Committee, 3–20–74 8945
EPA: Paint and Varnish Industry Advisory Committee, 3–26 and 3–27–74 8955
NASA: Research and Technology Advisory Council, Committee on Materials and Structures, 3–13 and 3–14–74 8969
National Foundation on the Arts and the Humanities: Federal-State Partnership/Special Project Advisory Panel, 3–11 and 3–12–74 8970
Museum Advisory Subpanel, 3–10–74 8970
National Science Foundation: Advisory Panel for Economics, 3–29 and 3–30–74 8970

Contents

AGRICULTURAL MARKETING SERVICE
Rules and Regulations
Apricots; U.S. grade standards 8903
Onions; import regulations; minimum grade and size requirements 8911
Proposed Rules
Milk marketing agreements:
Chicago regional and certain other marketing areas 8938
Minnesota-North Dakota and certain other marketing areas 9011
Tomatoes grown in Florida; increase in expenses 8937

AGRICULTURE DEPARTMENT
See Agricultural Marketing Service; Animal Plant Health Inspection Service; Forest Service; Packers and Stockyards Administration.

AIR FORCE DEPARTMENT
Notices
Proposed Minuteman II operational base launch; public hearing 8941

ANIMAL AND PLANT HEALTH INSPECTION SERVICE
Proposed Rules
Veterinarian accreditation; revised standards 8938

ARMY DEPARTMENT
Notices
Army Historical Advisory Committee; meeting 8941

ATOMIC ENERGY COMMISSION
Notices
Exxon Nuclear Co., Inc.; availability of final environmental statement 8949
Washington Public Power Supply System; application for construction permit 8948

CIVIL AERONAUTICS BOARD
Notices
Hearings, etc.:
British Airways Board 8952
International Air Transport Association 8951
National Airways, Inc., and British Overseas Airways Corp 8949
Pan American Airways, Inc 8953
Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA) 8954
World Airways, Inc 8954

CIVIL SERVICE COMMISSION
Rules and Regulations
Excepted service:
General Services Administration 8903
Housing and Urban Development Department 8903
Small Business Administration 8903

COAST GUARD
Rules and Regulations
Operation of uninspected vessels; deletions 8918
Notices
Atchafalaya River, Louisiana; special order to assist traffic 8947

COMMERCE DEPARTMENT
See National Bureau of Standards; National Oceanic and Atmospheric Administration.

COST OF LIVING COUNCIL
Rules and Regulations
Exemptions from Phase IV regulations:
Instruments 8921
Jewelry, silverware, and plated ware 8922

DEFENSE DEPARTMENT
See Army Department; Air Force Department.

EDUCATION OFFICE
Proposed Rules
Library research and demonstration; improvement provisions 8927
Notices
Library Research and Demonstration Program; closing date for receipt of applications 8946
Loans to private nonprofit schools; closing date for applications 8946

ENVIRONMENTAL PROTECTION AGENCY
Proposed Rules
Fuels and fuel additives; registration provisions 8929
Notices
Paint and Varnish Industry Advisory Committee; meeting 8955

FEDERAL COMMUNICATIONS COMMISSION
Proposed Rules
Antenna monitor sampling systems; extension of time 8935
Hawaii; fixed relay and control operations; allocation of certain frequencies 8932
Notices
Domestic public radio services; applications 8955
Skeehan, Regis T., Jr., and Chesapeake and Potomac Telephone Co. of Virginia; complaint 8956

FEDERAL DEPOSIT INSURANCE CORPORATION
Rules and Regulations
Miscellaneous amendments:
Information made available to the public 8913
Termination of insured status of certain institutions 8913

(Continued on next page)

Notices

Insured State nonmember banks; policy statement and guidelines for investments in "leeway securities" ---- 8956

FEDERAL ENERGY OFFICE

Notices

Reconsideration of petroleum price controls; hearing---- 8996

FEDERAL HIGHWAY ADMINISTRATION

Notices

Utah; proposed action plan---- 8948

FEDERAL HOME LOAN BANK BOARD

Rules and Regulations

Mutual-to-stock conversions by federally insured institutions (3 documents) ---- 9142

FEDERAL MARITIME COMMISSION

Notices

Agreements filed:
- American Export Lines, Inc., et al ---- 8958
- Blue Sea Line Joint Service---- 8957
- Moore-McCormack Lines, Inc., and Empresa Lineas Maritimas Argentinas, S.A---- 8957

Certificates of financial responsibility; issuance (2 documents)- 8958

FEDERAL POWER COMMISSION

Rules and Regulations

Equity method of accounting for long-term investments in subsidiaries; correction---- 8916

Notices

National Power Survey Technical Advisory Committee on the Impact of Inadequate Electric Power Supply; establishment-- 8962

Hearings, etc.:
- Bien, Frank N---- 8958
- Cascade Natural Gas Corp---- 8959
- Cities Service Gas Co---- 8959
- Colorado Interstate Gas Co---- 8959
- Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co---- 8960
- El Paso Natural Gas Co---- 8960
- Georgia Power Co---- 8960
- Iroquois Gas Corp. et al---- 8961
- Michigan-Wisconsin Pipe Line Co ---- 8961
- Missouri Public Service Co---- 8961
- Natural Gas Pipeline Company of America---- 8963
- Northern Natural Gas Co---- 8964
- Otter Tail Power Co---- 8964
- Pacific Indonesia LNG Co---- 8964
- Roseau Electric Cooperative, Inc ---- 8965
- South Georgia Natural Gas Co ---- 8966
- Southern Natural Gas Co---- 8966
- Suburban Propane Gas Corp--- 8967
- United Natural Gas Co---- 8967
- Wisconsin Power and Light Co- 8967
- Western Massachusetts Electric Co ---- 8967

FEDERAL RAILROAD ADMINISTRATION

Rules and Regulations

Agreements pursuant to Regional Rail Reorganization Act of 1973; procedures and guidelines---- 8919

FEDERAL RESERVE SYSTEM

Notices

Bank acquisitions:
- First at Orlando Corp---- 8967
- First Bancgroup of Ohio---- 8968
- United Missouri Bancshares, Inc. (2 documents)---- 8968

Mid-America Bancorporation, Inc.; formation of bank holding company ---- 8968

FEDERAL TRADE COMMISSION

Rules and Regulations

Food Trade Stores, Inc. et al; unfair trade practices---- 8914

FOOD AND DRUG ADMINISTRATION

Notices

Labeling for human drug prescriptions; intent to solicit comments on draft proposal---- 8946

FOREST SERVICE

Notices

Meetings:
- Coconino National Forest Advisory Committee---- 8945
- Rio Grande National Forest Grazing Advisory Board---- 8945
- San Juan National Forest Multiple Use Advisory Committee- 8945
- Uinta National Forest G–10 Grazing Advisory Board---- 8945

GENERAL SERVICES ADMINISTRATION

Rules and Regulations

Contract file arrangements; procurement case files---- 8918

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See Education Office; Food and Drug Administration; Social and Rehabilitation Service.

IMMIGRATION AND NATURALIZATION SERVICE

Proposed Rules

Citizen identification cards; modified procedure---- 8924

INDIAN AFFAIRS BUREAU

Notices

Pauloff Harbor, Alaska; final decision on ineligibility as a native village ---- 8943

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

Notices

Domestic Coal Co. et al.; applications for initial permits; correction ---- 8969

INTERIOR DEPARTMENT

See also Indian Affairs Bureau; Land Management Bureau; National Park Service.

Notices

Statements of changes in financial interests:
- John E. Ford, Jr---- 8945
- Otis B. Hocker---- 8945

INTERNAL REVENUE SERVICE

Rules and Regulations

Procedural rules; miscellaneous amendments ---- 8917

INTERSTATE COMMERCE COMMISSION

Rules and Regulations

Freight forwarders of household goods; need for greater regulation; extension of effective date- 8921

Kansas City Southern Railway Co.; car service order---- 8920

Notices

Assignment of hearings---- 8995

Fourth section applications for relief ---- 8995

Motor Carrier Board transfer proceedings ---- 8995

Motor carrier, broker, water carrier and freight forwarder applications ---- 8980

Richmond Terminal Railway Co.; abandonment of station---- 8996

JUSTICE DEPARTMENT

See Immigration and Naturalization Service.

LAND MANAGEMENT BUREAU

Notices

New Mexico Multiple Use Advisory Board; meeting---- 8944

Wyoming; pipeline applications (10 documents)---- 8941–8943

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of information reports; list of requests---- 8971

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notices

Research and Technology Advisory Council Committee on Materials and Structures; meeting ---- 8969

NATIONAL BUREAU OF STANDARDS

Notices

Federal Information Processing Standards Coordinating and Advisory Committee, meeting---- 8945

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Notices

National Endowment for the Arts; panel meetings (2 documents)-- 8970

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Proposed Rules

Pneumatic tires; proposed use of speed ratings; withdrawal---- 8928

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Proposed Rules

Estuarine sanctuary grants; selection criteria procedures---- 8924

NATIONAL PARK SERVICE

Notices

Golden Gate National Recreation Area Advisory Commission; meeting ---------- 8944

NATIONAL SCIENCE FOUNDATION

Notices

Advisory Panel for Economics; meeting ---------- 8970

NATIONAL TRANSPORTATION SAFETY BOARD

Notices

Aircraft accident at Johnstown, Pa.; change of hearing date---- 8971

PACKERS AND STOCKYARDS ADMINISTRATION

Rules and Regulations

Weighing of livestock; scale tickets ---------- 8913

SECURITIES AND EXCHANGE COMMISSION

Rules and Regulations

Alaska Native Claims Settlement Act corporations; temporary rule:

Applications under the Investment Company Act of 1940; procedure upon issuance of notice of application---------- 8916

Filing fees; correction---------- 8914

Filing of reports; correction----- 8914

Proposed Rules

Certain service agreements with investment companies; exemption for affiliated persons------ 8935

Alaska Native Claims Settlement Act corporations; permanent rule ---------- 8936

Notices

Hearings, etc.:

Aberdeen Management Corp--- 8971
Appalachian Power Co--------- 8972
Applied Devices Corp---------- 8972
BBI, Inc---------- 8972
Building Systems, Inc--------- 8973
CM Industries---------- 8973
Canadian Javelin, Ltd--------- 8973
Capezio & Things, Inc--------- 8974
Central and South West Corp-- 8973
Cross Country Industries, Inc-- 8974
Decair Corp---------- 8974
Ecology, Inc---------- 8974
Electrogasdynamics, Inc------- 8974
Equity Funding Corp. of America ---------- 8974
Franklin Industries, Inc------- 8974
Gail Roberts, Inc---------- 8978
Laser Sciences, Inc---------- 8974
Massachusetts Investors Trust- 8975
Meridian Income Securities, Inc ---------- 8975
Neuwirth Fund, Inc., et al---- 8976
New England Electric System et al---------- 8976
PBW Corp---------- 8978
Patterson Corp---------- 8978
Republic National Life Insurance Co---------- 8978
Royal Properties Inc---------- 8978
United General Corp--------- 8978
Urban Computer Systems, Inc-- 8978
U.S. Financial Inc---------- 8979
Walter Harvey Corp---------- 8974
Westgate California Corp----- 8979

SMALL BUSINESS ADMINISTRATION

Notices

Louisiana Equity Capital Corp.; issuance of license---------- 8979

SOCIAL AND REHABILITATION SERVICE

Rules and Regulations

Corrections:

Intermediate care facility services ---------- 8918

Skilled nursing facility services- 8918

Notices

Public information; fee schedule- 8947

TARIFF COMMISSION

Notices

Antenna rotator systems; extension of time---------- 8979

Convertible game tables and components; temporary exclusion order action---------- 8979

Sbicca of California; investigation of workers' petition for determination ---------- 8979

TRANSPORTATION DEPARTMENT

See also Coast Guard; Federal Highway Administration; Federal Railroad Administration; National Highway Traffic Safety Administration.

Rules and Regulations

Federal Railroad Administrator and Assistant Secretary for Administration; delegation of functions ---------- 8919

TREASURY DEPARTMENT

See Internal Revenue Service.

List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears following the Notices section of each issue beginning with the second issue of the month. In the last issue of the month the cumulative list will appear at the end of the issue.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1974, and specifies how they are affected.

5 CFR

213 (3 documents) 8903

6 CFR

150 (2 documents) 8921, 8922
152 (2 documents) 8921, 8922

7 CFR

52 8903
980 8911

PROPOSED RULES:

966 8937
1007 8938
1030 8938
1032 8938
1050 8938
1060 (2 documents) 8938, 9012
1061 (2 documents) 8938, 9012
1063 (2 documents) 8938, 9012
1064 (2 documents) 8938, 9012
1065 (2 documents) 8938, 9012
1068 (2 documents) 8938, 9012
1069 9012
1070 9012
1076 (2 documents) 8938, 9012
1078 (2 documents) 8938, 9012
1079 (2 documents) 8938, 9012
1090 8938
1097 8938
1098 8938
1104 8938
1106 8938
1108 8938

8 CFR

PROPOSED RULES:

235 8924
299 8924

9 CFR

201 8913

PROPOSED RULES:

160 8938
161 8938

12 CFR

308 8913
309 8913
546 9142
563 9142
563b 9142
563c 9142

15 CFR

PROPOSED RULES:

921 8924

16 CFR

13 8914

17 CFR

230 (2 documents) 8914
270 8915
271 8916

PROPOSED RULES:

270 (2 documents) 8935, 8936

18 CFR

141 8916
201 8917
260 8917

26 CFR

601 8917

40 CFR

PROPOSED RULES:

79 8929

41 CFR

5A–76 8918

45 CFR

234 8918
249 (2 documents) 8918
250 8918

PROPOSED RULES:

133 8927

46 CFR

26 8918

47 CFR

PROPOSED RULES:

2 8932
21 8932
73 8935
81 8932

49 CFR

1 8919
254 8919
1033 8920
1085 8921

PROPOSED RULES:

571 8928

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

General Services Administration

Section 213.3337 is amended to show that one additional position of Confidential Assistant to the Deputy Administrator, and one additional position of Special Assistant to the Assistant Administrator are excepted under Schedule C.

Effective on March 7, 1974, § 213.3337 (a)(5) and (a)(8) are amended as set out below.

§ 213.3337 General Services Administration.

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

(5) Two Confidential Assistants to the Deputy Administrator.

* * * * *

(8) Three Special Assistants to the Assistant 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. 74-5316 Filed 3-6-74; 8:45 am]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

Section 213.3384 is amended to show that one position of Staff Assistant to the Director, Executive Secretariat, and one position of Staff Assistant to the General Manager, Community Development Corporation are excepted under Schedule C.

Effective on March 7, 1974, § 213.3384 (a)(55) and (j)(2) are added as set out below.

§ 213.3384 Department of Housing and Urban Development.

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

(55) One Staff Assistant to the Director, Executive Secretariat.

* * * * *

(j) *Community Development Corporation.* * * *

(2) One Staff Assistant to the General Manager.

(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.74-5315 Filed 3-6-74;8:45 am]

PART 213—EXCEPTED SERVICE

Small Business Administration

Section 213.3332 is amended to show that two positions of Special Assistant to the Assistant Administrator for Minority Enterprise are excepted under Schedule C.

Effective on March 7, 1974, § 213.3332 (p) is added as set out below.

§ 213.3332 Small Business Administration.

* * * * *

(p) Two positions of Special Assistant to the Assistant Administrator for Minority Enterprise.

(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.74-5317 Filed 3-6-74;8:45 am]

Title 7—Agriculture

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

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

United States Standards for Grades of Canned and Canned Solid-Pack Apricots

A notice of proposed rulemaking to revise the United States Standards for Grades of Canned Apricots and to promulgate separate United States Standards for Grades of Canned Solid-Pack Apricots was published in the FEDERAL REGISTER of April 26, 1972 (37 FR 8389) and (37 FR 8395) respectively. In an effort to resolve differences between interested parties and the Department arising from the changes proposed, a second notice of proposed rulemaking was published in the FEDERAL REGISTER of August 23, 1973 (38 FR 22654) and (38 FR 22660) respectively. An extension of time for further consideration of the second notice was published in the FEDERAL REGISTER of October 12, 1973 (38 FR 28296).

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notices, the following United States Standards for Grades of Canned Apricots and for Grades of Canned Solid-Pack Apricots are hereby revised pursuant to the authority contained in the Agricultural Marketing Act of 1946 (Sec. 205, 60 Stat. 1090, as amended; 7 U.S.C. 1624.)

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

Statement of consideration leading to the revision. Interested persons were given until October 1, 1973, to offer comments, data, or views on the second notice of proposed rulemaking to revise the U.S. Standards for Grades of Canned Apricots and for Canned Solid Pack Apricots. The Canners League of California, which represents the majority of the apricot canners in the United States, requested an extension of time until December 31, 1973, in order that more extensive consideration could be given the proposal outside the regular packing season. The extension of time was granted.

Comments received from the Standards Committee of the Canners League of California indicate that the committee is basically in agreement with the second notice of proposed rulemaking, with the following exceptions:

1. Section 52.2644 *Liquid media and Brix measurement.* It was suggested that this section be changed to comply with the latest Food and Drug Standard of identity requirements for canned apricots which permits the use of fruit juice or fruit juices as a packing media. This change is made in the finalized form of the revised standards as requested.

2. The proposal states in § 52.2652 *Uniformity of size and symmetry,* that this factor is not scored for the style of sliced. In the table in § 52.2649, however, the sliced style is included with halves

and whole styles as being scored for size. It was suggested that the style of slices be included with the style of mixed pieces of irregular sizes and shapes in this table.

The style of slices is not scored for uniformity of size. It is subject to the same score point range for the other quality factors as are the styles of whole and halves and may be classified as Grade A. The style of mixed pieces of irregular sizes and shapes may not be classified above the Grade B classification, and is subject to a different set of score point ranges. However, the comment is valid and the style of slices is listed separately in the table in § 52.2649 to properly reflect the scorable factors.

3. It was suggested that mention should be made in § 52.2652 *Uniformity of size and symmetry*, that this factor is not scored for the style of mixed pieces of irregular sizes and shapes. The Department concurs with this and the change is made accordingly.

4. The committee suggested that mention should be made in § 52.6241 *Product description*, that solid-pack apricots are packed without a liquid packing medium. The Department agrees such a statement will clarify the "product description" meaning and the change is made accordingly.

5. The comments from the committee brought to the attention of the Department that the proposal omitted § 52.6253 *Ascertaining the grade of a lot*, from the text of the canned solid-pack standards, and suggested it be included. This was an inadvertent omission and this section is included in the finalized revision.

6. Other suggested changes were of an editorial nature and are made accordingly.

No other comments were received pertaining to the second notice of proposed rulemaking. Therefore, the United States Standards for Grades of Canned Apricots and for Canned Solid-Pack Apricots are hereby revised as proposed in the FEDERAL REGISTER of August 24, 1973, except for the aforementioned changes.

I. In 7 CFR Part 52, Subpart—United States Standards for Grades of Canned Apricots is revised to read as follows:

Subpart—United States Standards for Grades of Canned Apricots

PRODUCT DESCRIPTION, STYLES, AND GRADES

Sec.
52.2641 Product description.
52.2642 Styles.
52.2643 Grades.

LIQUID MEDIA, FILL OF CONTAINER, DRAINED WEIGHTS, AND FILL WEIGHTS

52.2644 Liquid media and Brix measurements.
52.2645 Fill of container.
52.2646 Recommended minimum drained weights.
52.2647 Recommended minimum fill weights.

SAMPLE UNIT SIZE

52.2648 Sample unit size.

FACTORS OF QUALITY

52.2649 Ascertaining the grade.
52.2650 Ascertaining the rating for the factors which are scored.
52.2651 Color.
52.2652 Uniformity of size and symmetry.
52.2653 Defects.
52.2654 Character.

ALLOWANCES FOR QUALITY FACTORS

52.2655 Allowances for quality factors.

LOT INSPECTION AND CERTIFICATION

52.2656 Ascertaining the grade of a lot.

SCORE SHEET

52.2657 Score sheet for canned apricots.

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

Subpart—United States Standards for Grades of Canned Apricots

PRODUCT DESCRIPTION, STYLES, AND GRADES

§ 52.2641 Product description.

(a) *Canned apricots.* "Canned apricots", is the product represented as defined in the Standards of Identity for canned apricots (21 CFR 27.10) issued pursuant to the Federal Food, Drug, and Cosmetic Act, and prepared in one of the styles specified in § 52.2642; in one of the liquid media specified in § 52.2644; and is sealed in a container and so processed by heat as to prevent spoilage. The food may be seasoned with one or more of the optional ingredients permitted in the aforementioned standards of identity.

§ 52.2642 Styles.

(a) "Halves" are pitted apricots cut approximately in half along the suture from stem to apex.

(b) "Slices" are pitted apricots cut into thin sectors or strips.

(c) "Whole" is unpitted apricots with stems removed.

(d) "Mixed pieces of irregular sizes and shapes" are cut apricot units that are predominantly irregular in size and shape which do not conform to a single style or which are a mixture of two or more of such styles.

(e) When the apricots are unpeeled the name of the style is preceded or followed by the word "unpeeled."

(f) When the apricots are peeled, the name of the style is preceded or followed by the word "peeled."

§ 52.2643 Grades.

(a) "U.S. Grade A" or "U.S. Fancy" is the quality of halves, slices, and whole canned apricots, that:

(1) Have similar varietal characteristics;

(2) Have normal flavor and odor;

(3) Have at least a reasonably good color that scores not less than 17 points;

(4) Are at least reasonably uniform in size and symmetry for the applicable styles except for limits of off-suture cuts in the style of halves;

(5) Are practically free from defects;

(6) Have at least a reasonably good character; and

(7) For those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 90 points.

(b) "U.S. Grade B" or "U.S. Choice" is the quality of canned apricots of any style that:

(1) Have similar varietal characteristics;

(2) Have a normal flavor and odor;

(3) Have at least a reasonably good color;

(4) Are at least fairly uniform in size and symmetry for the applicable styles except for the limits of off-suture cuts in the style of halves;

(5) Are at least reasonably free from defects;

(6) Have at least a reasonably good character; and

(7) For those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 80 points.

(c) "U.S. Grade C" or "U.S. Standard" is the quality of canned apricots of any style that:

(1) Have similar varietal characteristics;

(2) Have a normal flavor and odor;

(3) Have at least a fairly good color;

(4) Are at least fairly uniform in size and symmetry for the applicable style;

(5) Are at least fairly free from defects;

(6) Have at least a fairly good character; and

(7) For those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 70 points.

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

LIQUID MEDIA, FILL OF CONTAINER, DRAINED WEIGHTS & FILL WEIGHTS

§ 52.2644 Liquid media and Brix measurements.

"Cut-out" requirements for liquid media in canned apricots are not incorporated in the grades of the finished product since sirup or any other liquid medium, as such, is not a factor of quality for the purposes of these grades. The designations of liquid packing media and the Brix measurements, where applicable, are as follows:

Designations	*Brix measurement*
"Extra heavy sirup" or "Extra heavy fruit juice(s) sirup".	25° or more but not more than 40°.
"Heavy sirup" or "Heavy fruit juice(s) sirup"	21° or more but less than 25°.
"Light sirup" or "Light fruit juice(s) sirup"	16° or more but less than 21°.
"Slightly sweetened water"	Less than 16°.
"Slightly sweetened fruit juice(s)"	10° or more but less than 16°.
"In water"	Not applicable.
"In fruit juice(s)"	Do.
"Artificially sweetened"	Do.

§ 52.2645 **Fill of container.**

The standard of fill of container for canned apricots is the maximum quantity of the apricot units which can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient. Canned apricots that do not meet this requirement are "Below Standard in Fill."

§ 52.2646 **Recommended minimum drained weights.**

(a) *General.* (1) The minimum drained weight recommendations for the various styles in Table II are not incorporated in the grades of the finished product since drained weight, as such, is not a factor of quality for the purposes of these grades.

(2) The recommended minimum drained weights are based on equalization of the product 30 days or more after the product has been canned.

(b) *Definitions of symbols.* (1) $\overline{X}_d$—the minimum average drained weight of all the sample units in the sample.

(2) LL—Lower limit for the drained weight of an individual sample unit.

(c) *Method for ascertaining drained weight.* (1) The drained weight is determined by emptying the contents of the container upon a U.S. Standard No. 8 circular sieve of proper diameter containing 8 meshes to the inch (0.0937) ±3 percent, square openings) so as to distribute the product evenly, inclining the sieve to approximately a 17 to 20 degree angle to facilitate drainage, and allowing the product to drain for two minutes.

(2) The drained weight is the weight of the sieve and apricots less the weight of the dry sieve. A sieve 8 inches in diameter is used for No. 3 size cans (404 x 414) and smaller sizes, and a sieve 12 inches in diameter is used for containers larger than the No. 3 size can.

(d) *Compliance with recommended minimum drained weights.* A lot of canned apricots is considered as meeting the minimum drained weight recommendations if the following criteria are met:

(1) The average of the drained weights from all the sample units in the sample meets the recommended average drained weight (designated as $\overline{X}_d$) in Table II; and

(2) The number of sample units which fail to meet the recommended minimum drained weight for individuals (designated as LL) in Table II does not exceed the applicable acceptance number specified in Table I.

TABLE I—SINGLE SAMPLING PLAN FOR DRAINED WEIGHTS

Sample size (number of sample units)	3	6	13	21	29	39	48	60
Acceptance number	0	1	2	3	4	5	6	7

TABLE II—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR CANNED APRICOTS

Container size (metal, unless otherwise stated)		In extra heavy and heavy sirups					
		Unpeeled or peeled halves; slices; mixed pieces of irregular sizes and shapes		Whole unpeeled		Whole peeled	
Designation	Dimensions	LL	$\overline{X}_d$	LL	$\overline{X}_d$	LL	$\overline{X}_d$
		Ounces	*Ounces*	*Ounces*	*Ounces*	*Ounces*	*Ounces*
5 Z	211 x 200	2.1	2.7				
5 Z	211 x 202	2.4	3.0				
7 Z	211 x 212	3.4	4.0				
8 Z tall	211 x 304	4.2	4.8	3.7	4.3	3.8	4.5
No. 300	300 x 407	7.9	8.6	6.8	7.6	7.2	8.0
No. 303 glass		8.7	9.5	7.6	8.5	8.0	8.9
No. 303	303 x 406	8.7	9.5	7.6	8.5	8.0	8.9
No. 2	307 x 409	10.6	11.5	9.6	10.5	9.8	10.8
No. 2½ glass		15.2	16.3	13.6	14.9	13.9	15.2
No. 2½	401 x 411	15.5	16.7	13.8	15.1	14.4	15.7
No. 10	603 x 700	59.7	62.0	57.5	60.0	57.9	60.4
		In any other liquid medium					
5 Z	211 x 200	2.2	2.8				
5 Z	211 x 202	2.5	3.1				
7 Z	211 x 212	3.5	4.1				
8 Z tall	211 x 304	4.3	4.9	3.8	4.4	3.9	4.6
No. 300	300 x 407	8.1	8.8	7.0	7.8	7.4	8.2
No. 303 glass		8.9	9.7	7.8	8.7	8.2	9.1
No. 303	303 x 406	8.9	9.7	7.8	8.7	8.2	9.1
No. 2	307 x 409	10.9	11.8	9.7	10.7	10.1	11.1
No. 2½ glass		15.7	16.8	14.0	15.3	14.3	15.6
No. 2½	401 x 411	16.0	17.2	14.2	15.5	14.8	16.1
No. 10	603 x 700	61.7	64.0	59.0	61.5	59.5	62.0

TABLE III—RECOMMENDED FILL WEIGHT VALUES FOR CANNED APRICOTS

Container size (metal unless otherwise stated)		Unpeeled or peeled halves—Fill weight values							Sampling allowance code
Designation	Dimensions	$\overline{X}'_{min}$	$LWL_{\overline{X}}$	$LRL_{\overline{X}}$	LWL	LRL	$\overline{R}'$	R_{max}	
		Ounces	*Ounces*	*Ounces*	*Ounces*	*Ounces*	*Ounces*	*Ounces*	
5 Z	211 x 200	3.0	2.6	2.4	2.2	1.8	0.9	2.0	G
5 Z	211 x 202	3.3	2.9	2.7	2.5	2.1	0.9	2.0	G
7 Z	211 x 212	4.4	3.9	3.7	3.4	2.9	1.2	2.5	I
8 Z tall	211 x 304	5.3	4.8	4.6	4.3	3.8	1.2	2.5	I
No. 300	300 x 407	9.4	8.9	8.6	8.3	7.7	1.3	2.7	J
No. 303 glass		10.4	9.9	9.6	9.2	8.6	1.4	3.0	K
No. 303	303 x 406	10.4	9.9	9.6	9.2	8.6	1.4	3.0	K
No. 2	307 x 409	12.6	12.0	11.6	11.2	10.5	1.6	3.4	M
No. 2½ glass		18.0	17.2	16.8	16.2	15.3	2.1	4.4	Q
No. 2½	401 x 411	18.4	17.6	17.2	16.6	15.7	2.1	4.4	Q
No. 10	603 x 700	69.5	68.2	67.5	66.5	65.0	3.5	7.4	X
		Whole unpeeled—Fill weight values							
8 Z tall		4.6	4.1	3.8	3.5	2.9	1.3	2.7	J
No. 300		8.3	7.7	7.4	7.0	6.3	1.5	3.2	L
No. 303 glass		9.2	8.6	8.2	7.8	7.1	1.6	3.4	M
No. 303		9.2	8.6	8.2	7.8	7.1	1.6	3.4	M
No. 2		11.4	10.7	10.3	9.8	9.0	1.9	3.9	O
No. 2½ glass		16.2	15.3	14.8	14.2	13.2	2.3	4.9	S
No. 2½		16.5	15.6	15.1	14.5	13.5	2.3	4.9	S
No. 10		65.0	63.5	62.7	61.6	59.9	4.0	8.4	Z
8 Z tall		5.0	4.5	4.2	3.9	3.3	1.3	2.7	J
No. 300		8.9	8.3	8.0	7.6	6.9	1.5	3.2	L
No. 303 glass		9.9	9.3	8.9	8.5	7.8	1.6	3.4	M
No. 303		9.9	9.3	8.9	8.5	7.8	1.6	3.4	M
No. 2		12.0	11.3	10.9	10.4	9.6	1.9	3.9	O
No. 2½ glass		17.0	16.1	15.6	15.0	14.0	2.3	4.9	S
No. 2½		17.5	16.6	16.1	15.5	14.5	2.3	4.9	S
No. 10		66.5	65.0	64.2	63.1	61.4	4.0	8.4	Z
		Peeled or unpeeled sliced—Fill weight values							
5 Z	211 x 200	3.2	2.9	2.7	2.5	2.1	0.8	1.7	F
5 Z	211 x 202	3.5	3.2	3.0	2.8	2.4	0.8	1.7	F
7 Z	211 x 212	4.7	4.3	4.1	3.8	3.3	1.1	2.2	H
8 Z tall	211 x 304	5.6	5.2	5.0	4.7	4.2	1.1	2.2	H
No. 300	300 x 407	9.9	9.4	9.2	8.9	8.4	1.2	2.5	I
No. 303 glass		11.0	10.6	10.2	9.9	9.3	1.3	2.7	J
No. 303	303 x 406	11.0	10.6	10.2	9.9	9.3	1.3	2.7	J
No. 2	307 x 409	13.3	12.8	12.5	12.1	11.5	1.4	3.0	K
No. 2½ glass		19.0	18.3	18.0	17.5	16.7	1.7	3.7	N
No. 2½	401 x 411	19.4	18.7	18.4	17.9	17.1	1.7	3.7	N
No. 10	603 x 700	72.5	71.3	70.7	69.9	68.6	3.0	6.4	V
		Mixed pieces of irregular sizes and shapes—Fill weight values							
No. 2½		18.7	17.9	17.5	16.9	16.0	2.1	4.4	Q
No. 10		70.5	69.2	68.5	67.5	66.0	3.5	7.4	X

§ 52.2647 Recommended minimum fill weights.

(a) *General.* The minimum fill weight recommendations for the various styles in Table III are not incorporated in the grades of the finished product since fill weight, as such, is not a factor of quality for the purposes of these grades.

(b) *Method for ascertaining fill weight.* The fill weight of canned apricots is determined in accordance with the U.S. Department of Agriculture's U.S. Standards for Inspection by Variables and the U.S. Standards for Determination of Fill Weights.

(c) *Definitions of terms and symbols.* "Subgroup means a group of sample units representing a portion of a sample.

(1) $\bar{X}'_{min}$ means the minimum lot average fill weight.

(2) $LWL_{\bar{x}}$ means the lower warning limit for subgroup averages.

(3) $LRL_{\bar{x}}$ means the lower reject limit for subgroup averages.

(4) LWL means the lower warning limit for individual fill weight measurements.

(5) LRL means the lower reject limit for individual fill weight measurements.

(6) $\bar{R}'$ means a specified average range value.

(7) R_{max} means a specified maximum range for a subgroup.

(d) *Compliance with recommended fill weights.* Compliance with the recommended fill weights for canned apricots shall be in accordance with the acceptance criteria specified in the U.S. Department of Agriculture's U.S. Standards for Inspection by Variables and U.S. Standards for Determination of Fill Weights.

SAMPLE UNIT SIZE

§ 52.2648 Sample unit size.

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

(a) Halves—50 halves.

(b) Whole—25 whole apricots. In the case of the factor of color and the factor of defects, only with respect to minor defects, a whole apricot shall be considered halved along the suture and each half therefrom is a unit and the sample unit size thereby becomes 50 halves.

(c) Slices—50 slices.

(d) Mixed pieces of irregular sizes and shapes—30 ounces drained fruit of finished product or 33 ounces raw fruit for on-line control.

FACTORS OF QUALITY

§ 52.2649 Ascertaining the grade.

(a) *General.* In addition to considering other requirements outlined in the Standards, the following quality factors are evaluated:

(1) *Factors not rated by score points.*

(i) Varietal characteristics.

(ii) Flavor and odor.

(2) *Factors rated by score points.* The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

	Halves, whole	Slices	Mixed pieces of irregular sizes and shapes
	Points	*Points*	*Points*
(i) Color	20	20	20
(ii) Uniformity of size and symmetry	20	----------	----------
(iii) Defects	30	30	40
(iv) Character	30	30	40
Total score	100	$\frac{80 \times 100}{80} =$ 100	100

(b) *Definition of flavor and odor.* "Normal flavor and odor" means that the canned apricots are free from objectionable flavors and objectionable odors of any kind.

§ 52.2650 Ascertaining the rating for the factors which are scored.

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

§ 52.2651 Color.

(a) *General.* (1) The color of canned apricots refers to the characteristic color of the outer, uncut surfaces of the units; and the varying degrees of pale yellow areas, light greenish-yellow areas, and light green areas.

(2) In evaluating the factor of color for canned spiced apricots consideration is given to any effect the added spices may contribute to the color.

(b) *Definitions*—(1) *Well colored.* Well colored means that the units have a bright typical color characteristic of well-matured apricots. The units may have pale yellow areas not exceeding one-fourth of the outer surface area and are free from brown color due to oxidation, improper processing, or other causes.

(2) *Reasonably well colored.* Reasonably well colored means that the units have a color typical of reasonably well matured apricots. The units may have pale yellow areas not exceeding one-half of the outer surface area or may have light greenish-yellow areas not exceeding one-fourth of the outer surface area and are free from brown color due to oxidation, improper processing, or other causes.

(3) *Fairly well colored.* Fairly well colored means that the units have a typical color characteristic of fairly well matured apricots. The units may have pale yellow areas, may have light greenish-yellow areas not exceeding one-half of the outer surface area, or have light green areas not exceeding one-fourth of the outer surface areas. The units may have a slight brown color due to oxidation, improper processing, or other causes.

(4) *Poorly colored.* Poorly colored means that the units have light greenish-yellow areas exceeding one-half of the outer surface area, or light green areas exceeding one-fourth of the outer surface area, and/or may have more than a slight brown color due to oxidation, improper processing, or other causes.

(c) (*A*) *classification.* Halves, slices, and whole canned apricots that possess a good color may be given a score of 18 to 20 points. "Good color" means that the apricots are well colored; the sample unit as a mass is practically uniform in color, and the number of units that may be reasonably well colored does not exceed the number specified for the style in § 52.2655.

(d) (*B*) *classification.* Halves, slices, and whole canned apricots that possess a reasonably good color may be given a score of 16 or 17 points. Canned apricots of these styles that score 16 points shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). Canned apricots of mixed pieces or irregular sizes and shapes that have at least a reasonably good color may be given a score of 16 to 20 points. "Reasonably good color" means that the apricots are at least reasonably well colored; the sample unit as a mass is reasonably uniform in color; and the number of units that may be fairly well colored does not exceed the number specified for the style in § 52.2655.

(e) (*C*) *classification.* Canned apricots of any style that possess a fairly good color may be given a score of 14 or 15 points. Canned apricots that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means that the apricots are fairly well colored; the sample unit as a mass is fairly uniform in color, and the number of poorly colored units does not exceed the number specified for the style in § 52.2655.

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

§ 52.2652 Uniformity of size and symmetry.

(a) *General.* The factor of uniformity of size and symmetry for the styles of slices and mixed pieces of irregular sizes and shapes is not based on any detailed requirement and is not scored; the other three factors (color, defects, and character as applicable) are scored and for the style of slices the total is multiplied

by 100 and divided by 80, dropping any fractions to determine the total score. Uniformity of size and symmetry for the styles of halves and whole pertains to the percent by which the weight of the largest full-sized unit exceeds the weight of the smallest full-sized unit. In the style of halves this factor pertains to the number of off-suture cuts and detached or partially detached pieces. A unit that possesses an off-suture cut and is scoreable as such and in addition possesses a partially detached piece is scored as a partially detached piece, not both.

(b) *Definitions*—(1) *Off-suture cut.* "Off-suture cut" in the style of halves means a halved unit which has been cut at a distance from the suture greater than one-fourth inch at the widest measurement from the suture.

(2) *Detached piece.* "Detached piece" is a piece in the style of halves which has the appearance of a slice resulting from an off-suture cut or improper cutting that is completely separated from the half from which cut.

(3) *Partially detached piece.* "Partially detached piece" in the style of halves, is a piece which has the appearance of a slice resulting from an off-suture cut or improper cutting and is detached more than one-third the length of the half along the suture or approximately parallel with the suture. A partially detached piece, together with the unit to which it is attached, is considered as one unit.

(c) (*A*) *classification.* The styles of halves and whole canned apricots that are practically uniform in size and symmetry may be given a score of 18 to 20 points. "Practically uniform in size and symmetry" means that the number of units that exceed the maximum weight variation, the number of detached or partially detached pieces in the style of halves, and/or the number of units of halves that posses off-suture cuts do not exceed the applicable number specified in § 52.2655.

(d) (*B*) *classification.* The styles of halves and whole canned apricots that are reasonably uniform in size and symmetry may be given a score of 16 or 17 points. A sample unit of the style of halves that possess more than 5 units which have off-suture cuts shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Reasonably uniform in size and symmetry" means that the number of units that exceed the maximum weight variation, the number of detached or partially detached pieces, and/or the number of units of halves that possess off-suture cuts do not exceed the applicable number specified in § 52.2655.

(e) (*C*) *classification.* The styles of halves and whole canned apricots that are fairly uniform in size and symmetry may be given a score of 14 or 15 points. Canned apricots that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product. A sample unit of halves style that possesses more than 8 units that have off-suture cuts shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a partial limiting rule). "Fairly uniform in size and symmetry" means that the units may vary in size, thickness, and symmetry; and that the number of units that exceed the maximum weight variation, the number of detached or partially detached pieces, and/or the number of units of halves styles that possess off-suture cuts do not exceed the applicable number specified in § 52.2655.

(f) (*SStd*) *classification.* Canned apricots that fail to meet the uniformity of size and symmetry requirements for Grade C may be given a score of 0 to 13 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.2653 Defects.

(a) *General.* (1) The factor of defects refers to the degree of freedom from pit material, loose pits, harmless extraneous material, short stems, peel, minor blemishes, major blemishes, and crushed or broken units.

(2) Canned whole apricots shall be considered as halved along the suture and each half therefrom is considered a separate unit in evaluating the factor of defects with respect to minor blemishes only. Each whole apricot shall be considered as a separate unit in ascertaining compliance with allowances for major blemishes.

(b) *Definitions*—(1) *Harmless extraneous material.* "Harmless extraneous material" means any harmless vegetable substance (such as, but not limited to, a leaf or portion thereof, or a large stem) that is harmless.

(2) *Short stem.* A "short stem" means the short, thick, woody, stem which attaches the apricot to the twig of the tree or other stem material of equivalent woodiness and shortness.

(3) *Pit material.* "Pit material" means any whole pit in all styles other than whole styles or any portion of an apricot pit, regardless of size, except when whole apricot pits or apricot kernels are declared as seasoning ingredients in other than whole styles.

(4) *Loose pit.* A "loose pit" means a whole, unbroken pit not adhering to the flesh of a unit in the styles of whole apricots.

(5) *Minor blemish.* "Minor blemish" in unpeeled styles includes "freckles" and also means:

(i) Light brown to brown surface areas which, singly or in combination on a unit, exceed in the aggregate the area of a circle ⅛ inch (3mm) in diameter but do not exceed in the aggregate the area of a circle ¼ inch (6mm) in diameter; or

(ii) Single dark brown surface areas that do not exceed the area of a circle ⅛ inch (3mm) in diameter but which, singly or in combination with other "minor blemishes" on a unit, affect materially but not seriously the appearance of the unit. Light brown to brown surface areas and "freckles" that are insignificant and less than the area of a circle ⅛ inch (3mm) in diameter and which do not affect materially the appearance of the unit are not considered "defects."

(6) *Major blemish.* "Major blemish" in canned apricots includes units affected by scab, hail injury, discoloration, or other abnormalities in the following degree:

(i) Light brown to brown surface areas in unpeeled styles which, singly or in combination on a unit, exceed in the aggregate the area of a circle ¼ inch (6mm) in diameter;

(ii) Blemishes that extend into the fruit tissue regardless of area or depth;

(iii) Single dark brown surface areas in unpeeled styles that exceed the area of a circle ⅛ inch (3mm) in diameter, whether or not the unit is affected by minor blemishes; or

(iv) Any blemish whether or not specifically defined or mentioned in this subparagraph which affects seriously the appearance of the unit but is not a filthy or decomposed substance.

(7) *Crushed or broken.* "Crushed or broken" means that:

(i) A unit in halves or whole style of canned apricots is "crushed" if the unit has definitely lost its normal shape and is crushed not due to ripeness; and

(ii) A unit in halves or whole style of canned apricots is "broken" if severed into definite parts; halves of canned apricots that are slightly or partially split or mashed from the edge to the pit cavity are not considered broken, or units in the style of peeled whole apricots that are mashed or very soft due to ripeness to the extent that the pit cavity is exposed or a seed missing therefrom, are not crushed or broken. Portions equivalent to a full-size unit that has been broken are considered as one unit in determining compliance with the allowances for this defect.

(c) (*A*) *classification.* Halves, slices, and whole canned apricots that are practically free from defects may be given a score of 27 to 30 points. "Practically free from defects" means that:

(1) The amount of peel that may be present in peeled styles does not exceed the amount specified in § 52.2655; and

(2) The number of other defects that may be present does not exceed the number specified for the applicable style in § 52.2655.

(d) (*B*) *classification.* Halves, slices, and whole canned apricots that are reasonably free from defects may be given a score of 24 to 26 points. Canned apricots of mixed pieces of irregular sizes and shapes that are at least reasonably free from defects may be given a score of 32 to 40 points. Canned apricots of any style that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that:

(1) The amount of peel that may be present in peeled styles does not exceed the amount specified in § 52.2655;

(2) With respect to all styles, the number of other defects that may be present does not exceed the number specified for the applicable style in § 52.2655.

(e) (*C*) *classification.* Halves, slices, and whole canned apricots that are fairly free from defects may be given a score of 21 to 23 points. Canned apricots of mixed pieces and irregular sizes and shapes that are fairly free from defects may be given a score of 28 to 31 points. Canned apricots of any style that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that:

(1) The amount of peel that may be present in peeled styles does not exceed the amount specified in § 52.2655; or

(2) With respect to all styles, the number of other defects that may be present does not exceed the number specified for the applicable style in § 52.2655.

(f) (*SStd*) *classification.* Canned apricots that fail to meet the defect requirements for Grade C may be given a score of 0 to 20 points for the styles of halves, slices, and whole and 0 to 27 points for mixed pieces of irregular sizes and shapes, and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.2654 Character.

(a) *General.* The factor of character refers to the degree of ripeness, the texture, and condition of the flesh, the firmness and tenderness of the canned apricots and their tendency to retain their apparent original conformation and size without disintegration.

(b) *Definitions*—(1) *Good character.* "Good character" means that the units have a practically uniform tender, fleshy texture, typical of well-ripened, properly prepared and properly processed canned apricots; the units may be soft but hold their original conformation and size without material disintegration.

(2) *Reasonably good character.* "Reasonably good character" means that the units have a reasonably uniform, reasonably tender texture typical of properly ripened canned apricots that are properly processed; the texture is reasonably fleshy, and the units are reasonably thick but the tenderness may be variable within the unit or among the units; the units may be soft to slightly firm, but are not mushy, and may be slightly ragged.

(3) *Fairly good character.* "Fairly good character" means that the units have a texture of properly processed apricots which may be variable in fleshiness but the texture is fairly fleshy; the units may be lacking uniformity of tenderness; the units may be very soft to moderately firm, and markedly ragged with frayed edges.

(4) *Poor character.* "Poor character" means the units may be lacking in fleshiness; may be not tender or may be very firm or may be mushy.

(c) (*A*) *classification.* Halves, slices, and whole canned apricots that have a good character may be given a score of 27 to 30 points. To score in this classification, the number of units that possess reasonably good character does not exceed the number specified for the style in § 52.2655.

(d) (*B*) *classification.* Halves, slices, and whole canned apricots that possess a reasonably good character may be given a score of 24 to 26 points. Canned apricots of mixed pieces of irregular sizes and shapes that possess at least a reasonably good character may be given a score of 32 to 40 points and shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). To score in this classification, the number of units that possess fairly good character does not exceed the number specified for the style in § 52.2655.

(e) (*C*) *classification.* Halves, slices, whole canned apricots that possess a fairly good character may be given a score of 21 to 23 points. Canned apricots of mixed pieces of irregular sizes and shapes that possess a fairly good character may be given a score of 28 to 31 points. Canned apricots that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). To score in this classification, the number of units that possess poor character does not exceed the number specified for the style in § 52.2655.

(f) (*SStd*) *classification.* Canned apricots that fail to meet the character requirements for Grade C may be given a score of 0 to 20 points for the styles of halves, slices and whole, and 0 to 27 points for mixed pieces of irregular sizes and shapes, and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

ALLOWANCES FOR QUALITY FACTORS

§ 52.2655 Allowances for Quality factors for canned apricots.

TABLE IV.—STYLES: HALVES AND WHOLE

Factors	Maximum allowances permitted per sample unit [1]		
	A	B	C
Color (Number of halves):			
Reasonably well colored	2	No limit	No limit
Fairly well colored	0	5	No limit
Poorly colored	0	0	5
Uniformity of size (number of units)			
Weight variation			
Whole:			
More than 50%	1	No limit	No limit
More than 75%	0	1	No limit
More than 100%	0	0	3
Halves:			
More than 50%	3	No limit	No limit
More than 75%	0	3	No limit
More than 100%	0	0	5
Halves:			
Off suture cuts	2	7	15
	and	including	including
Detached and partially detached pieces	2	7	15
Defects:			
Harmless extraneous material (number of pieces)	0	1 (average 0.5)	2
Short stem (count)	2	3	5
Peel	3/8 in²	3/4 in²	1 1/4 in²
Loose pits (whole-style only-count)	3	5	5
Pit material (halves-count)	3 (average 1)	3 (average 1)	3 (average 1)
Crushed or Broken:			
Halves	2	2	2
Whole	1	1	1
Blemished-halves-minor	5	10	20
	including	including	including
Major	2	5	10
Whole—Minor	5	10	20
	including	including	including
Major	1	2	5
Character (Halves):			
Reasonably good	2	No limit	No limit
Fairly good	0	5	No limit
Poor	0	0	5
(Whole)			
Reasonably good	1	No limit	No limit
Fairly good	0	2	No limit
Poor	0	0	2

[1] Additional sample average (average of all sample units) requirement denoted by "(avg.....)."

TABLE V.—STYLE: SLICES

Factors	Maximum allowances permitted per sample unit [1] A	B	C
Color:			
Reasonably well colored	2	No limit	No limit
Fairly well colored	0	5	No limit
Poorly colored	0	0	5
Defects:			
Harmless extraneous material (number of pieces)	0	1 (average 0.15)	1 (average 0.5)
Short stems	1 (average 0.5)	1	2 (average 1.5)
Peel	1/32 in²	3/16 in²	5/16 in²
Pit material (count)	1 (average 0.3)	1 (average 0.3)	1 (average 0.3)
Blemished—Minor	3 including	6 including	10 including
Major	1	3	5
Character:			
Reasonably good	2	No limit	No limit
Fairly good	0	5	No limit
Poor	0	0	5

[1] Additional sample average (average of all sample units) requirements denoted by "(avg.....)."

TABLE VI.—STYLE: MIXED PIECES OF IRREGULAR SIZES AND SHAPES

Factors	Maximum allowances permitted per sample unit [1] A	B	C
Color (ounces):			
Reasonably well colored	2	No limit	No limit
Fairly well colored	0	3	No limit
Poorly colored	0	0	3
Defects:			
Harmless extraneous material (No. of pieces)	0	1 (average 0.6)	2
Short stems (count)	4	4	6
Peel (peeled style only)	1/2 in²	1/2 in²	1 in²
Pit material (count)	2 (average 0.7)	2 (average 0.7)	2 (average 0.7)
Blemished—Minor (oz)	1.5 including	3 including	6 including
Major (oz)	0.75	1	3
Character (ounces):			
Reasonably good	1.5	No limit	No limit
Fairly good	0	3	No limit
Poor	0	0	3

[1] Additional sample average (average of all sample units) requirements denoted by "(avg. ....)."

LOT INSPECTION CERTIFICATION

§ 52.2656 Ascertaining the grade of a lot.

The grade of a lot of canned apricots covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (§§ 52.1 through 52.83).

SCORE SHEET

§ 52.2657 Score sheet for canned apricots.

Size and kind of container _____
Container mark or identification _____
Label _____
Net weight (ounces) _____
Vacuum (inches) _____
Drained weight (ounces); ( ) Heavy pack _____
Brix measurement _____
Sirup designation (Extra heavy, heavy, etc.) _____
Style _____
Count (halves, whole) _____

Factors	*	**	Score points
Color	20	0	(A) 18-20; (B) [2] 16-17; (B) Mixed pieces 16-20; (C) [1] 14-15; (SStd) [1] 0-13
Uniformity of size and symmetry.	20	.....	(A) 18-20; (B) [2] 16-17; (C) [2] 14-15; (SStd) [1] 0-13
Defects	30	40	(A) 27-30; (B) [1] 24-26; (B) Mixed pieces 32-40; (C) [1] 21-23; (C) Mixed pieces [1] 28-31; (SStd) [1] 0-20; (SStd) Mixed pieces [1] 0-27
Character	30	40	(A) 27-30; (B) [2] 24-26; (B) Mixed pieces [1] 32-40; (C) [1] 21-23; (C) Mixed pieces [1] 28-31; (SStd) [1] 0-20; (SStd) Mixed pieces [1] 0-27
Total score	100	100	.....

Varietal characteristics: ( ) Similar; ( ) Dissimilar _____
Normal flavor and odor _____
Grade _____

[1] Indicates limiting rule.
[2] Indicates partial limiting rule.
*Halves, slices, whole.
**Mixed pieces of irregular sizes and shapes.

The U.S. Standards for Grades of Canned Apricots, as herein revised, shall become effective April 1, 1974, and will thereupon supersede the U.S. Standards for Grades of Canned Apricots which have been in effect since August 5, 1971.

II. Subpart—United States Standards for Grades of Solid-Pack Apricots is added to 7 CFR Part 52 to read as follows:

Subpart—United States Standards for Grades of Canned Solid-Pack Apricots

PRODUCT DESCRIPTION, STYLES, AND GRADES

Sec.
52.6241 Product description.
52.6242 Styles.
52.6243 Grades.

FILL OF CONTAINER, DRAINED WEIGHTS

52.6244 Recommended fill of container.
52.6245 Recommended minimum drained weights.

SAMPLE UNIT SIZE

52.6246 Sample unit size.

FACTORS OF QUALITY

52.6247 Ascertaining the grade of a sample unit.
52.6248 Ascertaining the rating for the factors which are scored.
52.6249 Color.
52.6250 Defects.
52.6251 Character.

ALLOWANCES FOR QUALITY FACTORS

52.6252 Allowances for quality factors.

LOT INSPECTION AND CERTIFICATION

52.6253 Ascertaining the grade of a lot.

SCORE SHEET

52.6254 Score sheet for canned solid-pack apricots.

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

United States Standards for Grades of Solid-Pack Apricots

PRODUCT DESCRIPTION, STYLES, AND GRADES

§ 52.6241 Product description.

Canned solid-pack apricots are prepared from mature, sound apricots (Prunus armeniaca), pitted and peeled or unpeeled, or any combination of peeled and unpeeled. The product is packed without a liquid packing medium, may be packed with dry nutritive sweetening ingredients, and is sufficiently processed by heat in hermetically sealed containers to assure its preservation.

§ 52.6242 Styles.

(a) "Halves" are apricots cut approximately in half along the suture from stem to apex.

(b) "Slices" are apricots cut into thin sectors or strips.

(c) "Mixed pieces of irregular sizes and shapes" are apricot units that are predominantly irregular in size and shape which do not conform to a single

style or which are a mixture of halves and slices.

§ 52.6243 Grades.

(a) "U.S. Grade C" or "U.S. Standard" is the quality of the product that:

(1) has normal flavor and odor;

(2) has at least a fairly good color;

(3) has at least a fairly good character;

(4) is at least fairly free from defects; and

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

(b) "Substandard" is the quality that fails to meet the requirements of "U.S. Grade C."

FILL OF CONTAINER, DRAINED WEIGHTS

§ 52.6244 Recommended fill of container.

The recommended fill of container for canned solid-pack apricots is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container be as full of apricots as practicable without impairment of quality and that the product occupy not less than 90 percent of the volume of the container.

§ 52.6245 Recommended minimum drained weight.

(a) *General.* The minimum drained weight recommendations in Table I are not incorporated in the grades of the finished product since drained weight, as such, is not a factor of quality for the purpose of these grades.

(b) *Definitions of symbols.* (1) LL—Lower limit for individual drained weights.

(2) $\overline{X}_d$—Minimum sample average drained weight value.

(c) *Method for ascertaining drained weight.* (1) The drained weight is determined by emptying the contents of the container upon a U.S. Standard No. 8 circular sieve of proper diameter containing 8 meshes to the inch (0.0937±3 percent, square openings) so as to distribute the product evenly, inclining the sieve to approximately a 17 to 20 degree angle to facilitate drainage, and allowing the product to drain for two minutes.

(2) The drained weight is the weight of the sieve and apricots less the weight of the dry sieve. A sieve 12 inches in diameter is used.

(d) *Compliance with recommended minimum drained weights.* A lot of canned solid-pack apricots is considered as meeting the minimum drained weight recommendations if the following criteria are met:

(1) The average of the drained weights from all the sample units in the sample meets the recommended average drained weight (designated as $\overline{X}_d$) in Table I; and

(2) The number of sample units which fail to meet the recommended minimum drained weight for individuals (designated as LL) in Table I does not exceed the applicable acceptance number specified in Table II.

TABLE I—RECOMMENDED DRAINED WEIGHTS FOR CANNED SOLID-PACK APRICOTS

Container designation	Dimensions	LL	$\overline{X}_d$
		Ounces	*Ounces*
No. 10	603 x 700	89.5	92.0

TABLE II—ACCEPTANCE NUMBERS FOR RECOMMENDED DRAINED WEIGHT

Sample size (number of sample units)	3	6	13	21	29	38	48	60
Acceptance number	0	1	2	3	4	5	6	7

SAMPLE UNIT SIZE

§ 52.6246 Sample unit size.

For purposes of evaluating quality factors, the sample unit size shall be the entire contents of a No. 10 container or equivalent.

FACTORS OF QUALITY

§ 52.6247 Ascertaining the grade of a sample unit.

In addition to considering other requirements outlined in the standards, the following quality factors are evaluated:

(a) *Factors not rated by score points.* (1) Flavor and odor.

(b) *Factors rated by score points.* The relative importance of each factor which is scored is expressed numerically on the scale of 100. Score points are assigned the various quality factors in accordance with the scoring guide in Table III. The maximum number of points that may be given such factors are:

	Points
Color	20
Defects	40
Character	40
Total score	100

(c) *Definition of flavor and odor.* "Normal flavor and odor" means that the product is free from objectionable flavors and objectionable odors of any kind.

§ 52.6248 Ascertaining the rating for the factors which are scored.

The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive (for example, "14 to 20 points" means 14, 15, 16, 17, 18, 19, or 20 points).

§ 52.6249 Color.

(a) *General.* The color of canned solid-pack apricots refers to the characteristic color of the outer, uncut surfaces of the units, the varying degrees of "pale yellow areas", "light-greenish yellow areas", and "light green areas"; and the uniformity of the individual sample unit when viewed in mass.

(b) *Definitions*—(1) *Well colored.* "Well colored" means that the units have a typical color characteristic of well-matured apricots. The units may have pale yellow areas not exceeding one-fourth of the outer surface area and are free from brown color due to oxidation, improper processing, or other causes.

(2) *Reasonably well-colored.* "Reasonably well colored" means that the units may possess pale yellow areas not exceeding one-half of the outer surface area, or may possess light greenish-yellow areas not exceeding one-fourth of the outer surface area. The units may possess a slight brown color due to oxidation, or other causes.

(3) *Fairly well-colored.* "Fairly well-colored" means that the units may be pale yellow or may possess light greenish-yellow areas not exceeding one-half of the outer surface areas, or greenish areas not exceeding one-fourth of the outer surface and/or may possess more than a slight brown color due to oxidation, or other causes, but not off-color.

(4) *Poorly colored.* "Poorly colored" means that the units may possess light greenish-yellow areas exceeding one-half of the outer surface area, or green areas exceeding one-fourth of the outer surface area, or are off-color for any reason.

(c) *(C) classification.* Canned solid-pack apricots that possess a fairly good color may be given a score of 14 to 20 points. "Fairly good color" means that (1) the sample unit, in mass, may be variable in color; and (2) the apricots are at least fairly well colored, except that the weight of the units that are poorly colored does not exceed the weight specified in Table III.

(d) *(SStd) classification.* Canned solid-pack apricots that fail to meet the requirements of U.S. Grade C may be given a score of 0 to 13 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.6250 Defects.

(a) *General.* The factor of defects refers to the degree of freedom from pit material, harmless extraneous material, short stems, minor blemishes and major blemishes, and from any other defect not specifically mentioned.

(b) *Definitions and explanations of defects*—(1) *Harmless extraneous material.* Any vegetable substance (such as, but not limited to, a leaf or portion thereof or a large stem) that is harmless.

(2) *Short stem.* The short, thick, woody stem which attaches the apricot to the twig of the tree or other stem material of equivalent woodiness and shortness.

(3) *Pit material.* Any whole pit or any hard portion of an apricot pit, regardless of size.

(4) *Minor blemish.* (i) Light brown or brown surface areas, including "freckles" which singly or in combination on a unit, exceed in aggregate the area of a circle ⅛ inch in diameter but do not exceed in the aggregate the area of a circle ¼ inch in diameter.

(ii) Any blemish or abnormality whether or not specifically defined which materially but not seriously affects the appearance or eating quality of the product.

(5) *Major blemish.* (i) Light brown to brown surface areas which, singly or in the aggregate on a unit, exceed the area of a circle ¼ inch diameter.

(ii) Blemishes that extend into the fruit tissue regardless of the area or depth.

(iii) Single dark brown surface areas that exceed the area of a circle ⅛ inch in diameter, whether or not the unit is affected by minor blemishes; or

(iv) Any blemish whether or not specifically defined which seriously affects the appearance and/or eating quality of the unit but is not a filthy or decomposed substance.

(c) *(C) classification.* Canned solid-pack apricots that are at least fairly free from defects may be given a score of 28 to 40 points. "Fairly free" from defects means that the defects present do not exceed the allowances specified in Table III.

(d) *(SStd) classification.* Canned solid-pack apricots that fail to meet the defect requirements of U.S. Grade C may be given a score of 0 to 27 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.6251 Character.

(a) *General.* The factor of character refers to the degree of ripeness, the texture and condition of the flesh, the firmness, and tenderness of the canned solid-pack apricots.

(b) *Definitions*—(1) *Good character.* "Good character" means that the units have a practically uniform, tender, fleshy texture typical of well-ripened, properly prepared, and properly processed canned solid-pack apricots; the units may be soft but hold their original conformation and size without material disintegration.

(2) *Reasonably good character.* "Reasonably good character" means that the units possess at least a reasonably uniform, reasonably tender texture typical of properly ripened apricots that are properly processed; the texture is at least reasonably fleshy, and the units are at least reasonably thick but the tenderness may be variable within the unit or among the units; the units may be soft to slightly firm or ragged, but are not mushy.

(3) *Fairly good character.* "Fairly good character" means that the units possess a texture of properly processed apricots which may be variable in fleshiness but the texture is fairly fleshy and the units may be lacking uniformity of tenderness or may be markedly ragged with frayed edges or may be very soft or mushy, or may be moderately firm.

(4) *Poor character.* "Poor character" means that the units are very mushy or very firm.

(c) *(C) classification.* Canned solid-pack apricots that possess a fairly good character may be given a score of 28 to 40 points. To score in this classification, the weight of units that possess poor character does not exceed the weight specified in Table III.

(d) *(SStd) classification.* Canned solid-pack apricots which fail to meet the requirements of U.S. Grade C may be given a score of 0 to 27 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

ALLOWANCES FOR QUALITY FACTORS

§ 52.6252 Allowances for quality factors for canned solid-pack apricots.

TABLE III

Quality Factors	Maximum Allowances			
	Grade C			Substandard
Score points	18–20	16–17	14–15	0–13 [1]
Color ounces of apricots that are: Well colored.	All	No limit	No limit	No limit.
Reasonably well colored	5	All	do	Do.
Fairly well colored	2	9	All	Do.
Poorly colored	0	2	14	All.
Score points	36–40	32–35	28–31	0–27 [1]
Defects (numbers of defects) Harmless extraneous material.	0	1	3	More than 3.
Short stems	1	3	6	More than 6.
Pit material	1	3	6	Do.
Units affected by minor and major blemishes.	9	18	36	More than 36.
Major blemishes	4	9	18	More than 18.
Score points	36–40	32–35	28–31	0–27 [1]
Character ounces of apricot units that possess: Good character.	All	No limit	No limit	No limited.
Reasonably good character	5	All	do	Do.
Fairly good character	2	9	All	Do.
Poor character	0	2	9	Do.

LOT INSPECTION AND CERTIFICATION

§ 52.6253 Ascertaining the grade of a lot.

The grade of a lot of canned solid-pack apricots covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (§§ 52.1 through 52.83).

SCORE SHEET

§ 52.6254 Score sheet for canned solid-pack apricots.

Size and kind of container			
Container mark or identification			
Label			
Net weight (ounces)			
Vacuum (inches)			
Drained weight (ounces)			
Degrees Brix (if sweetened)			
Factors		**Score points**	
Color	20	(C)	14–20
		(SStd)[1]	0–13
Defects	40	(C)	28–40
		(SStd)[1]	0–27
Character	40	(C)	28–40
		(SStd)[1]	0–27
Total score	100		
Normal flavor and odor			
Grade			

[1] Indicates limiting rule.

The U.S. Standards for Grades of Canned Solid-Pack Apricots, as herein revised, shall become effective April 1, 1974, and will thereupon supersede the U.S. Standards for Grades of Canned Solid-Pack Apricots which have been in effect since August 5, 1971.

Dated: February 28, 1974.

E. L. PETERSON,
Administrator.

[FR Doc.74-5112 Filed 3-6-74;8:45 am]

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

PART 980—VEGETABLES: IMPORT REGULATIONS: ONIONS

[980.112 Amdt. 1]

Minimum Grade and Size Requirements

This amendment changes minimum grade and size requirements for imported onions.

Notice of rule making regarding a proposed amendment to § 980.112 onion import regulation (38 FR 19010) was published in the February 5, 1974, issue of the FEDERAL REGISTER (39 FR 4580). This regulation is effective under Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 608e–1).

The notice afforded interested persons an opportunity to file written data, views, or arguments in regard thereto not later than February 18, 1974. None was filed.

Under section 8e, whenever two or more marketing orders are concurrently in effect regulating the same agricultural commodity produced in different areas of the United States, the importation of

such commodity shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition.

Onion import regulation § 980.112 (38 FR 19010), became effective July 20, 1973, and sets forth similar grade, size, quality, and maturity requirements as those in effect for onions handled under Marketing Order No. 958, as amended (7 CFR Part 958) regulating the shipments of onions grown in designated counties in Idaho and Malheur County, Oregon. Grade, size, quality, and maturity requirements become effective for the period March 11 through May 12, 1974, under Marketing Order No. 959, as amended (7 CFR Part 959), regulating the handling of onions grown in South Texas. Imported onions will be in most direct competition with those regulated under Marketing Order 959 on or about March 25 and the changes are necessary to bring the import regulation into line with the domestic regulation covering South Texas onions.

Findings. (a) After consideration of all relevant matters, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found that the proposal as published in the notice should be issued and that imported onions comply with the grade, size, quality and maturity requirements, as hereinafter provided, applicable to onions produced in the United States, and effective under Marketing Order No. 959, as amended (7 CFR Part 959) regulating the handling of onions grown in designated counties of South Texas. This regulation is subject to further amendment with adequate notice as domestic requirements are changed.

(b) It is hereby further found that good cause exists for not postponing the effective date of this regulation beyond the time specified (5 U.S.C. 553) in that (1) the requirements established by this regulation are mandatory under section 8e of the act; (2) all known onion importers were notified of the proposed regulation; and (3) notice hereof was published in the February 5, 1974, FEDERAL REGISTER (39 FR 4580), and such notice is determined to be reasonable.

Regulation, as amended. Section 980.112 *Onion import regulation* (38 FR 19010), is hereby amended to read as follows:

§ 980.112 Onion import regulation.

Pursuant to section 8e of the act (7 U.S.C. 608e–1) and except as otherwise provided herein, during the period beginning March 25, 1974, and continuing through May 12, 1974, the importation of onions is prohibited unless such onions are inspected and meet the requirements of this section.

(a) *Minimum grade and size requirements.* (1) *Grade.* Not to exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Applications of tolerances in U.S. Grade Standards shall apply to in-grade lots.

(2) *Size.* White onions—1 inch minimum diameter; all other varieties of onions—1¾ inches minimum diameter.

(b) *Condition.* Due consideration shall be given to the time required for transportation and entry of onions into the United States. Onions with transit time from country of origin to entry into the United States of ten or more days may be entered if they meet an average tolerance for decay of not more than 5 percent, provided they meet the other requirements of this section.

(c) *Minimum quantity.* Any importation which in the aggregate does not exceed 100 pounds in any day, may be imported without regard to the provisions of this section.

(d) *Plant quarantine.* Provisions of this section shall not supersede the restrictions or prohibitions on onions under the Plant Quarantine Act of 1912.

(e) *Designation of governmental inspection service.* The Federal or the Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, and the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, are designated as governmental inspection services for certifying the grade, size, quality and maturity of onions that are imported into the United States under the provisions of Section 8e of the act.

(f) *Inspection and official inspection certificates.*

(1) An official inspection certificate certifying the onions meet the United States import requirements for onions under Section 8e (7 U.S.C. 608e–1), issued by a designated governmental inspection service and applicable to a specific lot is required on all imports of onions.

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (Part 51 of this title). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant.

(3) Since inspectors may not be stationed in the immediate vicinity of some smaller ports of entry, importers of onions should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located, each importer must give the specified advance notice to the applicable office listed below prior to the time the onions will be imported.

Ports	Office	Advance notice
All Texas points	L. M. Denbo, P.O. Box 107, San Juan, Tex. 78589. Phone 512-787-4091 or 6881.	1 day.
All Arizona points.	B. O. Morgan, P.O. Box 1614, Nogales, Ariz. 85621. Phone 602-287-2902.	Do.
All California points.	D. P. Thompson, 784 South Central Ave., Room 266, Los Angeles, Calif. 90021. Phone 213-622-8756.	3 days.
All Hawaii points.	Stevenson Ching, P.O. Box 5425, Pawaa Substation, 1428 South King St., Honolulu, Hawaii 96814. Phone 808-941-3071.	1 day.
All Puerto Rico points.	Darrell McNeal, P.O. Box 10163, Santurce, P.R. 00908. Phone 809-783-2230 or 4116.	2 days.
New York City	Frank J. McNeal, Room 28A, Hunts Point Market, Bronx, N.Y. 10474. Phone 212-991-7669 or 7668.	1 day.
New Orleans	Pascal J. Lamarca, 5027 Federal Office Bldg., 701 Loyola Ave., New Orleans, La. 70113. Phone 504-527-6741 or 6742.	Do.
All Florida points.	Hubert S. Flynt, P.O. Box 20194, Orlando, Fla. 32814. Phone 305-894-9611.	Do.
All other points	D. S. Matheson, Fruit and Vegetable Division, AMS, Washington, D.C. 20250. Phone 202-447-5870.	3 days.

(4) Inspection certificates shall cover only the quantity of onions that is being imported at a particular port of entry by a particular importer.

(5) Each inspection certificate issued with respect to any onions to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection.

(ii) The name of the shipper or applicant.

(iii) The commodity inspected.

(iv) The quantity of the commodity covered by the certificate.

(v) The principal identifying marks on the containers.

(vi) The railroad car initials and number, the truck and trailer license number, the name of the vessel, or other identification of the shipment; and

(vii) The following statement, if the facts warrant: Meets import requirements of 7 U.S.C. 608e–1.

Meets import requirements of 7 U.S.C. 608e–1.

(g) *Reconditioning prior to importation.* Nothing contained in this part shall be deemed to preclude any importer from reconditioning prior to importation any shipment of onions for the purpose of making it eligible for importation.

(h) It is hereby determined that imports of onions, during the effective time of this section, are in most direct competition with onions grown in South Texas. The requirements set forth in this section are the same as those applicable to grade, size, quality and maturity being made effective for onions grown in South Texas.

(i) *Definitions.* For the purpose of this section, "Onions" means all (except red) varieties of Allium cepa marketed

dry, except dehydrated, canned and frozen onions, onion sets, green onions, and pickling onions. Onions commonly referred to as "braided," that is, with tops, may be imported if they meet the grade and size requirements except for top length. The term "U.S. No. 1" shall have the same meaning as set forth in the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (§§ 51.3195–51.3209 of this title), United States Standards for Grades of Creole Onions (§§ 51.3955–51.3970 of this title), or in the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) (§§ 51.2830–51.2854 of this title), whichever is applicable to the particular variety. Tolerances for size shall be those in the applicable United States Standards. The requirements of Canada No. 1 grade are deemed comparable to the requirements of U.S. No. 1 grade. "Importation" means release from custody of the United States Bureau of Customs.

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

Dated: March 1, 1974 to become effective March 25, 1974.

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

[FR Doc.74–5232 Filed 3–6–74;8:45 am]

Title 9—Animals and Animal Products

CHAPTER II—PACKERS AND STOCKYARDS ADMINISTRATION, DEPARTMENT OF AGRICULTURE

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

Requirements Regarding Scale Tickets Evidencing Weighing of Livestock

On December 27, 1973, a notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 35324) regarding the amendment of § 201.49 of the regulations (9 CFR 201.49) under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.). Interested persons were given an opportunity to submit written data, views, and arguments with respect to the proposed amendment.

The purpose of the amendment is to eliminate the reference to scale tickets for live poultry which is now covered in section 201.107 of the regulations and to make the regulations more concise and understandable. It also eliminates reference to National Bureau of Standards specifications for scale tickets and reference to type-registering weighbeams since stamped or printed weights are now required on all livestock scales under §§ 201.71 and 201.78. Since the regulation is designed to apply to various types of marketing, the requirements as to the number of copies of scale tickets have been changed to read, "sufficient copies shall be executed to provide a copy to all parties to the transaction." Language has been added to exempt markets which use automatic weighing and recording equipment from issuing scale tickets when the weight value is recorded directly on the account of sale or other basic record provided the seller or consignor. Requirements as to correction tickets or correction slips have been deleted since this appears to be an unnecessary requirement on the industry.

In summation, the purpose of the amendment is to clarify and update the existing regulation to fit present-day livestock marketing conditions. Requirements for scale tickets issued by meat packers are covered in § 201.78 of the regulations. After consideration of all relevant matter submitted by interested persons, 9 CFR 201.49 is hereby amended to read as follows:

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock.

(a) When livestock is weighed for purpose of purchase or sale, a scale ticket shall be issued which shall show: (1) The name and location of the agency performing the weighing service; (2) the date of the weighing; (3) the name of the buyer and seller or consignor, or a designation by which they may be readily identified; (4) the number of head; (5) kind; (6) actual weight of the livestock; and (7) the name, initials, or number of the person who weighed the livestock, or if required by State law, the signature of the weighmaster. Scale tickets issued under this section shall be serially numbered and sufficient copies executed to provide a copy to all parties to the transaction.

(b) In instances where the weight values are recorded by means of automatic weighing and recording equipment directly on the account of sale or other basic record, this record may serve in lieu of a scale ticket.

(c) Stockyard owners, market agencies, and dealers who own or operate livestock scales shall be responsible for the accurate weighing of livestock and the execution and issuance of scale tickets.

(Sec. 402 and 407(a) of the Packers and Stockyards Act, 1921, as amended (42 Stat. 169, as amended; 7 U.S.C. 222, 228(a), and § 6(g) of the Federal Trade Commission Act 38 Stat. 721, 15 U.S.C. 46(g)); 37 FR 28465, 28477.)

This amendment shall become effective on March 15, 1974.

The recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D.C., March 4, 1974.

MARVIN L. MCLAIN,
Administrator, Packers and Stockyards Administration.

[FR Doc.74–5354 Filed 3–6–74;8:45 am]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 308—RULES OF PRACTICE AND PROCEDURES

Termination of Insured Status of Certain Institutions; Miscellaneous Amendment

Effective on March 7, 1974, the fifth sentence of § 308.27 *Termination of insured status of banking institution not engaged in the business of receiving deposits other than trust funds*, of the rules and regulations of the Federal Deposit Insurance Corporation (12 CFR 308.27) is amended by deleting the reference "8(c)" and inserting the reference "8(p)" in lieu thereof.

The purpose of the amendment is to cure an erroneous reference to section 8(c) of the Federal Deposit Insurance Act as being the section of the Act pursuant to which the Corporation's Board of Directors may terminate the insured status of a banking institution not engaged in the business of receiving deposits other than trust funds. The section was renumbered as section 8(p) by section 202 of title II of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1046).

Inasmuch as the Board of Directors has found, pursuant to § 302.6 of the Corporation's rules and regulations (12 CFR 302.6), that the amendment to the fifth sentence of § 308.27 is editorial and not substantive in nature and that notice, public participation, and prior publication are unnecessary and would serve no useful purpose, the requirements of section 553 of title 5, United States Code, with respect to notice, public participation, and deferred effective date were not followed in connection with this amendment.

(Sec. 9, 64 Stat. 881; 12 U.S.C. 1819)

By order of the Board of Directors, March 1, 1974.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] ALAN R. MILLER,
Executive Secretary.

[FR Doc.74–5336 Filed 3–6–74;8:45 am]

PART 309—PUBLISHED AND UNPUBLISHED RECORDS AND INFORMATION

Information Made Available to the Public; Miscellaneous Amendment

Effective on March 7, 1974, the sixth sentence of § 309.1(a)(3) of the rules and regulations of the Federal Deposit Insurance Corporation (12 CFR 309.1(a)(3)) is amended to read as follows: "The Corporation makes available at its Washington office, at the New York, Chicago, and San Francisco Federal Reserve Banks, and at the Reserve bank of the district in which the bank filing a report is located, for public inspection and copying reports from insured State nonmember banks required under the provisions of section 12 of the Securities Ex-

change Act of 1934, as amended (15 U.S.C. 78)."

The purpose of the amendment is to restate an identical amendment to the sentence adopted on December 18, 1969. During the course of amending § 309.1 (a)(3) in another respect on December 22, 1972, the Corporation inadvertently amended the sentence to read as it read prior to the December 18, 1969 amendment.

Inasmuch as the Board of Directors has found, pursuant to § 302.6 of the Corporation's rules and regulations (12 CFR 302.6), that the amendment imposes no additional duties or burdens upon the affected public and that notice, participation, and prior publication are unnecessary and would serve no useful purpose, the requirements of section 553 of title 5, United States Code, with respect to notice, public participation, and deferred effective date were not followed in connection with this amendment.

(Sec. 9, 64 Stat. 881; 12 U.S.C. 1819.)

By order of the Board of Directors, March 1, 1974.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] ALAN R. MILLER,
Executive Secretary.

[FR Doc.74-5337 Filed 3-6-74;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 8786, etc.]

PART 13—PROHIBITED TRADE PRACTICES

Food Fair Stores, Inc., et al.; Order Dismissing Complaints

Food Fair Stores, Inc., et al. Docket No. 8786; H. C. Bohack Co., Inc., et al. Docket No. 8787; Jewel Companies, Inc., et al. Docket No. 8788; Borman Food Stores, Inc. Docket No. 8789; First National Stores, Inc., et al. Docket No. 8790.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 2, 49 Stat. 1526; (15 U.S.C. 13))

[Orders dismissing complaints, Food Fair Stores, Inc., et al., Philadelphia, Pa., et al., Docket No. 8786, et al., Jan. 22, 1974]

In the Matter of Food Fair Stores, Inc., a Corporation; World-Wide Produce Co., Inc., a Corporation; Hallee-Boy Sales, Inc., a Corporation; Ivin Arost, Individually; and John P. Storm, a Corporation, Docket No. 8786; H. C. Bohack Co., Inc., a Corporation; Henderson Distributing Co., Inc., a Corporation; and Vinson Henderson, Individually and as an Officer of Henderson Distributing Co., Inc., Docket No. 8787; Jewel Companies, Inc., a Corporation; Jack Stires, Inc., a Corporation; and John C. Stires II, Individually and as an Officer of Jack Stires, Inc., Docket No. 8788; Borman Food Stores, Inc., a Corporation, Docket No. 8789; First National Stores, Inc., a Corporation; Ruby Produce Company, Inc., a Corporation; and Samuel Harry Rubenstein, Individually and as an Officer of Ruby Produce Company, Inc., Docket No. 8790

Orders dismissing the complaints issued against 10 corporations and certain individual officers thereof, engaged in various aspects of the food industry for alleged violations of section 2(c) of the Clayton Act, on the basis that the evidence relied upon by complaint counsel would not support the charges that respondents had violated section 2(c) of the Clayton Act, as amended.

The orders, dismissing the complaints, are as follows:

The administrative law judges filed their initial decisions in these matters on July 30, 1973, and August 1 and 3, 1973, ordering that respondents' motions for summary decisions be granted and that the complaints herein be dismissed. No appeals were taken from the initial decisions, and on Sept. 11, 1973, the Commission ordered that the effective dates thereof be stayed until further order of the Commission.

The Commission has now determined that the administrative law judge was correct in finding on the basis of admissions made by complaint counsel that the evidence which complaint counsel intended to offer in support of the complaints would not sustain the essential factual allegations that the brokers were acting for or in behalf of the buyers or subject to the buyers' direct or indirect control. Consequently, the dismissals of the complaints were proper. The Commission, however, does not consider the initial decisions appropriate in all respects to dispose of these matters and has determined that they should be adopted only to the extent that they hold that the evidence relied upon by complaint counsel would not support the charges that respondents had violated Section 2(c) of the Clayton Act, as amended.

It is ordered that the initial decisions, modified as indicated herein, be, and they hereby are, adopted as the decisions of the Commission.[1]

It is further ordered that the complaints be, and they hereby are dismissed.

By the Commission.

Issued: January 22, 1974.

[SEAL] VIRGINIA M. HARDING,
Acting Secretary.

[FR Doc.74-5410 Filed 3-6-74;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5452A, 34-10626A]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Adoption of Amendments; Correction

On February 19, 1974, the Commission adopted amendments to Rule 144 (17 CFR 230.144) under the Securities Act of 1933 (Securities Act Release No. 5452, Securities Exchange Act No. 10626) (39 FR 6069). An omission was made in the text of paragraph (c)(1) of the Rule. The corrected text of amended paragraph (c)(1) should read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(c) * * *

(1) Filing of reports. The issuer has securities registered pursuant to section 12 of the Securities Exchange Act of 1934, has been subject to the reporting requirements of section 13 of that Act for a period of at least 90 days immediately preceding the sale of the securities and has filed all the reports required to be filed thereunder during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports); or has securities registered pursuant to the Securities Act of 1933, has been subject to the reporting requirements of section 15(d) of the Securities Exchange Act of 1934 for a period of at least 90 days immediately preceding the sale of the securities and has filed all the reports required to be filed thereunder during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports). The person for whose account the securities are to be sold shall be entitled to rely upon a statement in whichever is the most recent report, quarterly or annual, required to be filed and filed by the issuer that such issuer has filed all reports required to be filed by section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the issuer was required to file such reports) and has been subject to such filing requirements for the past 90 days, unless he knows or has reason to believe that the issuer has not complied with such requirements. Such person shall also be entitled to rely upon a written statement from the issuer that it has complied with such reporting requirements unless he knows or has reasons to believe that the issuer has not complied with such requirements.

* * * * *

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

FEBRUARY 12, 1974.

[FR Doc.74-5314 Filed 3-6-74;8:45 am]

[Release No. 33-5453]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Filing Fees; Correction

In Securities Act Release No. 33-5453 of February 1, 1974 which was published in the FEDERAL REGISTER of February 19, 1974 at 39 FR 6069, an error was made in the designation of the section involved. The section was incorrectly des-

[1] Filed as part of the original document.

ignated as § 230.467. The correct designation should be § 230.457 *Computation of fee.*

For the Commission pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

FEBRUARY 22, 1974.

[FR Doc.74-5313 Filed 3-6-74;8:45 am]

[Release No. IC-8251 Extract, S7-514]

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Adoption of Temporary Rule for Alaska Native Claims Settlement Act Corporations

Notice is hereby given that the Securities and Exchange Commission hereby adopts temporary Rule 6c-2(T) [17 CFR 270.6c-2] and proposes to adopt Rule 6c-2 [17 CFR 270.6c-2], both under the Investment Company Act of 1940 ("Act") to exempt from all provisions of the Act except sections 8(a), 9, 17, 36, and 37 (15 U.S.C. 80a-8a, 80a-9, 80a-17, 80a-35, 80a-36) corporations organized pursuant to the Alaska Native Claims Settlement Act of 1971[1] ("Settlement Act") (such corporations hereinafter referred to collectively as "ANCSA Corporations"). Such exemptions are conditioned upon adherence by the ANCSA Corporations to reporting and other requirements specified herein. Rule 6c-2(T) is effective as of December 18, 1971, the date of the enactment of the Settlement Act; it will be superseded at such time as the Commission takes action on proposed Rule 6c-2, which, as proposed, would provide the same relief on a permanent basis as is now provided by Rule 6c-2(T).

The ANCSA Corporations have been (or will soon be) organized to hold and administer the extensive land grants, mineral rights, cash, and mineral revenues intended by the Government of the United States to recompense Alaska's native Indian Aleut and Eskimo population ("Alaska Natives") for lands within the State of Alaska. In accordance with this statutory purpose, the ANCSA Corporations will be owned and managed exclusively by Alaska Natives, who will be given shares of stock in the ANCSA Corporations. The ANCSA Corporations consist of twelve "Regional Corporations," representing the Alaska Natives residing in twelve geographical districts designated by the Department of the Interior, and more than 200 "Village Corporations" within these districts each representing Alaska Natives residing in a village.

Although the ANCSA Corporations are to be given substantial real estate and subsurface mineral interests, many of such interests are not presently specifically identifiable as they are to be selected and acquired over a four-year period in accordance with the provisions of the Settlement Act. Distribution of a significant portion of monetary compensation was made almost immediately upon enactment of the Settlement Act, however, and $130,000,000 of such monies has already been received by the twelve Regional Corporations. Furthermore, large additional distributions of cash will be made to the ANCSA Corporations in the next few years, so that, during this period, at least until they have fully exercised their land grant privileges and have begun to engage primarily in owning land or operating a business, many of the ANCSA Corporations may be investment companies within the meaning of sections 3(a)(1) and 3(a)(3) of the Act (15 U.S.C. 80a-3(a)(1), 80a-3(a)(3)).[2]

It appears that, without compliance with the Act or exemptive relief by the Commission, questions may be raised whether many ANCSA Corporations may operate in interstate commerce or buy securities in interstate commerce.[3] Several ANCSA Corporations have filed applications for orders of the Commission pursuant to section 3(b)(2) (15 U.S.C. 80a-3(b)(2)) of the Act, each claiming, in effect, that the applicant is primarily engaged in a business other than that of being an investment company.[4] In view of the large number of ANCSA Corporations, many of which are potential applicants of this type, and the serious question as to whether such ANCSA Corporations can meet the operational prerequisites for a section 3(b)(2) order, the Commission has determined to grant appropriate temporary exemptive relief by the promulgation of a rule pursuant to section 6(c) (15 U.S.C. 80a-6(c)) of the Act and to propose that such relief be made permanent.

Rule 6c-2(T) temporarily removes all ANCSA Corporations from the burden of complying with various requirements of the Act. Such corporations will be obliged to comply with only those provisions which provide essential protection for the substantial pools of liquid capital they hold in trust for the Alaska Natives. Accordingly, Rule 6c-2(T) provides that the ANCSA Corporations shall be exempt from all provisions of the Act except sections 8(a), 9, 17, 36, and 37 provided, however, that such corporations must comply with certain reporting and other requirements set forth in the rule. Rule 6c-2 would provide exactly the same relief on a permanent basis, if adopted.

Section 8(a) of the Act requires the ANCSA Corporations to register with the Commission by filing a Form N-8A disclosing basic information such as the name and address of the corporation, the names of its officers, directors, and adviser and the identity of other companies substantial amounts of the securities of which are held by the registrant. The more detailed Form N-8B-1 registration statement will not be required.

Section 9 of the Act prohibits a person convicted of certain crimes or enjoined from certain specified activities, generally crimes and activities involving securities transactions and the functions of underwriters, brokers, dealers and financial institutions, from serving as an officer, director, member of an advisory board, investment adviser, or depositor of a registered investment company. Section 9 also provides procedures for the removal of this prohibition under appropriate circumstances.

Section 17 of the Act, generally speaking, requires Commission approval before the ANCSA Corporations may engage in certain transactions with affiliated persons.

Section 36 of the Act authorizes the Commission or a shareholder to bring a civil action against officers, directors, members of advisory boards, investment advisers, depositors or underwriters of registered companies for breach of fiduciary duty involving personal misconduct. It further provides that an investment adviser is deemed to have a fiduciary duty with respect to the receipt of compensation for services or payments of a material nature paid by the investment company.

Section 37 of the Act makes it a crime under the Act to steal or embezzle the property of an investment company.

The exemptions granted by the rules may be claimed only by ANCSA Corporations which meet conditions requiring them to file annually with the Commission copies of reports required by section 7(o) (43 U.S.C. 1606(o)) of the Settlement Act, and to maintain the records used as the basis for such reports for examination by the Commission.

Rule 6(c)-2(T) is hereby adopted pursuant to sections 6(c), 38(a), and 39 of the Act. Proposed Rule 6(c)-2 would be adopted pursuant to the same provisions. Section 6(c) of the Act provides that the Commission by rule, regulation, or order may conditionally or unconditionally exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or

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[1] P.L. 92-203, 92d Cong., 85 Stat. 688.

[2] Section 3(a)(1) defines "investment company" as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a)(3) defines "investment company" as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (excluding Government securities and cash items) on an unconsolidated basis.

[3] Such activities might be precluded by sections 7(a)(4) and 7(b)(3) of the Act, which provide, respectively, that an unregistered investment company may not engage in any business in interstate commerce and that no depositor or trustee of or underwriter for any unregistered investment company may sell or purchase for the account of such company, by the use of the mails or any means or instrumentality of interstate commerce, any security or interest in a security, by whomever issued.

[4] Section 3(b)(2) provides, in pertinent part, that if the Commission finds that an issuer is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities such issuer will not be an investment company within the meaning of the Act.

provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. Section 38(a) states, in part, that the Commission shall have the authority from time to time to make, issue and amend such rules and regulations as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act. Section 39 states in part, subject to the Federal Register Act, rules and regulations of the Commission under the Act shall be effective upon publication in the manner prescribed by the Commission.

The Commission finds that the adoption of Rule 6c–2(T) is appropriate in the public interest and is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. The Commission further finds, in accordance with the requirements of the Administrative Procedure Act,[5] that notice of Rule 6c–2(T) prior to its adoption and public procedure thereon are impracticable and unnecessary since the rule will be temporary in its effect and will not exempt any ANCSA Corporations from those provisions of the Act needed to provide essential protections for the assets being held for the Alaska Natives and since any delay in the adoption of the rule would cause great inconvenience to many ANCSA Corporations and prevent them from seeking an investment return on such assets for the benefit of the Alaska Natives until such time as the rule is adopted.[6]

Commission action. Pursuant to the authority in sections 6(c), 38(a) and 39 of the Investment Company Act of 1940, the Securities and Exchange Commission hereby adopts a new § 270.6c–2 under Part 270 of Chapter II of Title 17 of the Code of Federal Regulations, as a temporary regulation pending consideration of a proposal to adopt a similar regulation in permanent form as set forth in another section of this release, said temporary regulation to read as follows:

§ 270.6c–2—(Rule 6c–2(T)) Temporary Exemption for Corporations Organized pursuant to the Alaska Native Claims Settlement Act of 1971.

Any corporation organized pursuant to the Alaska Native Claims Settlement Act of 1971 ("Settlement Act") ("ANCSA Corporation") shall be temporarily exempt from all provisions of the Act except Sections 8(a), 9, 17, 36, and 37 subject to the following conditions: Any company claiming exemptions pursuant to this rule shall file annually with the Commission copies of the reports required by section 7(o) of the Settlement Act and shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for such information and of the auditor's certification thereto. All such accounts, books, and other documents shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Such company shall furnish to the Commission, within such time as the Commission may prescribe, copies of or extracts from such records which may be prepared without undue effort, expense, or delay as the Commission may by order require.

(Secs. 6(c), 38(a), 39, 54 Stat. 800, 841, 842, 15 U.S.C. 80a–6(c), 80a–37(a), 80a–38).

Effective date. This temporary rule shall become effective on February 26, 1974, retroactive to December 18, 1971, the date of enactment of the Settlement Act.

Information concerning the Commission's proposed Rule 6c–2 is found under the heading "Proposed Rulemaking" elsewhere in this issue of the FEDERAL REGISTER. All interested persons are invited to submit their views and comments with respect to that proposed rule in accordance with the directions contained there.

By the Commission.

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

FEBRUARY 26, 1974.

[FR Doc.74–5280 Filed 3–6–74;8:45 am]

[Release No. IC–8236]

PART 271—INTERPRETIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Application Under Investment Company Act of 1940; Procedure Upon Issuance of a Notice Pursuant to Rule 0–5

It has come to the attention of the Commission's Division of Investment Management Regulation in connection with applications filed for orders pursuant to the Investment Company Act of 1940 ("Act"), that applicants may incorrectly assume that the issuance of a public notice of the application indicates that an order granting it will issue as of course immediately following expiration of the notice period. The Commission is issuing this release to inform affected persons the procedure involved.

As provided by Rule 0–5 [17 CFR 270.0–5] of the Rules and Regulations promulgated under the Act, an order disposing of an application will be issued as of course following the expiration of the prescribed notice period, unless the Commission thereafter orders a hearing on the matter. The Commission will order such a hearing, if it appears that it is necessary or appropriate in the public interest or for the protection of investors, upon the request of any interested person or upon the Commission's own motion.[1] Applicants should be aware that, even if an application appears not to be controversial, some delay may be encountered, particularly if a person who is, or asserts that he is, an interested person files a request for a hearing after issuance of the notice of such application. In such event, a reasonable period of time may be required before the Commission can determine whether or not a hearing is necessary or appropriate.

In view of the foregoing, the best course for applicants to follow under these circumstances is to file any necessary application as far in advance as possible and to avoid taking actions prior to receipt of an order granting the application which will create problems if the requested order is either delayed or ultimately denied. For example, the sponsor of an applicant unit investment trust which requires an order under the Act prior to making its offering should not assemble its portfolio of securities prior to the receipt of the order unless the sponsor is willing to bear the risk of a capital loss if the order is delayed and the securities decline in value.

By the Commission.

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

FEBRUARY 20, 1974.

[FR Doc.74–5312 Filed 3–6–74;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. R–395; Order 469]

UNIFORM SYSTEMS OF ACCOUNTS

Equity Method of Accounting for Long-Term Investments in Subsidiaries; Correction

FEBRUARY 21, 1974.

The following corrections are made to FR Doc. 73–2660, issued February 1, 1973, and published at 38 FR Doc. 4246 on February 12, 1973:

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

In ordering paragraph B (page 4248), the addition to § 141.1(d) of a new schedule entitled "Investment in Subsidiary Companies," immediately following the schedule entitled "Investments," should be indicated as follows:

§ 141.1 Form No. 1, Annual report for electric utilities, licensees and others (Class A and Class B).

* * * * *

(d) This annual report contains the following schedules:

* * * * *

Investment in Subsidiary Companies

* * * * *

[5] 5 U.S.C. § 551 et seq. (1970)

[6] Id. § 553 (2) (1).

[1] See Investment Company Act of 1940 Release No. 7926, August 7, 1973 (38 FR 23324).

PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES

In ordering paragraph C(1) (page 4248), the definitions now numbered and recodified as "30" and "31" should be numbered and recodified as "35" and "36".

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

In ordering paragraph D (page 4249), the addition to § 260.1(c) of a new schedule entitled "Investment in Subsidiary Companies," immediately following the schedule entitled "Investments," should be indicated as follows:

§ 260.1 Form No. 2, Annual report for natural gas companies (Class A and Class B).

* * * * *

(c) This annual report contains the following schedules:

* * * * *

Investment in Subsidiary Companies

* * * * *

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5199 Filed 3-6-74;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER H—INTERNAL REVENUE PRACTICE

PART 601—STATEMENT OF PROCEDURAL RULES

Miscellaneous Amendments

This document contains miscellaneous amendments to the Statement of Procedural Rules (26 CFR Part 601) which was last amended on December 3, 1973 (38 FR 33300).

The statement of procedural rules sets forth the procedural rules of the Internal Revenue Service respecting all taxes administered by the Service.

The amendments to the Statement of Procedural Rules contained in this document are adopted by this document. A discussion of the most significant of these amendments follows:

Section 601.106(h) is amended to provide that the approval of the Assistant Regional Commissioner (Appellate) (rather than the Director, Appellate Division) is required to reopen certain cases closed by agreement of the taxpayer and the Appellate Division.

Section 601.107(c) is amended to reflect revised procedures for the processing of criminal tax cases after investigation.

New material added to § 601.201(r) describes procedures applicable to the issuance of rulings and determination letters with respect to the private foundation status and operating foundation status under sections 509(a) and 4942 (j)(3) of the Internal Revenue Code of 1954 of organizations exempt from Federal income tax under section 501(c) of the Code. These procedures apply in connection with applications for recognition of exempt status under section 501(c)(3) of the Code, or notices filed by organizations on Form 4653, Notification Concerning Foundation Status. Paragraph (2) of § 601.201(r), relating to nonexempt charitable trusts, was previously published as paragraph (6) of such section and is otherwise unchanged.

Section 601.204(b) is amended to indicate that a taxpayer's request to change from the overall cash receipts and disbursements method of accounting to the accrual method of accounting must now be filed with the National Office, instead of with the district director.

The revision of paragraph (d)(1) of § 601.401 reflects statutory changes in the amount of wages an employee must receive from two or more employers in a calendar year before he may be eligible for a special refund of social security tax.

AMENDMENTS TO THE STATEMENT OF PROCEDURAL RULES

This part as filed with the FEDERAL REGISTER on June 29, 1955, was last amended on December 3, 1973 (38 FR 33300). The following amendments are made to Part 601:

Paragraph 1. Section 601.106(h) is amended by substituting "Assistant Regional Commissioner (Appellate)" for "Director of the Appellate Division" in subparagraphs (1) and (3) and by revising subparagraph (2) to read as follows:

§ 601.106 Appellate functions.

* * * * *

(h) *Reopening closed cases not docketed in the Tax Court.* * * *

(2) Under certain unusual circumstances favorable to the taxpayer, such as retroactive legislation, a case not docketed in the Tax Court and closed by the Appellate Division on the basis of concessions made by both the Appellate Division and the taxpayer may be reopened upon written application from the taxpayer, and only with the approval of the Assistant Regional Commissioner (Appellate). The processing of an application for a tentative carryback adjustment or of a claim for refund or credit for an overassessment (for a year involved in the prior closing) attributable to a claimed deduction or credit for a carryback provided by law, and not included in a previous Appellate Division determination, shall not be considered a reopening requiring approval. A subsequent assessment of an excessive tentative allowance shall likewise not be considered such a reopening. The Director of the Appellate Division may authorize, in advance, the reopening of similar classes of cases where legislative enactments or compelling administrative reasons require such advance approval.

* * * * *

Par. 2. Section 601.107(c) is revised to read as follows:

§ 601.107 Intelligence functions.

* * * * *

(c) *Processing of cases after investigation.* The Chief, Intelligence Division, shall ordinarily notify the subject of an investigation and his authorized representative, if any, when he forwards a case to the Regional Counsel with a recommendation for prosecution. The rule will not apply if the case is with a United States Attorney.

Par. 3. Section 601.201 is amended by substituting "sections 509(a) and 4942 (j)(3)" for "section 509(a)" in paragraphs (b)(1) and (c)(5) and by revising paragraph (r) to read as follows:

§ 601.201 Rulings and determination letters.

* * * * *

(r) *Rulings and determination letters with respect to foundation status classification.* (1) *Rulings and determination letters on private and operating foundation status.* The procedures relating to the issuance of rulings and determination letters on private foundation status under section 509(a), and operating foundation status under section 4942(j)(3), of organizations exempt from Federal Income Tax under section 501(c)(3) of the Code will be published from time to time in the Internal Revenue Bulletin (see for example, Rev. Proc. 73-7, 1973-13 I.R.B. 33). These procedures apply in connection with notices filed by the organizations on Form 4653, Notification Concerning Foundation Status, or with applications for recognition of exempt status under section 501(c)(3) of the Code. Such notices and statements are filed by organizations in accordance with section 508(a) of the Code in order for an organization to avoid the presumption of private foundation status or to claim status as an operating foundation. In addition, these procedures also relate to National Office review of determination letters on foundation status under sections 509(a) and 4942(j)(3) of the Code and protest of adverse determination letters regarding foundation status.

(2) *Nonexempt charitable trusts claiming nonprivate foundation status under section 509(a)(3) of the Code.* A trust described in section 4947(a)(1) of the Code is one that is not exempt from tax under section 501(a) of the Code, has all of its unexpired interests devoted to one or more of the purposes described in section 170(c)(2)(B) of the Code, and is a trust for which a charitable deduction was allowed. These trusts are subject to the private foundation provisions (Part II of subchapter F of chapter 1 and chapter 42 of the Code) except section 508 (a), (b), and (c) of the Code. The procedures to be used by nonexempt charitable trusts to obtain determinations of their foundation status under section 509(a)(3) of the Code will be published from time to time in the Internal Revenue Bulletin (see, for example, Rev. Proc. 72-50, 1972-2 C.B. 830).

* * * * *

§ 601.204 [Amended]

Par. 4. Section 601.204 (b) is amended by deleting "Rev. Proc. 67-10, C.B. 1967-1, 585," from the last sentence.

Par. 5. Section 601.401 is amended by substituting "one" for "four" in the

fourth sentence of paragraph (a) (1) and by deleting the first two sentences of paragraph (d) (1) and inserting a new first sentence in lieu thereof to read as follows:

§ 601.401 Employment taxes.

* * * * *

(d) *Special refunds of employee social security tax.* (1) An employee who receives wages from more than one employer during a calendar year may, under certain conditions, receive a "special refund" of the amount of employee social security tax (*i.e.*, employee tax under the Federal Insurance Contributions Act) deducted and withheld from wages that exceed the following amounts: calendar years 1968 through 1971, $7,800; calendar year 1972, $9,000; calendar year 1973, $10,800; calendar year 1974, $12,000; calendar years after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) effective with respect to that year. * * *

* * * * *

[SEAL] DONALD C. ALEXANDER,
Commissioner.

[FR Doc. 74-5227 Filed 3-6-74; 8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 5A—FEDERAL SUPPLY SERVICE, GENERAL SERVICES ADMINISTRATION

PART 5A-76—EXHIBITS

PART 5A-77—PROCUREMENT FILES

Contract File Arrangements

The following guidelines are added concerning contract file arrangements.

1. The table of contents for Part 5A-76 is amended to include the following new entries:

5A-76.324 Small purchase files.
5A-76.325 Definite quantity contract files.
5A-76.326 Requirements type contract files.

NOTE: Copies of the illustrations in §§ 5A-76.324, 5A-76.325, and 5A-76.326 are filed with the original document.

2. Section 5A-77.101 is amended as follows:

§ 5A-77.101 Procurement case files.

* * * * *

(d) For illustrations of recommended small purchase and other case file arrangements see §§ 5A-76.324, 5A-76.325, and 5A-76.326.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. These regulations are effective on February 22, 1974.

Dated: February 22, 1974.

M. J. TIMBERS,
Commissioner,
Federal Supply Service.

[FR Doc.74-5318 Filed 3-6-74;8:45 am]

Title 45—Public Welfare

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

MEDICAL ASSISTANCE PROGRAM

Intermediate Care Facilities Services; Corrections

The following corrections are to be made in FR Doc. 74-1324, published at page 2220 on Thursday, January 17, 1974:

1. Page 2220, preamble to Chapter II, item 2, line 17: change "adiology" to "audiology".

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

2. Page 2220, preamble to § 234.130, line 23: change "249.11" to "§ 249.33"; line 26: change "date of publication" to "effective date".

3. Page 2221, § 234.130(c)(2), line 4: change "§ 249.11" to "§ 249.33".

PART 249—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

4. Page 2221, § 249.10(b)(15)(i)(*e*) and (ii): change introductory language to read: "Effective no later than 12 months following the effective date of these regulations,"

5. Page 2222, § 249.10(b)(15)(ii)(*a*), lines 8-9: change "(4)(i)(C)(*6*)(*iv*)" to "(4)(i)(C), (6)(iv)".

6. Page 2222, § 249.10(b)(15)(iii)(*b*), line 2: change "word" to "ward".

7. Page 2223, § 249.10(d)(1)(vi), line 6: insert after Act "P.L. 91-517)".

8. Page 2223, § 249.12(a)(1)(ii)(B), line 2: change "prohibits" to "prohibit".

9. Page 2225, § 249.12(a)(9)(iii), line 3: change ", with less than 15 beds," to ", with 15 beds or fewer,".

10. Page 2226, § 249.12(c)(2), line 8: change "licensed by" to "licensed as".

11. Page 2226, § 249.12(c)(3)(v), line 2: change "define" to "defined".

12. Page 2231, § 249.13(c)(6)(ii)(C)(*1*), line 1: change "Indentification" to "Identification".

13. Page 2232, § 249.13(c)(12)(ii)(E), line 2: change "evalatuion" to "evaluation".

14. Page 2234, § 249.13(h): change subparagraphs "(i)" through "(x)" to "(1)" through "(10)", and revise redesignated "(10)" to read as follows:

(10) "Time out" means time out from positive reinforcement; a behavior modification procedure in which, contingent upon undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

PART 250—ADMINISTRATION OF MEDICAL ASSISTANCE PROGRAMS

14. Page 2234, § 250.24(a)(1), lines 10-11: Delete "and service".

15. Page 2235, § 250.24(a)(3)(v)(B), line 5: change "regiment' 'to "regimen".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Approved: March 1, 1974.

THOMAS S. MCFEE,
Deputy Assistant Secretary for Management Planning and Technology.

[FR Doc.74-5351 Filed 3-6-74;8:45 am]

PART 249—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

Skilled Nursing Facility Services; Corrections

The following corrections are to be made in FR Doc. 74-1325, published at page 2254 on Thursday, January 17, 1974:

1. Page 2255, § 249.33(a)(1)(i), lines 9 and 11: change "this title" to "Title 20".

2. Page 2255, § 249.33(a)(1)(iii), line 6: insert "is" after "and".

3. Page 2255, § 249.33(a)(2), line 11: delete "proposed".

4. Page 2255, § 249.33(a)(4)(iii)(B), line 5: insert "is" after "which".

5. Page 2256, § 249.33(a)(8)(i)(B), line 3: change "§ 249.13" to "§ 249.12".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Approved: March 1, 1974.

THOMAS S. MCFEE,
Deputy Assistant Secretary for Management Planning and Technology.

[FR Doc.74-5350 Filed 3-6-74;8:45 am]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER C—UNINSPECTED VESSELS

[CGD 74-43]

PART 26—OPERATIONS

Miscellaneous Amendments

The purpose of this amendment to the Coast Guard regulations governing the operation of uninspected vessels is to delete a number of inaccurate and unnecessary sections which prescribe certain prohibited acts and the penalties under the Motorboat Act, 46 U.S.C. 526-526u (Motorboat Act). Sections 5261 and 526m of that Act have been repealed by the Federal Boat Safety Act of 1971, 46 U.S.C. 1451 et. seq. (FBSA '71) and replaced by sections 1461, 1483, and 1484 of the FBSA '71.

Sections 26.03-1 and 26.05-5 of 46 CFR repeat the provisions of the now repealed sections of the Motorboat Act and are therefore deleted.

Section 26.05-1 of 46 CFR simply repeats the provisions of section 526(0) of the Motorboat Act and is deleted as unnecessary.

§§ 26.03–1, 26.05–1, 26.05–5 [Deleted]

In consideration of the foregoing 46 CFR Part 26 is amended by deleting § 26.03–1 and Subpart 26.05 consisting of §§ 26.05–1 and 26.05–5.

Effective date. This amendment becomes effective March 7, 1974.

Dated: February 27, 1974.

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

[FR Doc.74–5238 Filed 3–6–74;8:45 am]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 1; Amdt. 1–88]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Federal Railroad Administrator and Assistant Secretary for Administration; Delegation of Functions

The purpose of this amendment is to delegate to the Federal Railroad Administrator and the Assistant Secretary for Administration certain functions vested in the Secretary by the Regional Rail Reorganization Act of 1973 (January 2, 1974, Pub. L. 93–236, 87 Stat. 985).

Since this amendment relates to Departmental management, procedures, and practices, notice and public procedure thereon are unnecessary and it may be made effective in fewer than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing Part 1 of Title 49 of the Code of Federal Regulations is amended as follows:

1. In § 1.49 a new paragraph (q) is added to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(q) Carry out the functions vested in the Secretary by sections 201(i)(3); 202(b)(7); 203, as applicable (except authority to issue subpoenas); 210, 212(a); 213; 215; 402 (except subsection (g)(2)); 403; and 601 of the Regional Rail Reorganization Act of 1973 (Public Law 93–236).

2. In § 1.60 a new paragraph (l) is added to read as follows:

§ 1.60 Delegations to Assistant Secretary for Administration.

* * * * *

(l) *Audit.* Carry out the functions vested in the Secretary by sections 203, as applicable (except authority to issue subpoenas); 212(b); and 402(g)(2) of the Regional Rail Reorganization Act of 1973 (Public Law 93–236).

Effective date. This amendment is effective February 25, 1974.

(Section 9(e), Department of Transportation Act, 49 U.S.C. 1657(e).)

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

CLAUDE S. BRINEGAR,
Secretary of Transportation.

[FR Doc.74–5438 Filed 3–6–74;8:45 am]

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA Economic Docket No. 2]

PART 254—AGREEMENTS PURSUANT TO SECTION 215 OF THE REGIONAL RAIL REORGANIZATION ACT OF 1973

Procedures and Guidelines

The purpose of this amendment is to establish a new Part 254 setting forth the procedures and guidelines to be observed with respect to agreements with railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization) pursuant to section 215 of the Regional Rail Reorganization Act of 1973 (Public Law No. 93–236) (the "Act").

Section 215 authorizes the Secretary of Transportation, with the approval of the United States Railway Association, and prior to the date upon which rail properties are transferred or conveyed to the Consolidated Rail Corporation under the Act, to enter into agreements with railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization) for the acquisition, maintenance, or improvement of railroad facilities and equipment necessary to improve property that will be in the final system plan prepared by the Association. The section also requires that agreements entered into pursuant to this section shall specifically identify the type and quality of improvements to be made pursuant to such agreements. In addition, the section provides that, notwithstanding section 210(b) of the Act, the Association shall issue obligations to finance such agreements, and that it shall require the Corporation to assume any such obligations. In addition, the section specifies that the Corporation will not be required, under title III of the Act, to compensate any railroad in reorganization for that portion of the value of the rail properties transferred to it under the Act which is attributable to the acquisition, maintenance, or improvement of such properties under section 215 of the Act.

By delegation of authority, dated March 4, 1974, the Secretary has delegated to the Federal Railroad Administrator certain of his authority under the Act, including the authority to enter into agreements pursuant to section 215 of the Act.

Since this new Part 254 establishes agency procedures and guidelines with respect to implementation of section 215 of the Act, notice and public procedure thereon are not required by the Administrative Procedure Act, and the procedures and guidelines can be made effective immediately.

Sec. 254.1 Applicability.
Sec. 254.3 Definitions.
Sec. 254.5 Eligibility.
Sec. 254.7 Guidelines.
Sec. 254.9 Exhibits.
Sec. 254.11 Amendments, waivers, and modifications.

AUTHORITY: Regional Rail Reorganization Act of 1973, Public Law 93–236; Section 1.49(q), Regulations of the Office of the Secretary of Transportation, 49 CFR § 1.49(q).

§ 254.1 Applicability.

This part prescribes the procedures and guidelines governing agreements with railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization) pursuant to section 215 of the Regional Rail Reorganization Act of 1973. Section 215 authorizes the Secretary, with the approval of the United States Railway Association, and prior to the date upon which rail properties are transferred or conveyed to Consolidated Rail Corporation under the Act, to enter into agreements with railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization) for the acquisition, maintenance, or improvement of railroad facilities and equipment necessary to improve property that will be in the final system plan. The section also requires that agreements entered into pursuant to this section shall specifically identify the type and quality of improvements to be made pursuant to such agreements. In addition, the section provides that, notwithstanding section 210(b) of the Act, the Association shall issue obligations to finance such agreements, and that it shall require the Corporation to assume such obligations. In addition, the section specifies that the Corporation will not be required, under Title III of the Act, to compensate any railroad in reorganization for that portion of the value of the rail properties transferred to it under the Act which is attributable to the acquisition, maintenance, or improvement of such properties under section 215 of the Act.

§ 254.3 Definitions.

As used in this part—

(a) "Act" means the Regional Rail Reorganization Act of 1973 (Public Law 93–236, January 2, 1974).

(b) "Administrator" means the Federal Railroad Administrator, or his delegate.

(c) "Trustee" means all trustees of a railroad in reorganization if more than one trustee has been appointed.

(d) "Railroad official" means the duly authorized officer or officers of a railroad leased, operated, or controlled by a railroad in reorganization where such leased, operated, or controlled railroad is not an integral part of the operations of the railroad in reorganization and is operated as a separate and independent entity.

(e) "Association" means the United States Railway Association established under Section 201 of the Act.

(f) "Parties" means the Administrator, and the trustee or railroad official severally and collectively.

(g) "Railroad" means a common carrier by railroad as defined in section 1(3) of Part I of the Interstate Commerce Act (49 U.S.C. 1(3)).

(h) "Railroad in reorganization" means a railroad in the region which is subject to a bankruptcy proceeding and which has not been determined by a

court to be reorganizable or not subject to reorganization pursuant to the Act as prescribed in section 207(b) of the Act. A "bankruptcy proceeding" includes a proceeding pursuant to section 77(b) of the Bankruptcy Act (11 U.S.C. 205) and an equity receivership or equivalent proceeding.

(i) "Region" means the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois; the District of Columbia; points in Kentucky in the Louisville, Kentucky, Standard Metropolitan Statistical Area as used in the latest national census; points in Missouri in the St. Louis, Missouri, Standard Metropolitan Statistical Area as used in the latest national census; and Kewaunee, and Manitowoc, Wisconsin.

(j) "Corporation" means the Consolidated Rail Corporation required to be established under section 301 of the Act.

§ 254.5 Eligibility.

Any railroad in reorganization in the region, or a railroad leased, operated or controlled by a railroad in reorganization, is eligible to enter into an agreement with the Administrator as provided for under this part. Eligibility shall be determined by the Administrator.

§ 254.7 Guidelines.

(a) Agreements for the acquisition, maintenance, or improvement of railroad facilities and equipment considered necessary to improve property to be included in the final system plan shall be executed by the trustee or the railroad official and the Administrator, and approved by the Association. The parties shall execute such other documents and instruments as may be required to comply with the requirements of the Act and to enable the Association to issue its obligations under the Act.

(b) Agreements entered into in accordance with subsection (a) above shall specifically identify (1) the particular railroad facilities and equipment to be covered by the agreements and the programs for acquisition, maintenance, or improvement thereof, and (2) the amount of the funds to be provided by the Association to finance the agreements, including the method of payment and the timing.

(c) Supporting documents for programs identified under paragraph (b) of this section shall include (1) a comprehensive analysis, in coordination with the Association and the Administrator, of the railroad's total needs for the upgrading, improvement and modernization of plant and equipment for the current calendar year and the succeeding three years, (2) the trustee's or railroad official's estimate of that portion of the railroad's needs identified in the analysis required under (1) above to be accomplished in the absence of an agreement under section 215 of the Act, (3) a detailed statement, with supporting justification, of the program which the railroad plans to accomplish pursuant to the agreement under section 215 of the Act, including (i) a statement on increased productivity and improved service to customers, (ii) a cost-benefit analysis, (iii) estimated return on investment, (iv) statement showing the time frame within which the program can be implemented and (v) the cash-flow benefits to be realized, and (4) the criteria and priorities used in making determinations with respect to the programs planned under paragraph (c) (2) and (3) of this section.

(d) Funds obtained pursuant to section 215 of the Act shall be used solely for the acquisition, maintenance, or improvement of railroad facilities and equipment considered by the Association and the Administrator to be necessary to improve property that will be in the final system plan.

(e) The parties shall agree that no attempt will be made to require the Association, in determining in accordance with section 206(f) of the Act the value of rail properties to be transferred under the final system plan, or in connection with any appeal of such determination, to include in such valuation of rail properties that portion of the value of such properties which is attributable to the acquisition, maintenance or improvement of such properties under section 215 of the Act.

(f) The parties shall agree that the trustee or the railroad official shall provide such assurances and undertakings, and such court authorizations and approvals, as the Administrator may reasonably find necessary, to assure that, in the event the facilities and equipment acquired, maintained or improved pursuant to the agreement are not included in the final system plan or are included in the final system plan but not conveyed to the Corporation thereunder, the Corporation shall nevertheless receive, on or before the date of implementation of the final system plan, money or value in an amount not less than that portion of the value of such facilities or equipment which is attributable to the acquisition, maintenance or improvement of such properties under the agreement.

(g) The parties shall agree to the use of such project management controls as necessary to insure full and efficient compliance with the provisions of the Act and with all agreements entered into pursuant to this part.

(h) All inquiries and requests with respect to participation in the program should be directed to the Federal Railroad Administrator, Department of Transportation, 400 7th Street SW., Washington, D.C. 20590.

§ 254.9 Exhibits.

Except where otherwise indicated, each agreement shall be supported by the following:

(a) As Exhibit A, a statement showing (1) the full and correct name and principal business address of the trustee or the railroad official, (2) the name, title and address of the person to whom correspondence regarding the agreement should be addressed, (3) the name and address of the reorganization court and the docket number of the reorganization proceeding under the direction of which the trustee is acting;

(b) As Exhibit B, with the original agreement, but not with the copies thereof, a copy of duly certified order of the court, or instrument of appointment, appointing the trustee.

(c) As Exhibit C, (1) certified copy of the order(s) of the reorganization court having jurisdiction of trustee authorizing negotiation of the agreement with the Administrator and the Association under section 215 of the Act; or (2) certified copy of the resolution of the board of directors of the railroad leased, operated, or controlled by a railroad in reorganization authorizing the negotiation of the agreement by the railroad official.

(d) As Exhibit D, opinion of counsel for the trustee or the railroad official that he is familiar with the powers of the trustee or railroad official, including those granted by the orders of the reorganization court or the board of directors, as the case may be, and that the trustee railroad official is authorized to negotiate the agreement.

(e) As Exhibit E, a map of the railroad's existing lines, identifying in particular leased lines, connections with other lines and trackage rights.

§ 254.11 Amendments, waivers and modifications.

(a) The parties may, with the approval of the Association, mutually agree in writing to any changes, modifications or amendments to any agreement entered into pursuant to this part.

(b) The Administrator may, upon good cause shown, waive or modify any requirement of the part not required by the Act, or make any additional requirements he deems necessary.

Effective date. This amendment is effective March 4, 1974.

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

JOHN W. INGRAM,
Administrator.

[FR Doc.74-5487 Filed 3-6-74;11:37 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1165; Amdt. 2]

PART 1033—CAR SERVICE

Kansas City Southern Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 1st day of February, 1974.

Upon further consideration of Service Order No. 1165 (39 FR 808, 4579) and good cause appearing therefor:

It is ordered, That:

Section 1033.1165 *Service Order No. 1165* (The Kansas City Southern Railway Company authorized to operate over certain tracks of Southern Pacific Transportation Company) be, and it is hereby,

amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., April 1, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

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

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

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

By the Commission, Railroad Service Board.

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

[FR Doc. 74-5347 Filed 3-6-74;8:45 am]

[No. FF-C-51]

PART 1085—FREIGHT FORWARDERS OF HOUSEHOLD GOODS

Need for Greater Regulations; Extension of Effective Date

Upon consideration of the record in the above-entitled proceeding, and of petition of Allied Van Lines, Inc., filed February 17, 1974, for reconsideration; and good cause appearing therefor:

It is ordered, That the effective date of the order of January 3, 1974 (39 FR 3270, Jan. 25, 1974), in the above-entitled proceeding, be, and it is hereby, postponed and fixed as June 3, 1974.

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 filing a copy with the Director, Office of the Federal Register.

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

By the Commission, Acting Chairman MacFarland.

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

[FR Doc.74-5346 Filed 3-6-74;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 150—COST OF LIVING COUNCIL PHASE IV PRICE REGULATIONS

PART 152—COST OF LIVING COUNCIL PHASE IV PAY REGULATIONS

Exemption of Instruments

The purpose of these amendments is to exempt the prices charged for instruments described in the Standard Industrial Classification Manual, 1972 edition, under Industry Group Numbers 381, 382, 383 and 385 by the manufacturer of such instruments from the Phase IV price regulations and to add a corresponding exemption to the Phase IV pay regulations.

The manufacturing activities affected by these amendments are those described in Industry Group Nos. 381 (engineering, laboratory, scientific, and research instruments and associated equipment), 382 (measuring and controlling instruments), 383 (optical instruments and lenses) and 385 (ophthalmic goods), in the Standard Industrial Classification Manual, 1972 edition. Industry Group Numbers 384 (surgical, medical, and dental instruments and supplies), 386 (photographic equipment and supplies) and 387 (watches, clocks, clockwork operated devices, and parts) are not exempt.

Industries in these groups are generally characterized by small size (over 80 percent of the firms are already exempt under the small business exemption) and a high degree of competition. Such competition, along with the rapidly increasing productivity of labor in these industries, should work to moderate any tendency toward sharp price increases.

The possibility is minimal that price increases for such instruments might cause a serious inflationary impact. Those instruments which are used as components of consumer goods (e.g. temperature controls for air conditioners or automobile speedometers) represent a very small percentage of the cost of the final products. Thus, any increase in the price of such component parts would not significantly affect the price that a consumer would pay for the finished item.

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

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

As a complementary action to the exemption from price controls, the Council has also exempted pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment in the instruments manufacturing industry as described. The exemption is set forth in new § 152.40q. "Establishment in the instruments manufacturing industry" is defined as any establishment classified in the Standard Industrial Classification Manual, 1972 Edition, under Group No. 381, 382, 383, and 385.

The exemption is inapplicable to any such employee who receives an item of incentive compensation, or who is a member of an executive control group. The exemption is also inapplicable to any such employee whose duties and responsibilities are not of a type exclusively performed in or related to the instruments manufacturing industry and whose pay adjustments are historically related to the pay adjustments of employees performing such duties outside the industry and are not related to the pay adjustments of other employees that are within the exemption.

The exemption is further inapplicable to employees who are part of an appropriate employee unit where 25 percent or more of the members of such unit are not engaged on a regular and continuing basis in the operation of an establishment in the instruments manufacturing industry or in support of such operation. In cases of uncertainty of application, inquiries concerning the scope of coverage of the wage exemption should be addressed to the Administrator, Office of Wage Stabilization, P.O. Box 672, Washington, D.C. 20044.

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

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

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1743; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489.)

In consideration of the foregoing, 6 CFR Parts 150 and 152 are amended as set forth herein, effective March 5, 1974.

Issued in Washington, D.C., on March 5, 1974.

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

1. In 6 CFR Part 150, § 150.54 is amended by adding a new paragraph (qq), which reads as follows:

§ 150.54 Certain price adjustments.

* * * * *

(qq) *Instruments.*

The prices charged by manufacturers of instruments for those products described in the Standard Industrial Classification Manual, 1972 Edition, under Group Nos. 381, 382, 383 and 385 are exempt.

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

§ 152.40q Instruments manufacturing industry.

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

(b) *Establishment in the instruments manufacturing industry.* For purposes of this section, "Establishment in the instruments manufacturing industry" means an establishment classified in the Standard Industrial Classification Manual, 1972 edition, under Group Number 381, 382, 383 or 385, and primarily engaged in the manufacture of any of the products listed within such groups.

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

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

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

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

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

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

(ii) Not related to pay adjustments of another unit of employees engaged on a regular and continuing basis in the operation of an establishment in the instruments manufacturing industry or in support of such operation within the meaning of paragraph (c) of this section.

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

(e) *Effective date.* The exemption provided in this section shall be applicable to pay adjustments with respect to work performed on and after March 5, 1974.

[FR Doc.74-5414 Filed 3-5-74;3:30 pm]

PART 150—PHASE IV PRICE REGULATIONS

PART 152—PHASE IV PAY REGULATIONS

Exemption of Jewelry, Silverware, and Plated Ware

The purpose of this amendment is to exempt prices charged for jewelry, silverware, and plated ware as described in the Standard Industrial Classification Manual, 1972 edition, under Group Number 391 and Industry Number 3961 by the manufacturers of such products and to add a parallel exemption in the pay regulations.

SIC Group Number 391 is composed of SIC Industry Numbers 3911, 3914, and 3915. Because the industries designated by these numbers are relatively distinct, the reasons for exempting each will be discussed separately.

Industry Number 3911 is the precious metal jewelry industry. Category I firms in the industry are placed at a distinct competitive disadvantage compared to smaller firms by the spiralling prices of precious metals. Also, because jewelry is purchased almost exclusively as a discretionary good, prices charged for jewelry have little impact on the cost of living.

Silverware, plated ware, and stainless steel ware comprise SIC Industry Number 3914. With respect to silverware, which accounts for about 60 per cent of the sales under SIC Industry Number 3914, the sharply increasing price of raw silver has caused a severe financial hardship for Category I firms. Because their prices cannot be adjusted rapidly to reflect changes in raw silver prices, Category I firms are curtailing production and laying off workers. With respect to the stainless steel ware industry, competition has tended to keep price increases moderate. This competition is primarily a result of imports, principally from Scandinavia, and of the large numbers of firms selling stainless steel ware at various prices and through various channels.

SIC Industry Number 3915 includes jewelers' findings and materials, and lapidary work. This industry is largely in the business of supplying the jewelry industry with unassembled parts made of precious metals and precious stones to be set in jewelry mountings. Because precious stones and custom-made jewelry are exempt from the price regulations pursuant to § 150.55(c) and § 150.54(c)(1)(iv) respectively, only about 20 percent of the industry is covered by the Phase IV regulations. The Council sees little economic benefit in controlling such a small segment of the industry.

With respect to SIC Industry Number 3961, costume jewelry and costume novelties, except precious metal, the Council has decided that because all other jewelry and related products are exempt and because price increases in the industry have been moderate, the industry should be exempt.

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

As a complementary action to the exemption from price controls, the Council has also exempted pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment in the jewelry and silverware manufacturing industry. The exemption is set forth in new § 152.40u. The exemption is inapplicable to any such employee who receives an item of incentive compensation, or who is a member of an executive control group. The exemption is also inapplicable to any such employee whose duties and responsibilities are not of a type exclusively performed in or related to the jewelry and silverware manufacturing industry and whose pay adjustments are historically related to the pay adjustments of employees performing such duties outside the industry and are not related to the pay adjustments of other employees that are within the exemption. The exemption is further inapplicable to employees who are part of an appropriate employee unit where 25 percent or more of the members of such unit are not en-

gaged on a regular and continuing basis in the operation of an establishment in the jewelry and silverware manufacturing industry or in support thereof. In cases of uncertainty of application, inquiries concerning the scope or coverage of the pay exemption should be addressed to the Administrator, Office of Wage Stabilization, P.O. Box 672, Washington, D.C. 20044.

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

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

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

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

In consideration of the foregoing, Parts 150 and 152 of Title 6 of the Code of Federal Regulations are amended as set forth herein, effective March 5, 1974.

Issued in Washington, D.C., on March 5, 1974.

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

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

§ 150.54 Certain price adjustments.

* * * * *

(uu) *Jewelry, silverware, and plated ware.* The prices which manufacturers of the following products charge for those products are exempt: products listed in the Standard Industrial Classification Manual, 1972 edition, under Group Number 391 and Industry Number 3961.

* * * * *

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

§ 152.40u Jewelry and silverware manufacturing industry.

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

(b) *Establishment in the jewelry and silverware manufacturing industry.* For purposes of this section, "Establishment in the jewelry and silverware manufacturing industry" means an establishment classified in the Standard Industrial Classification Manual, 1972 edition, under Group Number 391 (Jewelry, Silverware, and Plated Ware) or Industry Number 3961 (Costume Jewelry, and Costume Novelties, Except Precious Metal) and primarily engaged in the manufacture of products classified under such Group Number or Industry Number.

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

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

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

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

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

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

(ii) Not related to pay adjustments of another unit of employees engaged on a regular and continuing basis in the operation of an establishment in the jewelry and silverware manufacturing industry or in support of such operation within the meaning of paragraph (c) of this section.

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

(e) *Effective date.* The exemption provided in this section shall be applicable to pay adjustments with respect to work performed on and after March 5, 1974.

[FR Doc.74-5445 Filed 3-5-74;5:15 pm]

Proposed Rules

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[8 CFR Parts 235 and 299]

U.S. CITIZEN IDENTIFICATION CARD

Notice of Proposed Rule Making

Pursuant to section 553 of title 5 of the United States Code (80 Stat. 383), notice is hereby given of the proposed amendment of 8 CFR 235.10 and 299.1, pertaining to the issuance of United States citizen identification cards.

The purpose of the proposed amendment to § 235.10 is to modify the current procedure of issuing two different types of United States citizen identification cards by providing for the issuance of a single type of citizen identification card. The current regulations provide for the issuance of one type of citizen identification card to facilitate entry into the United States from Canada (Form I–197—U.S. Citizen Identification Card) and for the issuance of another type of card to facilitate identification in the United States by an immigration officer (Form I–179—Identification Card for the Use of Resident Citizens in the United States. Under the proposed amendment, a single type of card, Form I–197, would be utilized both for identification and facilitation of entry from contiguous territory, and the use of Form I–197 would be discontinued. The proposed amendment will also permit the issuance of a citizen identification card to a nonresident U.S. citizen provided he is physically present in the United States at the time of application for, and issuance of, the card.

In accordance with long-standing practice, and as explicity set forth in proposed § 235.10(a), the United States citizen identification card will continue to be made available solely for the convenience of those United States citizens who wish to apply for it. Possession of the card is not mandatory for any purpose.

The proposed amendment to § 235.10 also specifies the eligibility requirements to apply for and to be issued a citizen identification card; designates the procedure in applying for a card, or a replacement card; and specifies the conditions under which a card shall be surrendered, and the conditions under which it shall be deemed void.

In accordance with the provisions of section 553 of Title 5 of the United States Code (80 Stat. 383), interested persons may submit to the Commissioner of Immigration and Naturalization, Room 7100C, 425 Eye Street, NW, Washington, D.C. 20536, written data, views, or arguments, in duplicate, with respect to the proposed rules. Such representations may not be presented orally in any manner. All relevant material received before April 6, 1974, will be considered.

Section 235.10 is amended to read as follows:

§ 235.10 U.S. Citizen Identification Card.

(a) *General.* Solely as a convenience to facilitate identification in the United States by immigration officers and entry over land borders from foreign contiguous territory, a citizen who is physically present in the United States may apply for a U.S. Citizen Identification Card, Form I–197, to the Service office having jurisdiction over the place where he is present. However, possession of the card shall not be mandatory for any purpose.

(b) *Eligibility.* No United States citizen shall be eligible for an identification card unless he is physically present in the United States at the time of application therefor and at the time of issuance of the card and, if other than a native-born citizen, has been issued a certificate of naturalization or citizenship.

(c) *Application.* An application for an identification card shall be made on Form I–196, accompanied by the fee required under § 103.7 of this chapter and one photograph 1½ inches by 1½ inches, and evidence of his birth in the United States or, in the case of a United States citizen who was not born in the United States, a certificate of naturalization or citizenship. The applicant, when notified to do so, and his parent or guardian, if one is acting in his behalf, shall appear in person before an immigration officer in the United States for examination under oath or affirmation upon the application.

(d) *Denial of application.* If the decision of the district director is that the application shall be denied, notification thereof and the reasons therefor shall be furnished the applicant. No appeal shall lie from the denial of an application by the district director.

(e) *Issuance of identification card.* If the applicant establishes his citizenship and eligibility to the satisfaction of the district director, the identification card shall be issued to the applicant. The delivery of such card shall be made only in the United States.

(f) *Replacement.* An identification card which is in poor condition due to improper lamination or any other cause shall be surrendered to an immigration officer upon his demand. A replacement card may be issued on submission of a properly executed Form I–196, without fee, subject to the eligibility requirements of this section.

(g) *Surrender and voidance.* A U.S. citizen identification card shall be surrendered provisionally to a Service officer upon notification by the district director of such office that the validity of the card is being investigated, or upon notification of institution of a proceeding under section 236, 242, or 342 of the Act against the person to whom the card was issued, and shall be returned to such person if the outcome of the investigation is favorable to him, or the final order in the proceeding does not result in the voidance of the document pursuant to this subsection. A U.S. citizen identification card shall be deemed void automatically if the person to whom it was issued is determined to be an alien in a proceeding conducted pursuant to section 236 or 242 of the Act, or if a certificate, document, or record relating to such person is cancelled pursuant to section 342 of the Act. A U.S. citizen identification card shall also be deemed void automatically if the person to whom it was issued admits in a statement signed before an immigration officer that he is an alien, or the card is found by an immigration officer in the possession of a person other than the one to whom it was issued. When a U.S. citizen identification card becomes void, it shall be surrendered forthwith to an immigration officer or to the issuing office of the Service.

§ 299.1 [Amended]

The list of forms in § 299.1 *Prescribed forms* is amended by deleting therefrom the reference to "Form I–179 (1–1–73) Identification Card for Resident Citizen in the United States."

(Sec. 103, 66 Stat. 173 (8 U.S.C. 1103))

Dated: February 28, 1974.

L. F. CHAPMAN, Jr.,
Commissioner of Immigration and Naturalization.

[FR Doc.74–5230 Filed 3–6–74;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[15 CFR Part 921]

ESTUARINE SANCTUARY GRANTS

Application and Selection Criteria Procedures

Notice is hereby given that the guidelines set forth below are proposed by the National Oceanic and Atmospheric Administration (NOAA) to establish

policy and procedures for the nomination, selection and management of estuarine sanctuaries as authorized under section 312 and section 314 of the Coastal Zone Management Act of 1972 (Public Law No. 92-583; 86 Stat. 1280) hereinafter referred to as the "Act."

The Act recognizes that the coastal zone is rich in a variety of natural, commercial, recreational, industrial and esthetic resources of immediate and potential value to the present and future well-being of the nation. States are encouraged to develop and implement management programs to achieve wise use of the resources of the coastal zone, and the Act authorizes Federal grants to the States for those purposes (sections 305 and 306).

In addition, under section 312 of the Act, the Secretary of Commerce is authorized to make available to a coastal State grants of up to 50 per centum of the costs of acquisition, development and operation of estuarine santuaries.

Pursuant to the Office of Management and Budget (OMB) memorandum of October 5, 1971, which established a procedure for improving interagency coordination of proposed agency regulations, standards and guidelines pertaining to environmental quality, the following guidelines have been circulated to all interested Federal agencies for their review and comment. Comments submitted will be reviewed before final guidelines are published.

Prior to adoption of final guidelines, consideration will be given to comments which are received in writing to the Office of Coastal Environment, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Rockville, Maryland 20852, before April 8, 1974.

ROBERT M. WHITE,
Administrator.

Subpart A—General

Sec.
921.1 Policy and objectives.
921.2 Definitions.
921.3 Objectives and implementation of the program.
921.4 Zoogeographic classification.
921.5 Multiple use.
921.6 Relationship to other provisions of the act and to marine sanctuaries.

Subpart B—Application for Grants

921.10 General.
921.11 Initial application for acquisition, development and operation grants.
921.12 Subsequent application for development and operation grants.

Subpart C—Selection Criteria

921.20 Criteria for selection.

Subpart D—Operation

921.30 General.
921.31 Program review.

Subpart A—General

§ 921.1 Policy and objectives.

The estuarine sanctuaries program will provide grants to States on a matching basis to acquire, develop and operate natural areas as estuarine sanctuaries in order that scientists and students may be provided the opportunity to examine over a period of time the ecological relationships within the area. The purpose of these guidelines is to establish the rules and regulations for implementation of the program.

§ 921.2 Definitions.

(a) In addition to the definitions found in the Act and in the regulations dealing with Coastal Zone Management Program Development Grants published November 29, 1973 (Part 920 of this chapter) the term "estuarine sanctuary" as defined in the Act, means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(b) The term "multiple use" as used in this section shall mean the simultaneous utilization of an area or resource for a variety of compatible purposes or to provide more than one benefit. The term implies the long-term, continued uses of such resources in such a fashion that one use will not interfere with, diminish or prevent the primary purpose.

§ 921.3 Objectives and implementation of the program.

(a) General. The purpose of the estuarine sanctuaries program is to create natural field laboratories in which to gather data and make studies of the natural and human processes occurring within the estuaries of the coastal zone. This shall be accomplished by the establishment of a series of estuarine sanctuaries which will be designated so that at least one representative of each type of estuarine ecosystem will endure into the future for scientific and educational purposes. The primary use of estuarine sanctuaries shall be for research purposes, especially to provide some of the information essential to coastal zone management decisionmaking. Specific examples of research purposes and uses include but are not limited to the following:

(1) To gain a thorough understanding of the ecological relationships within the estuarine environment.

(2) To make baseline ecological measurements.

(3) To monitor significant or vital changes in the estuarine environment.

(4) To assess the effects of man's stresses on the ecosystem and to forecast and mitigate possible deterioration from human activities.

(b) The emphasis within the program will be on the designation as estuarine sanctuaries of areas which will serve as natural field laboratories for studies and investigations over an extended period. The area chosen as an estuarine sanctuary shall, to the extent feasible, include water and land masses constituting a natural ecological unit.

(c) In order that the estuarine sanctuary will be available for future studies, research involving the destruction of a large portion of an estuarine sanctuary which would permanently alter the nature of the ecosystem would not normally be permitted.

(d) It is anticipated that most of the areas selected as sanctuaries will be relatively undisturbed by human activities at the time of acquisition. Therefore, most of the areas selected will be areas with a minimum of development, industry or habitation.

(e) If sufficient permanence and control by the state can be assured, the acquisition of a sanctuary may involve less than the acquisition of a fee simple interest.

§ 921.4 Zoogeographic classification.

It is intended that estuarine sanctuaries should not be chosen at random, but should reflect regional differentiation and a variety of ecosystems so as to cover all significant variations. To insure adequate representation of all estuarine types reflecting regional differentiation and a variety of ecosystems, selections will be made by the Secretary from the following zoogeographic classifications:

1. *Arcadian.* Northeast coast south to Cape Cod; rocky, glaciated shoreline subject to winter icing; well developed algal flora; boreal biota.

2. *Virginian.* Middle Atlantic coast from Cape Cod to Cape Hatteras; lowland streams, coastal marshes and muddy bottoms; characteristics transitional between 1 and 3; biota primarily temperate with some boreal.

3. *Carolinian.* South Atlantic coast, from Cape Hatteras to Cape Kennedy; extensive marshes and swamps; waters turbid and productive; biota temperate with seasonal tropical elements.

4. *West Indian.* South Florida coast from Cape Kennedy to Cedar Key; shoreland low-lying limestone; calcareous sands, marls and coral reefs; coastal marshes and mangroves; tropical biota.

5. *Louisianian.* Northern Gulf of Mexico, from Cedar Key to Mexico; characteristics of 3, with components of 4; strongly influenced by terrigenous factors; biota primarily temperate.

6. *Californian.* South Pacific coast from Mexico to Cape Mendocino; shoreland influenced by coastal mountains; rocky coasts with reduced fresh-water runoff; general absence of marshes and swamps; biota temperate.

7. *Columbian.* North Pacific coast from Cape Mendocino to Canada; mountainous shoreland; rocky coasts; extensive algal communities; biota primarily temperate with some boreal.

8. *Fiords.* South coast Alaska and Aleutians; precipitous mountains; deep estuaries, some with glaciers; shoreline heavily indented and subject to winter icing; biota boreal to sub-Arctic.

9. *Subarctic.* West and north coasts of Alaska; ice stressed coasts; biota Arctic and sub-Arctic.

10. *Insular.* Larger islands; sometimes with precipitous mountains; considerable wave action; frequency with endemic species; larger island groups primarily with tropical biota.

11. *Great Lakes.* Great Lakes of North America; rocky, glaciated shoreline; limited wetlands; fresh water only; boreal climate; biota a mixture of boreal and temperate species with anadromous species and some marine invaders.

Various sub-categories may be developed and utilized as appropriate.

§ 921.5 Multiple use.

While the primary purpose of estuarine sanctuaries is to designate natural areas for research studies, multiple use of estuarine sanctuaries will be encouraged to the extent that such use is compatible with the sanctuary purposes. Non-compatible uses which would cause permanent ecological change will be prohibited.

§ 921.6 Relationship to Other Provisions of the Act and to Marine Sanctuaries.

(a) The estuarine sanctuary program must interact with the overall coastal zone management program in two ways: (1) The intended research use of the sanctuary should provide relevant data and conclusions of assistance to coastal zone management decision making, and (2) when developed, the State's coastal zone management program must recognize and be designed to protect the estuarine sanctuary; appropriate land and water use regulations and planning considerations must apply to adjacent lands. Although estuarine sanctuaries should be incorporated into the State coastal zone management program, their designation need not await the development and approval of the management program, but may be accomplished prior to approval of the management program where operation of the estuarine sanctuary would aid in the development of a program.

(b) It is also anticipated that the estuarine sanctuaries program will be conducted in close cooperation with the marine sanctuaries program (Title III of the Marine Protection, Research Act of 1972, Public Law 92–532) which recognizes that certain areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, or other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, need to be preserved or restored for their conservation, recreational, ecologic or esthetic values. It is anticipated that the Secretary on occasion may establish marine sanctuaries to complement the designation by States of estuarine sanctuaries, where this may be mutually beneficial.

Subpart B—Application for Grants

§ 921.10 General.

Section 312 authorizes Federal grants to coastal States so that the States may establish sanctuaries according to regulations promulgated by the Secretary. Coastal States may file applications for grants with the Director, Office of Coastal Environment, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Rockville, Maryland 20852.

§ 921.11 Initial application for acquisition, development and operation grants.

Grants may be awarded on a matching basis to cover the costs of acquisition, development and operation of estuarine sanctuaries. Development and operation costs may include the administrative expenses necessary to monitor the sanctuary, to insure its continued viability and to protect the integrity of the ecosystem. Research will not normally be funded by section 312 grants. It is anticipated that other sources of Federal, State and private funds will be available for research in estuarine sanctuaries. Initial applications should contain the following information:

(a) Legal description of the proposed sanctuary including location, boundaries, size and cost of acquisition, operation and development. A map should be included, as well as an aerial photograph, if available.

(b) Classification of the proposed sanctuary according to the zoogeographic scheme set forth in § 921.4

(c) Description of the major physical, geographic and biological characteristics and resources of the proposed sanctuary.

(d) Identification of ownership patterns; proportion of land already in the public domain.

(e) Description of intended research uses, potential research organizations or agencies and benefits to the overall coastal zone management program.

(f) Demonstration of necessary authority to acquire or control and manage the sanctuary.

(g) Description of proposed management techniques, including the management agency, principles and proposed budget including both State and Federal shares.

(h) Description of existing and potential uses of and conflicts within the area if it were not declared an estuarine sanctuary; potential use, use restrictions and conflicts if the sanctuary is established.

(i) Assessment of the environmental and socio-economic impacts of declaring the area an estuarine sanctuary, including the economic impact of such a designation on the surrounding community and its tax base.

(j) Description of planned or anticipated land and water use and controls for contiguous lands surrounding the proposed sanctuary (including if appropriate an analysis of the desirability of creating a marine sanctuary in adjacent areas).

(k) List of protected sites, either within the estuarine sanctuaries program or within other Federal, State or private programs, which are located in the same regional or zoogeographic classification.

(l) The Secretary deems it essential that the selection process be as open as possible, therefore, the application should also indicate the manner in which the State solicited the views of all interested parties prior to the actual submission of the application.

(m) In order to develop a truly representative scheme of marine estuaries, the states should attempt to coordinate their activities. This will help to minimize the possibility of similar estuarine types being designated in the same region. The application should indicate the extent to which neighboring states were consulted.

§ 921.12 Subsequent application for development and operation grants.

If application is made for development and operation funds for an estuarine sanctuary established under these guidelines, then the application should include at least the following information:

(a) Identification of the boundary.

(b) Specifications of the management program, including managing agency and techniques.

(c) Detailed budget.

(d) Discussion of recent and projected use of the sanctuary.

(e) Perceived threats to the integrity of the sanctuary.

Subpart C—Selection Criteria

§ 921.20 Criteria for selection.

Applications for grants to establish estuarine sanctuaries will be reviewed and judged on criteria including:

(a) Benefit to the coastal zone management program. Applications should demonstrate the benefit of the proposal to the development or operation of the overall coastal zone management program, including how well the proposal fits into the national program of representative estuarine types; the national or regional benefits; and the usefulness in research.

(b) The ecological characteristics of the ecosystem, including its biological productivity, diversity and representativeness. Extent of alteration of the natural system, its ability to remain a viable and healthy system in view of the present and possible development of external stresses.

(c) Size and choice of boundaries. To the extent feasible estuarine sanctuaries should approximate a natural ecological unit. The minimal acceptable size will vary greatly and will depend on the nature of the ecosystem.

(d) Cost. Although the Act limits the Federal share of the cost for each sanctuary to $2,000,000, it is anticipated that in practice the average grant will be substantially less than this. No Federal funds received from other sources shall be used as a matching share by the States.

(e) Enhancement of non-competitive uses.

(f) Proximity and access to existing research facilities.

(g) Availability of suitable alternative sites already protected which might be capable of providing the same use or benefit. Unnecessary duplication of existing activities under other programs should be avoided.

(h) Conflict with existing or potential competing uses.

(i) Compatibility with existing or proposed land use and water use in contiguous areas.

If the initial review demonstrates the feasibility of the application, a draft environmental impact statement will be prepared by the Office of Coastal Environment in accordance with the National Environmental Policy Act of 1969 and implementing CEQ guidelines. Pub-

lic participation will be one of the factors included in the selection of estuarine sanctuaries.

Subpart D—Operation

§ 921.30 General.

Management of estuarine sanctuaries shall be the responsibility of the applicant State or its agent. However, the research uses and management program must be in conformance with these guidelines and regulations, and others implemented by the provisions of individual grants. It is anticipated that these provisions in the grant will vary with individual circumstances and will be mutually agreed to by the applicant and the granting agency. As a minimum, the grant document for each sanctuary shall:

(a) Define the intended research purposes of the estuarine sanctuary.

(b) Define permitted, compatible, restricted and prohibited uses of the sanctuary.

(c) Include a provision for monitoring the uses of the sanctuary, to insure compliance with the intended uses.

(d) Insure ready access to and use of the sanctuary by all qualified scientists and students.

(e) Insure public availability and reasonable distribution of research results for timely use in the development of coastal zone management programs.

(f) Provide a basis for annual review of the status of the sanctuary, its value to the coastal zone program.

(g) Insure the continued integrity of the system which the sanctuary represents.

§ 921.31 Program review.

It is anticipated that reports will be required from the applicant State on a regular basis, no more frequently than annually, on the status of each estuarine sanctuary. The estuarine sanctuary program will be regularly reviewed to insure that the objectives of the program are being met and that the program itself is scientifically sound. The key to the success of the estuarine sanctuaries program is to assure that the results of the studies and research conducted in these sanctuaries are available in a timely fashion so that the States can develop land and water use programs for the coastal zone.

[FR Doc.74-5407 Filed 3-6-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 133]

LIBRARY RESEARCH AND DEMONSTRATION

Notice of Proposed Rule Making

In accordance with section 503 of the Education Amendments of 1972 (Public Law 92-318), and pursuant to the authority contained in Part B of Title II of the Higher Education Act of 1965, as amended, notice is hereby given that the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend 45 CFR by adding a new Part 133.

1. *Purpose of new Part 133.* These regulations are being issued under section 223 of part B of title II of the Higher Education Act of 1965, as amended and renumbered by section 111 of the Education Amendments of 1972, Public Law 92-318, 86 Stat. 238, 20 U.S.C. 1034, which provides for grants and contracts to institutions of higher education and other public and private agencies, institutions, and organizations for research and demonstration projects relating to the improvement of libraries or the improvement of training in librarianship and for the dissemination of information derived from such research and demonstration.

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

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

3. *Opportunity for public hearing.* Pursuant to section 503(c) of the Education Amendments of 1972, Public Law 92-318, the Commissioner will provide interested parties an opportunity for a public hearing on these regulations as follows:

The hearing will take place on April 1, 1974, in the auditorium of Regional Office Building Three (ROB-3) located at 7th and D streets SW., Washington, D.C. 20202, beginning at 10 a.m.

The purpose of the hearing is to receive comments and suggestions on the proposed regulations.

Parties interested in attending the hearing should notify the Office of Education at Room 2079-G, 400 Maryland Avenue SW., Washington, D.C. 20202, Attention: Chairman, Office of Education Task Force on Section 503.

Interested parties may also submit written comments and suggestions prior to the date of the hearing to the above address. Comments received in response to this notice will be available for public inspection at the above address on Mondays through Fridays between 9 a.m. and 4:30 p.m.

All relevant material received not later than the date of the public hearing will be considered.

(Catalog of Federal Domestic Assistance No. 13.475, Research and Demonstration (General Library Research)).

Dated: January 14, 1974.

JOHN OTTINA,
U.S. Commissioner of Education.

Approved: February 20, 1974.

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

Part 133—Library Research and Demonstration

Sec.

133.1 Scope of part.
133.2 Purpose of program.
133.3 Definitions.
133.4 General provisions regulations.
133.5 Eligible parties.
133.6 Applications for grants.
133.7 Special consideration.
133.8 Types of activities supported.
133.9 Panel of experts.

Appendix A Criteria for Approving Applications.

AUTHORITY: Sec. 223 of P.L. 89-329, 82 Stat. 1037, as renumbered and amended by Sec. 111 of P.L. 92-318, 86 Stat. 238 (20 U.S.C. 1034), unless otherwise noted.

§ 133.1 Scope of part.

The regulations in this part govern programs of Federal financial assistance by the U.S. Commissioner of Education for research and demonstration projects under Part B of Title II of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1031, 1034)

§ 133.2 Purpose of program.

The financial assistance under this part is available to eligible parties to support research and demonstration projects relating to the improvement of libraries or the improvement of training in librarianship, including the development of new techniques, systems, and equipment for processing, storing, and distributing information and for the dissemination of information derived from such research and demonstration.

(20 U.S.C. 1031, 1034)

§ 133.3 Definitions.

As used in this part:

"Act" means Part B of Title II of the Higher Education Act of 1965, Public Law 89-329, 82 Stat. 1037, as amended and renumbered by section 111 of the Education Amendments of 1972, Public Law 92-318, 86 Stat. 238.

(20 U.S.C. 1031, 1034)

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

(20 U.S.C. 1021(c)(2))

"Research and demonstration" means research, surveys, or demonstrations relating to the improvement of libraries,

including experimental libraries, and the improvement of training in librarianship, or the dissemination of information derived therefrom.

(20 U.S.C. 1034)

§ 133.4 General provisions regulations.

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

(20 U.S.C. 1034)

§ 133.5 Eligible parties.

A grantee or contractor eligible for a research and demonstration project under this part is an institution of higher education or other public or private agency, institution, or organization, provided that no private agency, organization, or institution other than a nonprofit one may receive a grant.

(20 U.S.C. 1034)

§ 133.6 Applications for grants.

Where information may be obtained, where application forms may be obtained, and where applications must be sent, will be stated in the annual announcement of the program in the Notice of Closing Date published in the FEDERAL REGISTER.

(20 U.S.C. 1034)

§ 133.7 Special consideration.

Special consideration will be given to proposals dealing with:

(a) *Libraries and information science.* (1) Activities which are designed to bring together the total information, educational, and cultural resources of communities and organizations into new and effective patterns of service with emphasis on special target groups such as the underemployed, undereducated, culturally or geographically isolated groups, and others who have been unserved or minimally served in the past.

(2) Activities which center on more efficient use of resources and fulfillment of comprehensive information needs of the users.

(3) Studies assessing the need for the types of activities described in paragraph (a) (1) and (2) of this section.

(4) Studies for the development of new techniques and technological innovations and services and new applications of existing ones for activities of the types described in paragraphs (a) (1) and (2) of this section.

(b) *Training of library personnel.* Investigation of training needs and design of training programs, which can be conducted to support the activities outlined in paragraph (a) (1) and (2) of this section.

(c) *Criteria.* Appendix A to this part sets forth the criteria to be used in approving applications for grants and contracts under this part.

(20 U.S.C. 1034)

§ 133.8 Types of activities supported.

Any one or more of the elements of research and demonstration as defined in § 133.3 may be supported under this part to the extent of available funds.

(20 U.S.C. 1034)

§ 133.9 Panel of experts.

The Commissioner will not approve any application for a grant under this part unless and until such application has been reviewed by a panel of experts who are competent to evaluate various types of research or demonstration projects, and the Commissioner has considered the advice and recommendations of that panel.

(20 U.S.C. 1034)

APPENDIX A

CRITERIA FOR APPROVING APPLICATIONS

(a) *Initial applications.* In approving applications for the commencement of new projects, the Commissioner shall use the following criteria (in addition to the criteria set forth in 45 CFR 100a.26(b)) in connection with the special consideration described in § 133.6 of this part:

(1) *Significance and impact.* The applicant proposes to contribute to the solution of an important library problem, the improvement of operations or service in a significant number of libraries, or the fulfillment of unmet informational, educational, or cultural needs.

(2) *Problem and needs assessment.* The applicant's identification and demonstration by objective evidence of the nature and magnitude of the needs to be addressed by the proposed program, the degree of the applicant's demonstrated knowledge of previous successes and failures with the same or similar programs and ability to accommodate to them.
(45 CFR 100a.26(b) (1))

(3) *Statement of objectives.* The applicant's set objectives in relation to the needs assessed and desired impact which are interrelated, specific measurable, and realistically attainable within the specified periods and the clarity and specification of output products that meet these objectives.
(45 CFR 100a.26(b) (8) (i))

(4) *Activities and scheduling.* The activities included in the proposed program promise of themselves to result in the attainment of the applicant's stated objectives and are so scheduled as to result in that attainment in an efficient manner.

(5) *Resources and resource management.* The application indicates that the project will be operated with:

(i) key personnel with appropriate education, experience, and good records of previous performance in similar or related work;
(45 CFR 100a.26(b) (3))

(ii) coordination with and maximum utilization of existing library resources;

(iii) appropriate utilization of specialists, consultants, community advisory boards, project advisory boards, and paraprofessionals where necessary;

(iv) a realistic budget that corresponds to the statement of work or activities to be performed;
(45 CFR 100a.26(b) (5))

(v) a budget request that minimizes or excludes purchase of books, equipment, and printing and in general does not provide for operational money except as necessary to support the proposed demonstration.
(45 CFR 100a.26(b) (4))

(6) *Evaluation.* The format for objective, quantifiable measurement of the success of the proposed program in attaining the stated objectives, including:

(i) a statement of the criteria by which attainment of objectives is to be measured;

(ii) a description of the instruments to be used to collect data for evaluation of the proposed program (and the method to be used to validate such instruments where necessary), or a description of the procedure to be employed in selecting such instruments;

(iii) an assessment of the validity of such instruments in measuring use of services, or changes in attitudes, skills, knowledge or behavior of users;

(iv) a schedule for the collection of data for evaluation, and a description of the method to be used to review the program;

(v) provisions for comparison of evaluation results with norms, control group or performance, results of other programs, or other external standards.
(45 CFR 100a.26(b) (8) (ii))

(7) *Dissemination.* Provisions in the application which will result in adequate dissemination of the results of the proposed program and will make all outputs available through commercial publication, published articles, conference papers, audiovisual preparations or in other ways as appropriate.

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

(8) *Continuity of project.* The extent to which the proposed program is designed in such a manner as to ensure the continuity of a project or parts of it at the site selected and or its replication at other sites as well as the strength of commitment in supporting letters and documentation.

(20 U.S.C. 1031, 1034)

(b) *Continuation of assistance.* In approving applications for assistance to continue programs already funded under this Part during the fiscal year prior to the fiscal year for which assistance is sought, the Commissioner shall apply (in addition to the criteria set forth in 45 CFR 100a.26(b)) the following criteria:

(1) *Program results.* The extent to which:

(i) the applicant demonstrates, by technical and evaluation reports, products and other objective evidence, that the program proposed to be continued has been successful in meeting stated objectives and identified needs; and

(ii) such program has been modified as may be required so as to increase the likelihood of success in meeting such needs.

(2) *Adoption by others.* The extent to which services, techniques, and new knowledge resulting from activities assisted under this part in prior fiscal years have been adopted by others.

(3) *Other educational criteria.* The extent to which the proposed activities satisfy the criteria set forth in paragraph (a), "Initial applications."

(c) *Priority.* In approving applications for assistance under this Part, the Commissioner shall give priority to the applications described in paragraph (b) of this section, "Continuation of assistance," for continuation of projects within their previously established project periods.

[FR Doc.74-5115 Filed 3-6-74;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 72-18; Notice 5]

FEDERAL MOTOR VEHICLE SAFETY STANDARDS

New Pneumatic Tires for Passenger Cars

This notice withdraws a prior notice published November 8, 1972 (37 FR

23731), proposing to allow the optional use of speed ratings in the tire size designations listed in Table I–R of the Appendix to Motor Vehicle Safety Standard No. 109 (49 CFR 571.109).

On August 2, 1972 (37 FR 15430), the NHTSA issued miscellaneous amendments in accordance with the abbreviated rulemaking procedures for the issuance of amendments to the Appendices of §§ 571.109 and 571.110 (33 FR 14964). The amendments included one requested by the European Tyre and Rim Technical Organisation (ETRTO) that would have added to Table I–R (listing "60 Series" radial ply tires) in Appendix A of § 571.109 the following footnote:

The letters "HR", "SR", or "VR" may be included in any specified tire size designation adjacent to or in place of the "dash."

These letters designate speed ratings that are required to appear on tires marketed in certain European countries.

Objections to the inclusion of the speed ratings were received, and in accordance with the abbreviated procedures the footnote was withdrawn on September 19, 1972 (37 FR 19138), and its use was proposed in the notice published on November 8, 1972 (37 FR 23731).

Comments received from foreign tire manufacturers urged adoption of the proposal, pointing out that it eliminated the need for separate labeling, and thus separate molds, for tires manufactured for importation into the United States. The comments also suggested that the footnote be added to Table I–M (listing "78 Series" radial ply tires) as well, where it is equally applicable.

Domestic tire manufacturers objected to the footnote on the basis that the Table in question listed alpha-numeric tire size designations developed by the domestic Tire and Rim Association and used predominantly on tires in the United States. They argued that the resulting tire size designations would be confusing, increasing the possibility of misapplication. One comment suggested that the use of the speed ratings be withdrawn from the size designations listed in Table I–G (listing "70 Series" type "R" radial ply tires) where it is presently allowed. ETRTO, without explanation, subsequently cancelled their request for inclusion of the speed ratings.

The NHTSA has decided to withdraw the proposed rule. This action is not based solely on the request for cancellation by ETRTO. The comments indicated that the requested change would have affected parties other than the petitioner, and the disposition of the rulemaking is made in view of all relevant factors. It appears that the Economic Commission for Europe (ECE), which has within its authority the establishment of tire size designations for member countries, is considering revised speed symbols for pneumatic tires. The revised symbols would differ from those presently used, and would not be included within the tire size designation. These revised symbols may receive approval during 1974, and the use of the existing speed ratings in the additional tire size designations as originally requested could thus be of short duration. Their inclusion at this time is therefore found to be unjustified.

In light of the above, the rulemaking proceeding initiated by Notice 4 in Docket No. 72–18 (November 8, 1972; 38 FR 23731) is terminated, and no action on the subject of the proposal will be taken without further notice and opportunity to comment.

(Secs. 103, 119, 201, Pub. L. 89–563; 80 Stat. 718; 15 U.S.C. § 1392, 1407, 1421; delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on March 1, 1974.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.74–5267 Filed 3–6–74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 79]

FUELS AND FUEL ADDITIVES

Registration

Notice is hereby given that, pursuant to section 211 of the Clean Air Act (42 U.S.C. 1857f–6c), the Administrator of the Environmental Protection Agency proposes to revise 40 CFR Part 79 (previously designated 42 CFR Part 479), which provides for the registration of fuel additives.

Section 211 provides that the Administrator may designate certain fuels or fuel additives and that any designated fuel or additive must be registered by the Agency prior to its sale or introduction into commerce. The section further provides that for the purpose of such registration the Administrator "shall require—

(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

Section 211 states that the Administrator "may also require the manufacturer of any fuel or fuel additive—

(A) to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and

(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle or vehicle engine, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols established by the Administrator. The result of such tests shall not be considered confidential.

As revised, Part 79 would designate certain fuels and additives as requiring registration; namely, motor vehicle gasolines, motor vehicle diesel fuels, and additives for use in motor vehicle gasolines, in motor vehicle diesel fuels, and/or in motor vehicle crankcase oil. Manufacturers would be required to notify the Administrator before selling the designated fuels or additives or introducing them into commerce and would be prohibited from selling or introducing such fuels or additives into commerce until the Administrator has registered them. Manufacturers would be required to submit certain quarterly and annual reports. The bases for requiring tests to be conducted by manufacturers following registration would be established.

In connection with registration of the designated fuels and additives, all fuel or additive manufacturers would be required to provide various information including the range of concentration and purpose-in-use of each additive, and to furnish descriptions of analytical techniques which can be used to detect the presence of additives and to measure their concentrations. In addition, all such manufacturers would be required to furnish summaries of information in their possession about mechanisms of action of additives, reactions between fuels and their additives, effects of the additives on emissions, identification and measurement of emission products, and effects of the emission products on health, welfare, and emission control devices.

Additive manufacturers would be required to furnish additional information about the chemical composition and structure of additives and methods of analysis, any impurities, and sales volumes. Fuel manufacturers would be required to furnish additional information on such properties as hydrocarbon composition, polynuclear organic materials, sulfur, trace elements, vapor pressure, distillation temperatures, and cetane numbers including methods of analysis for each of these, information on variation by geographic region, and production volume.

The proposed regulations contain provisions relating to confidentiality and penalties for violation of the regulations.

The Agency has under consideration the designation of additional fuels and the additives used in those fuels. Also under consideration is the establishment of testing requirements of the type identified in proposed § 79.6 but which would be prescribed by regulation as prerequisites of registration for additives containing specified substances.

Interested persons may submit written data, views, or arguments, in triplicate, in regard to the proposed revision to the Administrator, Environmental Protection Agency, Attention: Office of Fuel and Fuel Additive Registration, Research Triangle Park, North Carolina 27711. All

relevant material received on or before April 22, 1974, will be considered. Comments received pursuant to this proposal will be available for public inspection during normal working hours (8 a.m. to 4:30 p.m.) at the Office of Public Affairs, Room 329, Waterside Mall, Fourth and M Streets, SW., Washington, D.C.

This notice of proposed rulemaking is issued pursuant to section 211 of the Clean Air Act, as amended (42 U.S.C. 1857f–6c).

Dated: February 25, 1974.

JOHN QUARLES,
Acting Administrator,
Environmental Protection Agency.

It is proposed to revise 46 CFR Part 79, as follows:

PART 79—REGISTRATION OF FUELS AND FUEL ADDITIVES

Subpart A—General Provisions

Sec.
79.1 Applicability.
79.2 Definitions.
79.3 Confidentiality of information.
79.4 Requirement of registration.
79.5 Periodic reporting requirements.
79.6 Requirement for testing.
79.7 Samples for test purposes.
79.8 Penalties.

Subpart B—Fuel Registration Procedures

79.10 Notification by fuel manufacturer or processor.
79.11 Information and assurances to be provided by the fuel manufacturer or processor.
79.12 Determination of noncompliance.
79.13 Registration.
79.14 Termination of registration of fuels.

Subpart C—Additive Registration Procedures

79.20 Notification by additive manufacturer.
79.21 Information and assurances to be provided by the additive manufacturer.
79.22 Determination of noncompliance.
79.23 Registration.
79.24 Termination of registration of additives.

Subpart D—Designation of Fuels and Additives

79.30 Scope.
79.31 Additives.
79.32 Motor vehicle gasoline.
79.33 Motor vehicle diesel fuel.

Subpart A—General Provisions

§ 79.1 Applicability.

The regulations of this part apply to the registration of fuels and fuel additives designated by the Administrator, pursuant to section 211 of the Clean Air Act (42 U.S.C. 1857f–6c, as amended by section 9, Pub. L. 91–604).

§ 79.2 Definitions.

As used in this part, all terms not defined herein shall have the meaning given them in the Act:

(a) "Act" means the Clean Air Act (42 U.S.C. 1857 et seq., as amended by Pub. L. 91–604).

(b) "Administrator" means the Administrator of the Environmental Protection Agency.

(c) "Fuel" means any material which is capable of releasing energy or power by combustion or other chemical or physical reaction.

(d) "Fuel manufacturer or processor" means any person who, for sale or introduction into commerce, produces a fuel or causes or directs the alteration of the chemical composition or the mixture of chemical compounds in a fuel by adding to it an additive.

(e) "Additive" means any substance intentionally added to a fuel during or after manufacture and not removed prior to sale or use.

(f) "Additive manufacturer" means any person who produces an additive or sells an additive under his own name.

(g) "Range of concentration" means the highest concentration, the lowest concentration, and the average concentration of an additive in a fuel.

(h) "Chemical composition" means the name and percentage by weight of each compound in an additive and the name and percentage by weight of each element in an additive.

(i) "Chemical structure" means the molecular structure of each compound in an additive.

§ 79.3 Confidentiality of information.

Information obtained by the Administrator or his representatives pursuant to this part shall be treated, insofar as its confidentiality is concerned, in accordance with regulations in 40 CFR Part 2. Results of tests required under § 79.6(a) to determine potential public health effects of fuels or additives shall in no case be considered confidential.

§ 79.4 Requirement of registration.

(a) No manufacturer or processor of any fuel designated under this part shall, after the date prescribed for such fuel in this part, sell, offer for sale, or introduce into commerce such fuel unless the Administrator has registered such fuel. No manufacturer or processor of a registered fuel shall add or direct the addition to it of an additive which he has not previously reported unless he has notified the Administrator of such intended use, including the expected or estimated range of concentration.

(b) No manufacturer of any additive designated under this part shall, after the date prescribed for such additive in this part, sell, offer for sale, or introduce into commerce such additive for use as an additive unless the Administrator has registered such additive.

§ 79.5 Periodic reporting requirements.

(a) For each 3-month period (March through May, June through August, September through November, December through February) commencing after the date prescribed for a particular fuel in Subpart D, fuel manufacturers or processors shall submit to the Administrator a report for each registered fuel showing (1) the range of concentration of each additive reported under § 79.11, (2) the volume of such fuel produced, and (3) data for all items of additional information required under § 79.11(f) except summaries of information. Reports shall be submitted within 45 days after the close of the reporting period, on forms supplied by the Administrator upon request.

(b) Further information developed by or for the fuel manufacturer or processor of the type defined under summaries of information as required under § 79.11(f) shall be provided to the Administrator by April 1 of each year for the preceding calendar year.

(c) The following shall be provided by the additive manufacturer to the Administrator by April 1 of each year for the preceding calendar year:

(1) A report of the volume of each registered additive sold;

(2) Further information developed by or for the additive manufacturer of the type defined under summaries of information as required under § 79.21(e).

§ 79.6 Requirement for testing.

(a) The Administrator may establish procedures and protocols for the conduct of tests to determine potential public health effects of a designated fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects) and may thereafter require a fuel manufacturer or processor or an additive manufacturer to conduct tests in conformance with such test procedures and protocols.

(b) In order to obtain such information as is reasonable and necessary to determine the emissions resulting from the use of a fuel or an additive in a fuel, the effect of such fuel or additive on the emission control performance of any motor vehicle or motor vehicle engine, or the extent to which such emissions affect the public welfare, the Administrator may require a fuel manufacturer or processor or an additive manufacturer to conduct tests in accordance with protocols based on generally accepted test methods and procedures.

(c) Any test required under this section shall be performed in accordance with a time schedule prescribed by the Administrator, after consultation with the manufacturer involved.

(d) The Administrator may require a fuel manufacturer or processor to perform tests under this section on any fuel registered for such manufacturer or processor or an additive manufacturer to perform tests under this section on any additive registered for such manufacturer. He may not require any test as a prerequisite of registration unless it is part of a test protocol established by regulation a reasonable time prior to notification by the manufacturer.

§ 79.7 Samples for test purposes.

When the Administrator requires for test purposes a fuel or additive which is not readily available in the open market, he may request the manufacturer of such fuel or additive to furnish a sample in a reasonable quantity. The fuel or additive manufacturer shall comply with such request within 30 days.

§ 79.8 Penalties.

Any person who violates section 211(a) of the Act or who fails to furnish any information required under this part

shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district in which such person does business. The Administrator may, upon application therefor, remit or mitigate any such forfeiture; and he shall have authority to determine the facts upon all such applications.

Subpart B—Fuel Registration Procedures

§ 79.10 Notification by fuel manufacturer or processor.

Any manufacturer or processor of a designated fuel who wishes to have such fuel registered shall notify the Administrator in accordance with § 79.11 at least 60 days prior to the date prescribed for such fuel in Subpart D or, after such prescribed date, at least 30 days prior to the date on which such fuel manufacturer or processor proposes to begin to sell, offer for sale, or introduce into commerce such fuel. Each notification shall be signed by the fuel manufacturer or processor or his agent, and shall be submitted on such forms as the Administrator will supply on request.

§ 79.11 Information and assurances to be provided by the fuel manufacturer or processor.

Each notification submitted by a fuel manufacturer or processor shall include the following:

(a) The commercial identifying name of each additive to be used in a designated fuel subsequent to the date prescribed for such fuel in Subpart D.

(b) The name of the additive manufacturer of each additive named.

(c) The range of concentration of each additive named, as follows:

(1) In the case of an additive which has been or is being used in the designated fuel, the range during any 3-month or longer period prior to the date of submission.

(2) In the case of an additive which has not been used in the designated fuel, the expected or estimated range.

(d) The purpose-in-use of each additive named.

(e) The description (or identification, in the case of a generally accepted method) of any analytical technique that can be used to detect the presence of each named additive in the designated fuel and/or to measure its concentration therein.

(f) Such other information as is specified in the designation of the fuel in Subpart D, to the extent such information is known to the manufacturer.

(g) Assurances that the fuel manufacturer or processor will notify the Administrator in writing and within a reasonable time of any change in:

(1) The name of any additive being used.

(2) The name of the manufacturer of any additive being used.

(3) The purpose-in-use of any additive.

(4) Information submitted pursuant to paragraph (e) of this section.

(h) Assurances that the fuel manufacturer or processor will not represent, directly or indirectly, in any notice, circular, letter, or other written communication, or any written, oral, or pictorial notice or other announcement in any publication or by radio or television, that registration of the fuel constitutes endorsement, certification, or approval by any agency of the United States.

§ 79.12 Determination of noncompliance.

Whenever the Administrator determines that a notification fails to comply with the regulations of this part, he shall inform the noncomplying fuel manufacturer or processor of the reasons for such determination.

§ 79.13 Registration.

(a) If the provisions of this part requiring the submission of information and the giving of assurances have been complied with for a particular fuel, the Administrator shall register that fuel and notify the fuel manufacturer of such registration.

(b) The Administrator shall maintain a list of registered fuels, which shall be available to the public upon request.

§ 79.14 Termination of registration of fuels.

Registration may be terminated by the Administrator if the fuel manufacturer or processor requests such termination in writing.

Subpart C—Additive Registration Procedures

§ 79.20 Notification by additive manufacturer.

Except as provided in § 79.23(b), any manufacturer of a designated additive who wishes to have such additive registered shall notify the Administrator in accordance with § 79.21 at least 90 days prior to the date prescribed for such additive in Subpart D or, after such prescribed date, at least 30 days prior to the date on which such additive manufacturer proposes to begin to sell, offer for sale, or introduce into commerce such additive. Each notification shall be signed by the additive manufacturer or his agent and shall be submitted on such forms as the Administrator will supply upon request.

§ 79.21 Information and assurances to be provided by the additive manufacturer.

Each notification submitted by an additive manufacturer shall include the following:

(a) The chemical composition of the additive, with the method(s) of analysis identified.

(b) The chemical structure of the additive to the extent such information is available.

(c) The description (or identfication, in the case of a generally accepted method) of any analytical technique that can be used to detect the presence of the additive in any fuel named in the designation and/or to measure its concentration therein.

(d) The manufacturer's recommended range of concentration and purpose-in-use.

(e) Such other information as is specified in the designation of the additive in Subpart D, to the extent such information is known to the manufacturer.

(f) Assurances that any change in information submitted pursuant to paragraphs (a), (b), (c), (d), and (e) of this section will be provided to the Administrator in writing within 30 days of such change or as provided in § 79.5(c).

(g) Assurances that the additive manufacturer will not represent, directly or indirectly, in any notice, circular, letter, or other written communication or any written, oral, or pictorial notice or other announcement in any publication or by radio or television, that registration of the additive constitutes endorsement, certification, or approval by any agency of the United States.

§ 79.22 Determination of noncompliance.

Whenever the Administrator determines that a notification fails to comply with the regulations of this part, he shall inform the noncomplying additive manufacturer of the reasons for such determination.

§ 79.23 Registration.

(a) If the provisions of this part requiring the submission of information and the giving of assurances have been complied with for a particular additive, the Administrator shall register that additive and notify the additive manufacturer of such registration.

(b) Any additive which had been registered under the provisions of this part prior to the promulgation date of these regulations shall be deemed registered under these regulations upon such promulgation date. The information requirements of § 79.21 must be complied with for any such additive within 6 months after the promulgation of this part.

(c) The Administrator shall maintain a list of registered additives, which shall be available to the public upon request.

§ 79.24 Termination of registration of additives.

Registration may be terminated by the Administrator if the additive manufacturer requests such termination in writing.

Subpart D—Designation of Fuels and Additives

§ 79.30 Scope.

Fuels and additives designated and dates prescribed by the Administrator for the registration of such fuels and additives, pursuant to section 211 of the Act, are listed in this subpart. In addition, specific informational requirements under §§ 79.11(f) and 79.21(e) of this part are set forth for each designated fuel or additive. Additional fuels and/or additives may be designated and perti-

nent dates and additional specific informational requirements prescribed as the Administrator deems advisable.

§ 79.31 Additives.

(a) All additives produced or sold for use in motor vehicle gasoline, motor vehicle diesel fuel, and/or motor vehicle crankcase oil are hereby designated.

(b) All designated additives must be registered within 6 months after the promulgation of this part, except as provided in § 79.23(b).

(c) The additional information to be furnished in accordance with § 79.21(e) consists of:

(1) Fuels in which the use of the additive is recommended, and recommended range of concentration in each fuel.

(2) Impurities, if greater than 0.1 percent by weight, with method(s) of analysis identified.

(3) Summaries of any information developed by or for the additive manufacturer concerning:

(i) Mechanisms of action of the additive.

(ii) Reactions between the additive and the fuels listed in paragraph (a) of this section.

(iii) Identification and measurement of the emission products of the additive when used in the fuels listed in paragraph (a) of this section.

(iv) Effects of the additive on all emissions.

(v) Toxicity and any other public health or welfare effects of the emission products of the additive.

(vi) Effects of the emission products of the additive on the performance of emission control devices/systems. Such submissions shall be accompanied by a description of the test procedures used in obtaining the information.

§ 79.32 Motor vehicle gasoline.

(a) The following fuels commonly or commercially known or sold as motor vehicle gasoline are hereby individually designated:

(1) Motor vehicle gasoline, unleaded, premium—motor vehicle gasoline that contains no more than 0.05 gram of lead per gallon and is sold as "premium." Research octane number is usually 96.0 or greater.

(2) Motor vehicle gasoline, unleaded, regular—all other motor vehicle gasoline that contains no more than 0.05 gram of lead per gallon.

(3) Motor vehicle gasoline, low-lead, premium—motor vehicle gasoline that contains more than 0.05 but no more than 0.50 gram of lead per gallon and is sold as "premium." Research octane number is usually 96.0 or greater.

(4) Motor vehicle gasoline, low-lead, regular—all other motor vehicle gasoline that contains more than 0.05 but no more than 0.50 gram of lead per gallon.

(5) Motor vehicle gasoline, leaded, premium—motor vehicle gasoline that contains more than 0.50 gram of lead per gallon and is sold as "premium." Research octane number is usually 96.0 or greater.

(6) Motor vehicle gasoline, leaded, regular—all other motor vehicle gasoline that contains more than 0.50 grams of lead per gallon.

The Act defines the term "motor vehicle" to mean any self-propelled vehicle designed for transporting persons or property on a street or highway.

(b) All motor vehicle gasolines must be registered within 8 months after the promulgation of this part.

(c) The additional information to be furnished in accordance with § 79.11(f) for each of these designated fuels consists of:

(1) The highest, lowest, and average values of the following characteristics/properties during any 3-month or longer period prior to the date of submission:

(i) Hydrocarbon composition (aromatic content, olefin content, saturate content), with the methods of analysis identified.

(ii) Polynuclear organic material content, sulfur content, and trace element content, with the methods of analysis identified.

(iii) Reid vapor pressure.

(iv) Distillation temperatures (10% point, end point).

(v) Research octane number and motor octane number.

(2) Variation by region (e.g., New England, Middle Atlantic, Southwest) in the average concentration of any additive, where such variation exceeds 20 percent of the manufacturer's nationwide average concentration for that additive.

(3) Summaries of any information developed by or for the fuel manufacturer concerning:

(i) Mechanisms of action of each additive he reports.

(ii) Reactions between such additives and motor vehicle gasoline.

(iii) Identification and measurement of the emission products of such additives when used in motor vehicle gasoline.

(iv) Effects of such additives on all emissions.

(v) Toxicity and any other public health or welfare effects of the emission products of such additives.

(vi) Effects of the emission products of such additives on the performance of emission control devices/systems. Such submissions shall be accompanied by a description of the test procedures used in obtaining the information.

§ 79.33 Motor vehicle diesel fuel.

(a) The following fuels commonly or commercially known or sold as motor vehicle diesel fuel are hereby individually designated:

(1) Motor vehicle diesel fuel, grade 1–D.

(2) Motor vehicle diesel fuel, grade 2–D.

(3) Motor vehicle diesel fuel, grade 4–D.

The Act defines the term "motor vehicle" to mean any self-propelled vehicle designed for transporting persons or property on a street or highway.

(b) All designated motor vehicle diesel fuels must be registered within 12 months after promulgation of this part.

(c) The additional information to be furnished in accordance with § 79.11(f) consists of:

(1) The highest, lowest, and average values of the following characteristics/properties during any 3-month or longer period prior to the date of submission:

(i) Hydrocarbon composition (aromatic content, olefin content, saturate content), with the methods of analysis identified.

(ii) Polynuclear organic material content, sulfur content, and trace element content, with the methods of analysis identified.

(iii) Distillation temperatures (90% point, end point).

(iv) Cetane number.

(2) Summaries of any information developed by or for the fuel manufacturer concerning:

(i) Mechanisms of action of each additive he reports.

(ii) Reactions between such additives and motor vehicle diesel fuel.

(iii) Identification and measurement of the emission products of such additives when used in motor vehicle diesel fuel.

(iv) Effects of such additives on all emissions.

(v) Toxicity and any other public health or welfare effects of the emission products of such additives. Such submission shall be accompanied by a description of the test procedures used in obtaining the information.

[FR Doc.74–5320 Filed 3–6–74;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 21, 81]

[Docket No. 19943; RM–1894]

HAWAII

Fixed Relay and Control Operations; Proposed Allocation of Certain Frequencies

In the matter of amendment of part 2, governing frequency allocations, Part 21 of the Commission's rules, governing the domestic public land mobile radio services, and Part 81 of the Commission's rules, governing stations on land in the maritime services, to allocate to the latter two services certain frequencies in the 76–108 MHz band for fixed relay and control operations in the State of Hawaii.

1. Radiocall, Inc. a radio common carrier providing service in Hawaii, has requested changes in §§ 21.501 (f) and 81.141 of the rules to make available for use by licensees and applicants in the Domestic Public Land Mobile Radio Service and licensees and applicants for public coast facilities, frequencies in the 76–108 MHz band for fixed relay and control operations in Hawaii. The table of allocations in part 2 of the Rules would correspondingly have to be amended.

2. The frequency band in question (76–108 MHz) is allocated nationally to television broadcasting (76–88 MHz) and FM broadcasting (88–108 MHz) with the exception of Hawaii where, pursuant to NG footnote 21, frequency bands 76–88 MHz and 98–108 MHz are allocated exclusively to fixed service use by common

carrier fixed stations for inter-island communications only. Broadcast television on channels 5 (76–82 MHz) and 6 (82–88 MHz) is specifically prohibited in Hawaii pursuant to rule § 73.603(b), and correspondingly, FM broadcast in the band 98–108 MHz is similarly prohibited in Hawaii pursuant to rule § 73.204 (d). Bands 76–88 MHz and 98–108 MHz are currently available only in the Common Carrier Rural Radio Service for inter-office stations. They are currently used in the state of Hawaii solely by the Hawaiian Telephone Company.

3. Currently authorized operations of Radiocall consist of four Domestic Public Land Mobile Radio Service stations and two VHF public coast stations. The operations of Radiocall are spread throughout Hawaii and, according to Radiocall, in order to be operated economically must be controlled from a central location which happens to be Honolulu. Radiocall states that it has been unable to obtain appropriate control and repeater facilities and therefore has been handicapped in two respects: it has not been able to implement all of the authorizations granted to it by the Commission, even though the need for the pertinent facilities is clearly present; it has not been able to expand its facilities to meet the additional need which has been established and which could be met by common carriers.

4. In support of its request, Radiocall submits that frequencies currently allocated under parts 21 and 81 of the rules for control and repeater type communications are either unavailable or are unacceptable due to propagation problems; that at the present time there are no available wirelines at its proposed transmitter sites; and that it would be uneconomical to construct the wirelines required for the needed control and repeater functions.

5. Additionally, while other frequency bands are available for control and repeater operations (i.e. 72–76 MHz, 952–960 MHz, and 2110–2200 MHz), reasons for their unavailability have been presented by Radiocall. Operation involving the band 72–76 MHz is not possible, it says, because of the high probability of causing disruptive interference to the reception of TV channel 4 in Honolulu. While Radiocall has authority to operate a control and repeater link in the 952–960 MHz band, it contends it has been unable to obtain reliable performance due to propagation losses associated with the circuit which are directly related both to the frequency band and the distances involved. Use of frequencies at the 2100 MHz portion of the spectrum are not suitable, according to Radiocall, for three reasons: cost of equipment would be prohibitively high; operationally, use of wideband equipment for the comparatively small number of channels required would be wasteful of spectrum; and due to topographical factors, the frequencies could not be used without repeater stations.

6. Oppositions to Radiocall's petition were filed by the Hawaiian Telephone Company (Hawaiian) and Western Telestation, Inc. (Western). Hawaiian opposes Radiocall's petition on the grounds that Radiocall has not established conclusively that wireline control facilities are not available at the sites pertinent to Radiocall's operations; that Radiocall has not demonstrated the unavailability of other frequencies which would suffice; and that Radiocall has not demonstrated technically that its requirements could be accomplished using the 76–108 MHz band, due to an inaccurate portrayal of Hawaiian's operation within the band.

7. Western's argument in opposition to Radiocall's petition stems from an anticipated vacating of the 76–108 MHz band by Hawaiian which would result in enough spectrum for at least two television channels, both then being available for assignment within Hawaii. Western's main thrust is that the possibility for such future television service should not be foreclosed; hence Radiocall's petition should be denied.

8. Radiocall, in responding to Hawaiian's opposition, asserted the following: that circuits for wireline control at the sites of proposed operations are not available and while Hawaiian could provide such circuits, it would only do so if Radiocall bore the construction costs associated with the projects; that such costs would be prohibitively expensive so as to preclude Radiocall from utilizing wireline control for its facilities; and that control operation utilizing other frequency bands cannot be employed, for reasons clearly stated in the petition.

9. Radiocall challenges Western's opposition on the grounds that while Western expects Hawaiian to vacate the 76–108 MHz band shortly, Western does not supply facts which substantiate this contention. Radiocall further asserts that additional TV requirements in Hawaii could be satisfied by assignments in the UHF–TV band, which would not require any rule changes, and points out that existing UHF channels in Hawaii have remained vacant until now.

10. In consideration of the foregoing, the Commission concludes that Radiocall's proposal is reasonable, but that its request for spectrum space is in excess of that required to accomplish its immediate objectives. Radiocall requests reallocation and access to 32 MHz of spectrum, while it appears the requirement can be satisfied in a fraction of that amount. Therefore, we are proposing to grant access at this time to a portion of the 88–108 MHz band. Specifically, we propose to permit access to the 107.89–108.0 MHz portion only; to set forth a specific channeling plan for the portion; and to set forth technical parameters for use of the frequencies.

11. The proposed modifications to parts 2, 21 and 81 of the rules, are set forth below and are issued pursuant to the authority in sections 4(i) and 303 of the Communication Act of 1934, as amended.

12. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before April 8, 1974, and reply comments on or before April 17, 1974. All relevant and timely comments and reply comments will be considered by the Commission before final action in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to specific comments invited by this Notice.

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

Adopted: February 21, 1974.

Released: February 26, 1974.

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

Chapter I of 47 CFR is amended as follows:

I. In Part 2, § 2.106 is amended by revising footnote NG 21 to the Table of Frequency Allocations to read as follows:

NG 21 In Hawaii the frequency bands 76–88 MHz and 98–108 MHz are allocated exclusively to the fixed service for use by common carrier inter-island use only, with the exception of the frequency band 107.89–108.0 MHz which is available on a shared basis for control and repeater stations in the domestic public and maritime radio services only.

II. Part 21 of the rules is amended as follows:

1. Section 21.501(f) is amended by adding the band 107–108 MHz to the list of frequencies which are available for assignment to control and repeater stations functioning in conjunction with the Domestic Public Land Mobile Radio Service.

§ 21.501 Frequencies.

* * * * *

(f) The frequencies listed in this paragraph are available for assignment to control and repeater stations functioning in conjunction with the Domestic Public Land Mobile Radio Service, on a shared basis with certain other radio services. A repeater station normally will not be authorized unless the land mobile radio system with which it is associated is continuously open for public correspondence and the emission of the repeater station are under the operational surveillance of the land mobile systems' operating personnel.

72–76 MHz Band [1]

(1)

MHz	MHz	MHz
72.02	72.54	75.50
72.04	72.58	75.54
72.06	72.62	75.58
72.08	72.64	75.62
72.10	72.66	75.64
72.12	72.68	75.66
72.14	72.70	75.68
72.16	72.72	75.70
72.18	72.74	75.72
72.20	72.76	75.74
72.22	72.78	75.76
72.24	72.80	75.78
72.26	72.82	75.80
72.28	72.84	75.82
72.30	72.86	75.84
72.32	72.88	75.86
72.34	72.90	75.88
72.36	72.92	75.90
72.38	72.94	75.92
72.40	72.96	75.94
72.42	72.98	75.96
72.46	75.42	75.98
72.50	75.46	

107–108 MHz Band [2]

(2)

MHz	MHz	MHz
107.900	107.940	107.980
107.920	107.960	

[1] Assignments made to stations on frequencies in this band are subject to the condition that no harmful interference will be caused to operational fixed stations or reception of television stations on channels 4 or 5. (See § 2.103.) Existing stations authorized in the 73 to 74.6 MHz band as of December 1, 1961, may continue to operate, are not required to afford protection to the radio astronomy service, and must comply with the following technical specifications:
Frequency Tolerance: .005 percent.
Frequency Deviation: ±15 kHz.
Authorized Bandwidth: 40 kHz.
Modulation Limiter: Required of transmitter authorized or installed after July 1, 1950.
Audio Low Pass Filter: Not required.

[2] In Hawaii only, these frequencies are available for assignment to control and repeater stations functioning in conjunction with the Domestic Public Land Mobile Radio Service on a shared coordinated basis with stations in the Maritime Mobile Service. Operations on these frequencies using frequency modulated or phase modulated emissions shall comply with the following technical specifications:

Frequency tolerance: .0005 percent.
Frequency deviation: ±5 kHz.
Authorized Bandwidth: 20 kHz.

2. In § 21.507(b) of the rules, footnote 2 is amended by adding the band 107–108 MHz.

§ 21.507 Bandwidth and emission limitations.

* * * * *

(b) The maximum authorized bandwidth of emission and, for the cases of frequency or phase modulated emissions, the maximum authorized frequency deviation shall be as follows:

Type of emission	Authorized bandwidth (kHz)	Frequency deviation (kHz)	Authorized bandwidth (kHz)	Frequency deviation (kHz)	Authorized bandwidth (kHz)	Frequency deviation (kHz)
A1	1		1		1	
A2	3		3		3	
A3	8		8		8	
F1	3		3		3	
F2	16		15		15	
F3	20	5	[3] 40	[3] 15	[1] 20	[1] 5

[1] In the frequency band 450 to 470 MHz, radio facilities using frequency modulated or phase modulated emission, authorized prior to June 1, 1968, will continue to be authorized with bandwidth of 40 kHz until Nov. 1, 1971, provided that the frequency deviation is reduced to 5 kHz by June 1, 1968.
[3] In the frequency bands 72.0–73.0, 75.4–76.0 and 107–108 MHz, radio facilities using frequency modulated or phase modulated emission will be authorized with maximum bandwidth of 20 kHz and maximum frequency deviation of 5 kHz. Radio facilities which were authorized for operation on Dec. 1, 1961, in the frequency band 73.0–74.6 MHz may continue to be authorized without change and with bandwidth of 40 kHz and frequency deviation of 15 kHz. New or modified facilities in the frequency band 73.0–74.6 MHz will not be authorized.

* * * * *

III. Part 81, of the rules is amended as follows:

1. In § 81.132 paragraph (a)(4) is amended by adding the band 107.890 to 108.000 MHz to the list of operational fixed stations.

§ 81.132 Authorized classes of emission.

(a) Unless otherwise specified in the station license or in this part, stations are authorized to employ classes of emission as follows:

* * * * *

(4) Operational fixed stations:

72 to 76 MHz	A1, A2, A3, F1, F2, and F3.
107.890 to 108.000	F1, F2, and F3.

* * * * *

2. Section 81.141(a) is amended by adding the frequency band 107.890–108.000 to the table.

§ 81.141 Microwave technical standards.

* * * * *

Frequency band (MHz)	Power (watts)[1]	Tolerance (percent)	Bandwidth [2]	Beamwidth [3] (degrees)
107.890–108.000	100	0.0005	20 kHz	20
* * *	* * *	* * *	* * *	* * *
*	*	*	*	*

3. Section 81.602 is amended by including the band 107.890–108.000 MHz in the eligibility requirements.

§ 81.602 Eligibility requirements.

An applicant for an operational fixed station using frequencies in the 72–76 MHz and 107.890–108.000 MHz bands must submit the following showings:

(a) That he is the licensee of a coast station;

(b) The specific need for a station; and

(c) That other telecommuncations facilities either are not available or will not provide effective results.

4. Section 81.603 is amended by adding the band (107–108 MHz) and geographical limitations to the list of frequencies available for operational fixed stations.

§ 81.603 Operational fixed frequencies in the bands 72–76 MHz and 107–108 MHz.

(a) The following frequencies listed in the bands below may be assigned to operational fixed stations:

(1)

72–76 MHz Band

MHz	MHz	MHz
72.02 [1]	72.54	75.50
72.04 [1]	72.58	75.54
72.06 [1]	72.62	75.58
72.08 [1]	72.64	75.62
72.10 [1]	72.66	75.64
72.12 [1]	72.68	75.66
72.14 [1]	72.70	75.68
72.16 [1]	72.72	75.70
72.18 [1]	72.74	75.72
72.20 [1]	72.76	75.74
72.22 [1]	72.78	75.76
72.24 [1]	72.80	75.78
72.26 [1]	72.82	75.80
72.28 [1]	72.84	75.82
72.30 [1]	72.86	75.84
72.32 [1]	72.88	75.86
72.34 [1]	72.90	75.88
72.36 [1]	72.92	75.90
72.38 [1]	72.94	75.92
72.40 [1]	72.96	75.94
72.42	72.98	75.96
72.46	75.42	75.98
72.50	75.46	

(2)

107–108 MHz Band

MHz
107.900 [2]
107.920 [2]
107.940 [2]
107.960 [2]
107.980 [2]

[1] These frequencies are available on a shared basis with the Manufacturers Radio Service.
[2] In Hawaii only, this frequency is available for assignment on a shared coordinated basis with stations in the Domestic Public Land Mobile Service.

* * * * *

[FR Doc.74–5321 Filed 3–6–74;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19692]

SAMPLING SYSTEMS FOR ANTENNA MONITORS

Extension of Time

In the matter of amendment of part 73 of the Commission's rules and regulations to establish standards for the design and installation of sampling systems for antenna monitors in standard broadcast stations with directional antennas.

1. As extended, the deadlines for filing comments and reply comments in this proceeding were set as October 30, 1973, and November 30, 1973, respectively.

2. On February 19, 1974, A. Earl Cullum and Associates submitted comments, accompanied by a petition requesting that they be accepted and considered in reaching a final decision in this matter. The petitioner states that while the firm had devoted considerable time and incurred considerable expense in an effort to complete timely comments, a series of unforeseen exigencies involving its clients frustrated this effort.

3. These comments, of course, are extremely late, and, as a matter of right, would not be entitled to any consideration. However, we have examined the proffered document, and believe that it represents a substantial contribution on the matters with which this proceeding is concerned. Its acceptance at this time would not substantially delay our further action in the instant proceeding which, in any event, has been slowed by the pressure of other work.

4. Accordingly, it is ordered, that Cullum's petition is granted, and his comments are accepted for consideration in this docket. However, fairness to the other parties involved herein requires that we afford a reasonable period of time within which they may file reply comments, should they desire to do so.

5. It is further ordered, that pursuant to the applicable procedures set forth in § 1.415 of the Commission's rules interested parties may file reply comments, directed to the matters discussed in the comments of A. Earl Cullum and Associates on or before March 15, 1974.

6. In accordance with the provisions of § 1.419 of the rules, an original and 14 copies of all reply comments shall be furnished the Commission. Copies of all pleadings filed in this proceeding are available for public inspection in the Public Reference Room at the Commission's headquarters in Washington, D.C. (1919 M St. NW).

Adopted: February 25, 1974.

Released: February 26, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.74-5324 Filed 3-6-74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 270]

[Release No. IC-8245, File No. S7-513]

CERTAIN SERVICE AGREEMENTS WITH INVESTMENT COMPANIES

Proposed Exemption for Affiliated Persons

Notice is hereby given that the Securities and Exchange Commission has under consideration the amendment of Rule 17d-1 [17 CFR 270.17d-1] under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a-1 et seq), as amended, in order to permit affiliated persons or principal underwriters, or affiliated persons thereof, of registered investment companies to enter into service agreements with such companies which meet specified standards. The proposed amendment would be adopted pursuant to sections 6(c), 17(d), and 38(a) of the Act (15 U.S.C. 80a-6(c), 80a-17(d), 80a-37(a)).

A number of registered investment companies have entered into agreements with affiliated persons or principal underwriters or affiliated persons of such persons or principal underwriters pursuant to which the affiliates provide the investment companies with services other than those of acting (a) as investment adviser as provided for in section 15 of the Act (15 U.S.C. 80a-15, Sec. 8, P.L. 91-547, 84 Stat. 1419), or (b) as an underwriter or broker within the meaning of section 17(e)(1) of the Act (15 U.S.C. 80a-17(e)(1)). Representatives of various investment companies have brought to the Commission's attention the need for clarification of the applicability of section 17(d) of the Act and Rule 17d-1 thereunder to such arrangements (referred to herein as "service agreements").[1]

As here pertinent, section 17(d) and Rule 17d-1 prohibit an affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, from acting as principal in a joint transaction or joint arrangement with the investment company unless the Commission issues a formal order permitting the transaction. Although the type of service agreement with which the proposed amendment to the Rule would deal involves services usually regarded as being performed on an agency basis, such as acting as transfer agent, the parties may be viewed as acting as principals when they enter into the agreement. The proposed amendment to Rule 17d-1 is intended to remove any question as to the legality under Section 17(d) and Rule 17d-1 of service agreements meeting certain specified standards. The standards of the proposed amendments are, of course, prospective and would be operative only if and when the amendment is adopted.

The proposed amendment would modify Rule 17d-1 to expand its exclusionary language to encompass a written service agreement approved and renewed in the manner required for advisory agreements by sections 15(a) and 15(c) provided that a majority of the directors of the investment company who are not interested persons specifically find in the course of a review such as they would make if the provisions of Section 15 were applicable that:

(1) such contract is in the best interest of the company and its shareholders;

(2) the services to be performed pursuant to the contract are services required for the operation of the company;

(3) the affiliated person or principal underwriter can provide services the nature and quality of which are at least equal to those provided by others offering the same or similar services; and

(4) the fees for such services are fair and reasonable in the light of the usual and customary charges made by others for services of the same nature and quality.[2]

The Commission intends that the above would represent only the minimum findings that the directors would be required to make under the proposed rule. Also, the directors would be expected to make findings in this context only after a thorough examination of all relevant facts.

The proposed amendment will not diminish in any way the fiduciary responsibilities under section 36 of the Act (15 U.S.C. 80a-35, Sec. 20, P.L. 91-547, 84 Stat. 1428) of the persons enumerated in that section, including directors who are not interested persons as defined in the Act. No agreement excepted from the provisions of rule 17d-1 by the proposed amendment should relate to services which could not otherwise properly be paid for by the investment company. When considering a

[1] Section 17(d) and rule 17d-1(a) and section 17(e) of the Act contain language which removes from their coverage most of the underwriting and brokerage activities performed by affiliates. Rule 17d-1(c) presently excludes an investment advisory contract subject to Section 15 of the Act from the protections offered by section 17(d) and rule 17d-1 thereunder. The provisions of investment advisory contracts subject to section 15, however, include only those which directly provide for investment advice, portfolio management, and correlative matters such as the compensation for or duration and termination of investment advisory arrangements and the execution of portfolio transactions. Other provisions of such contracts, which deal with housekeeping functions for the investment company, such as transfer agent services or other non-investment advisory matters, are not included within the ambit of section 15 and are thus not excluded from present rule 17d-1.

[2] The concept of usual and customary charge for service rendered is also found in the provisions of section 17(e)(2) of the Act.

service agreement involving affiliates, the directors should examine in particular not only the factors contained in the amendment proposed herein but also the extent to which the fee structure of any such agreement provides for a reduction in payments resulting from economies of scale as well as whether it provides a reasonable rate of return on the capital invested by the persons performing the services. The directors should be furnished information adequate to make judgments on these and other relevant issues by the contracting party.

These considerations are not intended to preclude affiliates who perform services for investment companies from realizing reasonable profits necessary to afford economic incentives. They are intended, however, to assure that those who derive economic benefits from their fiduciary relationship with investment companies do not abuse that relationship. In light of this intent, a standard of reasonableness should be applied not only to the profits to be gained from the specific services, but those from the affiliated relationship viewed as a whole.[3]

Accordingly, the Securities and Exchange Commission, pursuant to authority given it in sections 6(c), 17(d) and 38(a) of the Investment Company Act of 1940, hereby proposes to amend 17 CFR 270.17d-1(c) to read as follows:

§ 270.17d-1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(c) "Joint enterprise or other joint arrangement or profit-sharing plan" as used in this rule shall mean any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company or a controlled company thereof and any affiliated person or of a principal underwriter for such registered investment company, or any affiliated person of such a person or principal underwriter, have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking, including, but not limited to, any stock option or stock purchase plan, but shall not include (i) an investment advisory contract subject to section 15 of the Act or (ii) any other written contract for services for such registered investment company which is approved and renewed in the manner required for investment advisory contracts by sections 15(a) and 15(c) provided that a majority of the directors of the investment company who are not interested persons determine that:

(i) such contract is in the best interest of the company and its shareholders;

(ii) the services to be performed pursuant to the contract are services required for the operation of the company;

(iii) the affiliated person or principal underwriter can provide services the nature and quality of which are at least equal to those provided by others offering the same or similar services; and

(iv) the fees for such services are fair and reasonable in the light of the usual and customary charges made by others for services of the same nature and quality.

* * * * *

All interested persons are invited to submit views and comments with respect to the proposals, in writing, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before April 30, 1974. All communications with respect to this matter should refer to File No. S7-513. Such communications will be available for public inspection.

(6(c), 17(d), 38(a); 54 Stat. 800, 815, 841; 15 U.S.C. 80a-6(c), 80a-17(d), 80a-37(a))

By the Commission.

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

FEBRUARY 25, 1974.

[FR Doc.74-5311 Filed 3-6-74;8:45 am]

[3] While section 36(b)(4) provides that section 36(b) "shall not apply to compensation or payments made in connection with transactions subject to section 17 * * * or rules, regulations, or orders thereunder * * *," compensation from section 17 transactions may be taken into account in determining the reasonableness of overall management compensation. See testimony of then Chairman Hamer Budge on the 1970 Act Amendments to the Act before the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, 91st Cong., 2d Sess., Pt. 1 (1969) pp. 177-178.

[17 CFR Part 270]

[Release No. IC-8251 (Extract), S7-514]

ALASKA NATIVE CLAIMS SETTLEMENT ACT CORPORATIONS

Proposed Permanent Rule

Notice is hereby given that the Securities and Exchange Commission hereby adopts temporary rule 6c-2(T) [17 CFR 270.6c-2] and proposes to adopt Rule 6c-2 [17 CFR 270.6c-2], both under the Investment Company Act of 1940 ("Act") to exempt from all provisions of the Act except sections 8(a), 9, 17, 36, and 37 (15 U.S.C. 80a-8a, 80a-9, 80a-17, 80a-35, 80a-36) corporations organized pursuant to the Alaska Native Claims Settlement Act of 1971[1] ("Settlement Act") (such corporations hereinafter referred to collectively as "ANCSA Corporations"). Such exemptions are conditioned upon adherence by the ANCSA Corporations to reporting and other requirements specified herein. Rule 6c-2(T) is effective as of December 18, 1971, the date of the enactment of the Settlement Act; it will be superseded at such time as the Commission takes action on proposed rule 6c-2, which, as proposed, would provide the same relief on a permanent basis as is now provided by rule 6c-2(T).

The ANCSA Corporations have been (or will soon be) organized to hold and administer the extensive land grants, mineral rights, cash, and mineral revenues intended by the Government of the United States to recompense Alaska's native Indian Aleut and Eskimo population ("Alaska Natives") for lands within the State of Alaska. In accordance with this statutory purpose, the ANCSA Corporations will be owned and managed exclusively by Alaska Natives, who will be given shares of stock in the ANCSA Corporations. The ANCSA Corporations consist of twelve "Regional Corporations," representing the Alaska Natives residing in twelve geographical districts designated by the Department of the Interior, and more than 200 "Village Corporations" within these districts each representing Alaska Natives residing in a village.

Although the ANCSA Corporations are to be given substantial real estate and subsurface mineral interests, many of such interests are not presently specifically identifiable as they are to be selected and acquired over a four-year period in accordance with the provisions of the Settlement Act. Distribution of a siginficant portion of monetary compensation was made almost immediately upon enactment of the Settlement Act, however, and $130,000,000 of such monies has already been received by the twelve Regional Corporations. Furthermore, large additional distributions of cash will be made to the ANCSA Corporations in the next few years, so that, during this period, at least until they have fully exercised their land grant privileges and have begun to engage primarily in owning land or operating a business, many of the ANCSA Corporations may be investment companies within the meaning of sections 3(a)(1) and 3(a)(3) of the Act (15 U.S.C. 80a-3(a)(1), 80a-3(a)(3)).[2]

It appears that, without compliance with the Act or exemptive relief by the Commission, questions may be raised whether many ANCSA Corporations may operate in interstate commerce or buy securities in interstate commerce.[3] Several ANCSA Corporations have filed applications for orders of the Commission pursuant to section 3(b)(2) (15 U.S.C. 80a-3(b)(2)) of the Act, each claiming,

[1] P.L. 92-203, 92nd Cong., 85 Stat. 688.

[2] Section 3(a)(1) defines "investment company" as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a)(3) defines "investment company" as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (excluding Government securities and cash items) on an unconsolidated basis.

[3] Such activities might be precluded by sections 7(a)(4) and 7(b)(3) of the Act, which provide, respectively, that an unregistered investment company may not engage in any business in interstate commerce and that no depositor or trustee of or underwriter for any unregistered investment company may sell or purchase for the account of such company, by the use of the mails or any means or instrumentality of interstate commerce, any security or interest in a security, by whomever issued.

in effect, that the applicant is primarily engaged in a business other than that of being an investment company.[4] In view of the large number of ANCSA Corporations, many of which are potential applicants of this type, and the serious question as to whether such ANCSA Corporations can meet the operational prerequisites for a Section 3(b)(2) order, the Commission has determined to grant appropriate temporary exemptive relief by the promulgation of a rule pursuant to section 6(c) (15 U.S.C. 80a-6(c)) of the Act and to propose that such relief be made permanent.

Rule 6c-2(T) temporarily removes all ANCSA Corporations from the burden of complying with various requirements of the Act. Such corporations will be obliged to comply with only those provisions which provide essential protection for the substantial pools of liquid capital they hold in trust for the Alaska Natives. Accordingly, rule 6c-2(T) provides that the ANCSA Corporations shall be exempt from all provisions of the Act except sections 8(a), 9, 17, 36, and 37 provided, however, that such corporations must comply with certain reporting and other requirements set forth in the rule. Rule 6c-2 would provide exactly the same relief on a permanent basis, if adopted.

Section 8(a) of the Act requires the ANCSA Corporations to register with the Commission by filing a Form N-8A disclosing basic information such as the the name and address of the corporation, the names of its officers, directors, and adviser and the identity of other companies substantial amounts of the securities of which are held by the registrant. The more detailed Form N-8B-1 registration statement will not be required.

Section 9 of the Act prohibits a person convicted of certain crimes or enjoined from certain specified activities, generally crimes and activities involving securities transactions and the functions of underwriters, brokers, dealers and financial institutions, from serving as an officer, director, member of an advisory board, investment adviser, or depositor of a registered investment company. Section 9 also provides procedures for the removal of this prohibition under appropriate circumstances.

Section 17 of the Act, generally speaking, requires Commission approval before the ANCSA Corporations may engage in certain transactions with affiliated persons.

Section 36 of the Act authorizes the Commission or a shareholder to bring a civil action against officers, directors, members of advisory boards, investment advisers, depositors or underwriters of registered companies for breach of fiduciary duty involving personal misconduct. It further provides that an investment adviser is deemed to have a fiduciary duty with respect to the receipt of compensation for services or payments of a material nature paid by the investment company.

Section 37 of the Act makes it a crime under the Act to steal or embezzle the property of an investment company.

The exemptions granted by the rules may be claimed only by ANCSA Corporations which meet conditions requiring them to file annually with the Commission copies of reports required by section 7(o) (43 U.S.C. 1606(o)) of the Settlement Act, and to maintain the records used as the basis for such reports for examination by the Commission.

Rule 6(c)-2(T) is hereby adopted pursuant to sections 6(c), 38(a), and 39 of the Act. Proposed rule 6(c)-2 would be adopted pursuant to the same provisions. Section 6(c) of the Act provides that the Commission by rule, regulation, or order may conditionally or unconditionally exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. Section 38(a) states, in part, that the Commission shall have the authority from time to time to make, issue and amend such rules and regulations as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act. Section 39 states in part, subject to the Federal Register Act, rules and regulations of the Commission under the Act shall be effective upon publication in the manner prescribed by the Commission.

The Commission finds that the adoption of Rule 6c-2(T) is appropriate in the public interest and is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. The Commission further finds, in accordance with the requirements of the Administrative Procedure Act,[5] that notice of rule 6c-2(T) prior to its adoption and public procedure thereon are impracticable and unnecessary since the rule will be temporary in its effect and will not exempt any ANCSA Corporations from those provisions of the Act needed to provide essential protections for the assets being held for the Alaska Natives and since any delay in the adoption of the rule would cause great inconvenience to many ANCSA Corporations and prevent them from seeking an investment return on such assets for the benefit of the Alaska Natives until such time as the rule is adopted.[6] Accordingly, Rule 6c-2(T) became effective on February 26, 1974, retroactive to December 18, 1971, the date of enactment of the Settlement Act.

Commission action. Pursuant to the authority in sections 6(c), 38(a) and 39 of the Investment Company Act of 1940, the Securities and Exchange Commission proposes to amend § 270.6c-2 of Chapter II of Title 17 of the Code of Federal Regulations by changing the present temporary regulation thereunder to a permanent regulation to read as follows:

§ 270.6c-2 Exemption for Corporations Organized pursuant to the Alaska Native Claims Settlement Act of 1971.

(a) Any corporation organized pursuant to the Alaska Native Claims Settlement Act of 1971 ("Settlement Act") ("ANCSA Corporation") shall be exempt from all provisions of the Act except sections 8(a), 9, 17, 36, and 37 subject to the following conditions:

(b) Any company claiming exemptions pursuant to this rule shall file annually with the Commission copies of the reports required by section 7(o) of the Settlement Act and shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for such information and of the auditor's certifications thereto. All such accounts, books, and other documents shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Such company shall furnish to the Commission, within such time as the Commission may prescribe, copies of or extracts from such records which may be prepared without undue effort, expense, or delay as the Commission may by order require.

(Sections 6(c), 38(a), 39, 54, Stat. 800, 841, 842, 15 U.S.C. 80a-6(c), 80a-37(a), 80a-38)

All interested persons are invited to submit views and comments with respect to proposed Rule 6c-2, in writing, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before April 10, 1974. All communications with respect to this matter should refer to File No. S7-514. Such communications will be available for public inspection. Information on the Commission's adoption of temporary Rule 6c-2(T) is found elsewhere in this issue of the FEDERAL REGISTER.

By the Commission.

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

FEBRUARY 26, 1974.

[FR Doc.74-5279 Filed 3-6-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 966]

TOMATOES GROWN IN FLORIDA

Proposed Increase in Expenses

Consideration is being given to the approval of an amended budget of $157,000 for the Florida Tomato Committee for its fiscal period ending July 31, 1974. The committee was established under Mar-

[4] Section 3(b)(2) provides, in pertinent part, that if the Commission finds that an issuer is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities such issuer will not be an investment company within the meaning of the Act.

[5] 5 U.S.C. § 551 et seq. (1970).

[6] Id. § 553 (d)(1).

keting Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966).

This marketing order program regulates the handling of tomatoes grown in designated counties in the State of Florida, under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

All persons who desire to submit written data, views, or arguments in connection with this proposal may file the same, in quadruplicate, with the Hearing Clerk, Room 112–A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than March 14, 1974. All written comments will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is as follows:

Amend § 966.210(a) as follows:

§ 966.210 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending July 31, 1974, by the Florida Tomato Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate will amount to $157,000.

* * * * *

Dated: March 4, 1974.

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

[FR Doc.74–5353 Filed 3–6–74;8:45 am]

[7 CFR Parts 1007, 1030, 1032, 1050, 1060, 1061, 1063, 1064, 1065, 1068, 1076, 1078, 1079, 1090, 1097, 1098, 1104, 1106, 1108]

[Docket Nos. AO–361–A11, etc.]

MILK IN THE CHICAGO REGIONAL AND CERTAIN OTHER MARKETING AREAS

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	Docket No.
1030	Chicago Regional	AO–361–A11.
1007	Georgia	AO–366–A11.
1032	Southern Illinois	AO–313–A25.
1050	Central Illinois	AO–355–A16.
1060	Minnesota-North Dakota	AO–360–A9.
1061	Southeastern Minnesota-Northern Iowa.	AO–367–A8.
1063	Quad Cities-Dubuque	AO–105–A39.
1064	Greater Kansas City	AO–23–A46.
1065	Nebraska-Western Iowa	AO–86–A31.
1068	Minneapolis-St. Paul, Minnesota.	AO–178–A31.
1076	Eastern South Dakota	AO–260–A20.
1078	North Central Iowa	AO–272–A23.
1079	Des Moines, Iowa	AO–295–A28.
1090	Chattanooga, Tenn	AO–266–A18.
1097	Memphis, Tenn	AO–219–A29.
1098	Nashville, Tenn	AO–184–A35.
1104	Red River Valley	AO–298–A23.
1106	Oklahoma Metropolitan	AO–210–A36.
1108	Central Arkansas	AO–243–A27.

Notice is hereby given of a public hearing to be held at the O'Hare Inn, 6600 North Mannheim Rd., Des Plaines, Illinois, beginning at 9 a.m., local time, on March 12, 1974 with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the aforesaid specified marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to proposals No. 1 and 2.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSAL NO. 1—PROPOSED BY CERTAIN INTERESTED PRODUCER COOPERATIVE ASSOCIATIONS IN EACH OF THE AFOREMENTIONED MARKETING AREAS

Amend any or all of the orders for the aforementioned marketing areas to provide during any or all of the period April through July 1974 that the price of milk used to produce butter and nonfat dry milk shall not exceed an amount computed as follows:

(1) Multiply the Chicago butter price by 4.2;

(2) Multiply by 8.2 the weighted averaged of carlot prices per pound of spray process nonfat dry milk for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

PROPOSAL NO. 2—PROPOSED BY THE DAIRY DIVISION, AGRICULTURAL MARKETING SERVICE:

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of each of the aforesaid specified marketing areas or from the Hearing Clerk, Room 112–A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

Signed at Washington, D.C., on March 6, 1974.

JOHN C. BLUM,
Deputy Administrator, Regulatory Programs.

[FR Doc.74–5467 Filed 3–6–74;10:21 am]

Animal and Plant Health Inspection Service

[9 CFR Parts 160, 161]

STANDARDS FOR ACCREDITED VETERINARIANS

Proposed Revisions

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to sections 3, 4, 5, 11, and 13 of the Act of May 29, 1884, as amended, section 10 of the Act of August 30, 1890, sections 1 and 2 of the Act of February 2, 1903, as amended, section 3 of the Act of March 3, 1905, as amended, the Act of May 31, 1920, sections 3 and 11 of the Act of July 2, 1962 (21 U.S.C. 105, 111–113, 114, 114a, 114a–1, 116, 120, 121, 125, 134b, and 134f), and section 9 of the Horse Protection Act of 1970 (15 U.S.C. 1828), the Animal and Plant Health Inspection Service, is considering revising the standards for accredited veterinarians in Parts 160 and 161, Title 9, Code of Federal Regulations.

The Department of Agriculture accredits veterinarians to perform certain functions under the regulations of the Department relating to the cooperative control and eradication of livestock and poultry diseases, the interstate transportation of certain animals and poultry, and the exportation and importation of certain animals, poultry and products (9 CFR Chapter I, Subchapter A, and Subchapters B, C, and D, Part 11). Copies of the standards of conduct required are

furnished to each veterinarian upon his accreditation.

The purpose of this proposal is to (1) redefine the term "accredited veterinarian" to permit such person to perform functions under the Horse Protection Act of 1970, (2) clarify the Standards for Accredited Veterinarians, including standards which prohibit the unauthorized use and/or distribution of biologics, drugs, or chemicals, (3) provide for the automatic termination of accreditation in a given State when an accredited veterinarian's license to practice veterinary medicine in that State is terminated, (4) provide for the automatic termination of accreditation when a veterinarian is convicted of a crime related to the Standards for Accredited Veterinarians, and (5) establish a minimum period of revocation of one year.

The regulations in 9 CFR Parts 160 and 161 would be amended to read as follows:

PART 160—DEFINITION OF TERMS

§ 160.1 Definitions.

For the purposes of this subchapter the following words, phrases, names, and terms shall be construed, respectively, to mean:

(a) Service: The Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture.

(b) Deputy Administrator: The Deputy Administrator for the Service or his representative to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

(c) State: Any State, Territory, the District of Columbia or the Commonwealth of Puerto Rico.

(d) Accredited Veterinarian: [1] A veterinarian approved by the Deputy Administrator in accordance with the provisions of Part 161 of this subchapter to perform functions specified in Part 11 of Subchapter A, and Subchapters B, C, and D of this Chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

(e) Veterinarian-in-Charge: The veterinary official of the Service who is assigned by the Deputy Administrator to supervise and perform the official work of the Service in the State where the veterinarian concerned is accredited or wishes to be accredited.

(f) State Animal Health Official: The State Animal Health Official who is responsible for the livestock and poultry disease control and eradication programs of the State in which the veterinarian is accredited or wishes to be accredited.

(g) Official certificate, form, record, report, tag, band, brand, or other identification: Means any certificate, form, record, report, tag, band, brand, or other identification prescribed by statute or regulations issued by the Secretary of Agriculture of the United States or State Animal Health Official for issue by an accredited veterinarian performing official functions under this subchapter.

[1] The provisions of Part 11 of Subchapter A, and Subchapters B, C, and D of this chapter authorize Federal and State veterinarians and accredited veterinarians to perform specified functions. Full-time Federal (including military) and State employed veterinarians are authorized to perform such functions, pursuant to delegation of authority or cooperative agreements, without specific accreditation under the provisions of this subchapter.

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

Sec.

161.1 Requirements for accreditation.
161.2 Standards for accredited veterinarians.
161.3 Suspension or revocation of veterinary accreditation.

Authority: The provisions of this Part 161 issued under 23 Stat. 32, as amended; 26 Stat. 417; 32 Stat. 791, 792, as amended; 33 Stat. 1265, as amended; 41 Stat. 699; 58 Stat. 734, as amended; 65 Stat. 693; 76 Stat. 130, 132; 84 Stat. 1406; 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 116, 120, 121, 125, 134b, and 134f.

§ 161.1 Requirements for accreditation.

(a) The Deputy Administrator is hereby authorized to accredit a veterinarian when he determines that such veterinarian (1) as a graduate of a college of veterinary medicine; (2) is licensed to practice veterinary medicine in the State in which he wishes to be accredited; (3) has made formal application for accreditation on Form 1–36A, "Application for Veterinary Accreditation"; (4) has passed an examination administered by the Service; and (5) has been jointly recommended by the State Animal Health Official and the Veterinarian-in-Charge for the State in which the veterinarian is licensed and wishes to be accredited.

(b) The Deputy Administrator is hereby authorized to reaccredit a veterinarian whose accreditation has been revoked when he determines, after the order of revocation has been in effect for not less than one year, that such veterinarian (1) is licensed to practice veterinary medicine in the State in which he wishes to be accredited; (2) has made formal application for accreditation on Form 1–36A, "Application for Veterinary Accreditation"; (3) has been jointly recommended by the State Animal Health Official and the Veterinarian-in-Charge for the State in which the veterinarian is licensed and wishes to be accredited; and (4) such veterinarian has furnished adequate assurance that he will faithfully fulfill the duties of an accredited veterinarian in the future.

§ 161.2 Standards for accredited veterinarians.

An accredited veterinarian shall perform official duties subject to the supervision and direction of the Veterinarian-in-Charge and the State Animal Health Official and shall observe the following specific standards:

(a) An accredited veterinarian shall not issue a certificate, form, record or report which reflects the results of any inspection, test, vaccination or treatment performed by him, with respect to any animal or poultry, unless he has personally inspected each animal, bird, or flock in such a manner as to detect abnormalities, such as, but not limited to, locomotion, body excretion, respiration, and skin conditions. An accredited veterinarian shall thoroughly examine each animal, bird, or flock showing abnormalities, in order to determine whether or not there is the presence or absence of a communicable disease, or in the case of a horse being examined under Part 11 of Subchapter A, whether or not it complies with such regulations and the provisions of the Horse Protection Act of 1970, and any legislation amendatory thereof.

(b) An accredited veterinarian shall not sign any certificate, form, record or report, or permit such a certificate, form, record, or report to be used until, and unless, he has ascertained that it has been accurately and fully completed clearly identifying the animal(s) or bird(s) to which it applies and showing the results of the inspection, test, or vaccination, etc., he has conducted, except as provided in paragraph (c) of this section. The accredited veterinarian shall distribute copies of certificates, forms, records, and reports, according to instructions issued to him by the Veterinarian-in-Charge or the State Animal Health Official.

(c) An accredited veterinarian shall not issue or sign any certificate, form, or report which reflects the results of any inspection, test, vaccination, or treatment, performed by another accredited veterinarian, unless the certificate, form, or report indicates that the inspection, test, vaccination, or treatment was performed by the other veterinarian; identifies the name of such other veterinarian; and includes the date and the place where such inspection, test, or vaccination was performed.

(d) An accredited veterinarian shall perform official tests, inspections, treatments, and vaccinations and shall submit specimens to designated laboratories in accordance with Federal and State regulations and instructions issued to the accredited veterinarian by the Veterinarian-in-Charge or the State Animal Health Official, or both.

(e) An accredited veterinarian shall identify reactor animals by branding and tagging or such other method as may be prescribed in instructions issued to him by the Veterinarian-in-Charge or the State Animal Health Official, or both.

(f) An accredited veterinarian shall immediately report all diagnosed or suspected cases of diseases of livestock, birds, or poultry named in § 71.3 (a) and (b) of Part 71, Subchapter C of this Chapter, to the Veterinarian-in-Charge or the State Animal Health Official, or both. An accredited veterinarian designated to examine and observe horses at shows and exhibitions shall complete the form provided on all horses which he considers are sored and shall promptly report each horse considered by him to be sored to

the Veterinarian-in-Charge for the State in which the horse show or exhibition is held in accordance with the Horse Protection Act of 1970, or any legislation amendatory thereto, and the regulations as promulgated in Part 11, Subchapter A of this Chapter.

(g) An accredited veterinarian shall take such measures as are necessary to prevent the spread of communicable diseases of livestock or poultry. Such measures include, but are not limited to, cleaning and disinfecting of footwear, restraining chutes, and other equipment before proceeding from an infected premises; and utilizing sanitized instruments to collect specimens from, or administer vaccines to such individual animals.

(h) An accredited veterinarian shall keep himself currently informed on Federal and State regulations governing the movement of animals and poultry, and on procedures applicable to disease control and eradication programs, including emergency programs, and on regulations under the Horse Protection Act of 1970, and any legislation amendatory thereof. He shall carry out all of his responsibilities under the applicable Federal programs and cooperative programs in accordance with such regulations and instructions issued to him by the Veterinarian-in-Charge or the State Animal Health official, or both.

(i) An accredited veterinarian shall not use or dispense in any manner, any drug, chemical, vaccine or serum, or other biological product authorized, for use under any Federal regulation or cooperative disease eradication program, without authorization from the Service or in contravention of Federal or State statute or regulation, or instruction.

(j) An accredited veterinarian shall be responsible for proper use of all certificates, forms, records, reports, tags, brands, bands, or other identification used in his work as an accredited veterinarian and shall take proper precautions to prevent misuse thereof. He shall immediately report to the Veterinarian-in-Charge or State Animal Health official the loss, theft, or deliberate or accidental misuse of any such certificate, form, record, report, tag, band, brand, or other identification. He shall not permit any certificate, form, record, report, tag, band, brand, or other identification, to be kept in the custody of anyone but himself prior to official use.

(k) An accredited veterinarian designated under the regulations issued pursuant to the Horse Protection Act of 1970, and any legislation amendatory thereof (Part 11, Subchapter A, 9 CFR), for the purpose of determining whether horses are in compliance with said Act, and any legislation amendatory thereof, and said regulations, shall thoroughly examine each horse in a professionally acceptable manner, in accordance with any instructions given by the Veterinarian-in-Charge, to determine whether or not each horse is in compliance with said Act, and any legislation amendatory thereof, and said regulations.

§ 161.3 Suspension or revocation of veterinary accreditation.

(a) The Deputy Administrator is authorized to suspend for a given period of time, or to revoke, the accreditation of a veterinarian when he determines that the accredited veterinarian has not complied with the "Standards for Accredited Veterinarians" as set forth in § 161.2, or in lieu thereof to issue a written notice of warning to the accredited veterinarian when the Deputy Administrator determines a notice of warning will be adequate to attain compliance with the Standards.

(b) Accreditation in a given State shall be automatically terminated when an accredited veterinarian's license to practice veterinary medicine in that State is terminated.

(c) Accreditation shall be automotically revoked when an accredited veterinarian is convicted of a crime in either State or Federal court, if such conviction is based on the performance or nonperformance of any act required of him in his capacity as an accredited veterinarian.

(d) Any suspension or revocation of accreditation for failure to comply with the Standards shall be applicable in all States in which the veterinarian is accredited.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments 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 8, 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 1st day of March 1974.

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

[FR Doc.74-5352 Filed 3-6-74;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF DEFENSE

Department of the Air Force

PROPOSED MINUTEMAN II OPERATIONAL BASE LAUNCH

Notice of Public Hearing

MARCH 5, 1974.

Notice is hereby given that in accordance with the National Environmental Policy Act (42 U.S.C. 4321 et seq) the United States Air Force will conduct informal public hearings in Helena, Montana, March 14, 1974, on the draft environmental statement concerning the launch of Minuteman II Missiles. Air Force Colonel Vincent A. Jordan will preside at the informal hearing scheduled to begin at 7:30 p.m. in the Montana State Highway Department auditorium located at 6th Avenue and Roberts Street.

The draft environmental statement on the operational Base Launch Program (called Giaant Patriot) discusses a demonstration launch program of four unarmed Minuteman II Missiles from operational silos near Malmstrom Air Force Base, Montana. The other launches in the program will be discussed in another environmental statement.

The space trajectory will carry the missiles up to 400 statute miles (350 nautical miles) over portions of Montana, Idaho, and Oregon enroute to a Pacific Ocean target in a lagoon at Canton Island in the Phoenix Island. Depending on which launch sites are selected, the trajectory may also cross the extreme southeast corner of Washington or the northwest top of California.

Persons desiring to participate in the hearing are asked to submit a request, in writing, to Colonel Jordan, c/o 341 Combat Support Group/Judge Advocate, Malmstrom Air Force Base, Montana 59402 or by calling his office at Offutt Air Force Base, Nebraska, 402–254–5132.

Copies of the draft environmental statement have been made available to the Helena City Library, the Montana State Historical Society Library, the State of Montana Library and the State Clearing House, Helena, Montana. Copies may be obtained from HQ USAF/PREV. Washington, D.C. 20330 and 341 SMW/Office of Information, Malstrom Air Force Base, Montana 59402.

STANLEY L. ROBERTS,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.74–5398 Filed 3–6–74; 8:45 am]

Department of the Army

ARMY HISTORICAL ADVISORY COMMITTEE

Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463) announcement is made of the following committee meeting:

Name: Department of the Army Historical Advisory Committee.

Date: April 5, 1974.

Place: Conference Room, Wing 2, Second Floor, Tempo C, 2d and R Streets, SW, Washington, D.C. 20315.

Time: 1000–1140, 1345–1515.

Proposed Agenda:
1000–1140—Review of historical activities.
1345–1515—Discussion of activities and executive session of the committee.

Purpose of meeting. The committee will review the past year's historical activities based on reports and manuscripts received throughout the year and formulate recommendations to the Secretary of the Army for advancing the purposes of the Army Historical Program.

Meetings of the Advisory Committee are open to the public. Public attendance depending on available space, may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the April 5 meeting.

Any member of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee Chairman may allow public presentations of oral statements at the meeting.

All communications regarding this Advisory Committee should be addressed to LTC C. F. Moore, Advisory Committee Management Officer for the Chief of Military History, Room 2009, Tempo C, 2d & R Streets, SW, Washington, D.C. 20315.

By authority of the Secretary of the Army.

R. B. BELNAP,
Special Advisor to TAG.

FEBRUARY 28, 1974.

[FR Doc.74–5231 Filed 3–6–74; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W–43942 (943)]

WYOMING

Colorado Interstate Corp.; Notice of Pipeline Application

MARCH 1, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Corporation has applied for a natural gas pipeline right-of-way in the following townships:

SIXTH PRINCIPAL MERIDIAN, WYOMING

Tps. 18 and 19 N., R. 99 W.,
Tps. 13, 14, 15, 17, and 18 N., R. 100 W.,
T. 15 N., R. 100½ W.,
Tps. 12, 13, 15, and 16 N., R. 101 W.

The pipeline will convey natural gas from several producing gas wells in Tps. 12 and 13 N., R. 101 W., and T. 13 N., R. 100 W., to an existing pipeline in sec. 9, T. 19 N., R. 99 W.

The purpose of this notice is to allow any persons asserting a claim to the lands or having bona fide objections to the proposed pipeline right-of-way to file their objections in this office. Any claim or objections must be filed not later than 30 days from the date of this notice, with evidence that a copy thereof has been served on the applicant. The claim or objections must be filed with the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001, within the time specified herein.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74–5256 Filed 3–6–74; 8:45 am]

[W–42809 (943)]

WYOMING

Colorado Interstate Corp.; Notice of Pipeline Application

MARCH 1, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Corporation has applied for a natural gas pipeline right-of-way across the following land:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 17 N., R. 99 W.,
Sec. 18, lot 8.

The pipeline will convey natural gas from the 1 Champlin 135 Amoco B–1 well to an existing natural gas pipeline in sec. 19, T. 17 N., R. 99 W., Sixth Principal Meridian, Wyoming.

The purpose of this notice is to allow any persons asserting a claim to the lands or having bona fide objections to the proposed pipeline right-of-way to file their objections in this office. Any claim or objections must be filed not later than 30 days from the date of this notice, with evidence that a copy thereof has been served on the applicant. The claim or objections must be filed with the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001, within the time specified herein.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74–5253 Filed 3–6–74;8:45 am]

[W–43337 (943)]

WYOMING

Colorado Interstate Corp.; Notice of Pipeline Application

MARCH 1, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Corporation has applied for a natural gas pipeline right-of-way across the following lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 21 N., R. 99 W.,
Sec. 28, E½SE¼ and SW¼SE¼.

The pipeline will convey natural gas from the Ten Mile Draw Unit 4 gas well to an existing natural gas pipeline in sec. 27, T. 21 N., R. 99 W., Sixth Principal Meridian, Wyoming.

The purpose of this notice is to allow any persons asserting a claim to the lands or having bona fide objections to the proposed pipeline right-of-way to file their objections in this office. Any claim or objections must be filed not later than 30 days from the date of this notice, with evidence that a copy thereof has been served on the applicant. The claim or objections must be filed with the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001, within the time specified herein.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74–5254 Filed 3–6–74;8:45 am]

[W–41977 (943)]

WYOMING

Coastal States Gas Corp.; Notice of Pipeline Application

MARCH 1, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Coastal States Gas Corporation has applied for a right-of-way for an underground corrosion control device on an existing natural gas pipeline on the following land:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 51 N., R. 100 W.,
Sec. 7, lot 5.

The purpose of this notice is to allow any persons asserting a claim to the lands or having bona fide objections to the proposed corrosion control device right-of-way to file their objections in this office. Any claim or objections must be filed not later than 30 days from the date of this notice, with evidence that a copy thereof has been served on the applicant. The claim or objections must be filed with the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001, within the time specified herein.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74–5252 Filed 3–6–74;8:45 am]

[W–43605 (943)]

WYOMING

Marathon Pipe Line Co.; Notice of Pipeline Application

MARCH 1, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Marathon Pipe Line Company has applied for an oil pipeline right-of-way in the following townships:

SIXTH PRINCIPAL MERIDIAN, WYOMING

Tps. 46 and 47 N., R. 90 W.,
Tps. 46 and 47 N., R. 91 W.

The pipeline will convey oil from producing oil wells in sec. 6, T. 46 N., R. 90 W., and sec. 1, T. 46 N., R. 91 W., Sixth Principal Meridian, Wyoming to the applicant's existing gathering system in sec. 23, T. 47 N., R. 91 W., Sixth Principal Meridian, Wyoming.

The purpose of this notice is to allow any persons asserting a claim to the lands or having bona fide objections to the proposed pipeline right-of-way to file their objections in this office. Any claim or objections must be filed not later than 30 days from the date of this notice, with evidence that a copy thereof has been served on the applicant. The claim or objections must be filed with the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001, within the time specified herein.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74–5255 Filed 3–6–74;8:45 am]

[W–41922 (943)]

WYOMING

Montana-Dakota Utilities Co.; Notice of Pipeline Application

MARCH 1, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Montana-Dakota Utilities Co. has applied for a natural gas compressor station site right-of-way on the following land:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 55 N., R. 96 W.,
Sec. 10, W½SW¼.

The compressor units are required to pump gas produced from the Government-Trig No. 16–9 and the Government-Ferguson No. 13–10 wells into the applicant's existing pipeline.

The purpose of this notice is to allow any person asserting a claim to the lands or having bona fide objections to the proposed compressor station right-of-way to file their objections in this office. Any claim or objections must be filed not later than 30 days from the date of this notice, with evidence that a copy thereof has been served on the applicant. The claim or objections must be filed with the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001, within the time specified herein.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74–5250 Filed 3–6–74;8:45 am]

[C–034373 (943)]

WYOMING

Pasco Pipeline Co.; Notice of Pipeline Application

MARCH 1, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Pasco Pipeline Company has applied to amend right-of-way grant C–034373 to construct an additional oil pipeline in the following townships:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 33 N., R. 80 W.,
T. 33 N., R. 81 W.,
Tps. 32 and 33 N., R. 82 W.,
Tps. 31 and 32 N., R. 83 W.,
Tps. 30 and 31 N., R. 84 W.,
Tps. 28, 29, and 30 N., R. 85 W.,
Tps. 26, 27, and 28 N., R. 86 W.,
T. 26 N., R. 87 W.

The pipeline will convey oil from the Platte Pipeline at Casper, Wyoming to the Sinclair, Wyoming refinery.

The purpose of this notice is to allow any persons asserting a claim to the lands or having bona fide objections to the proposed pipeline right-of-way to file their objections in this office. Any claim or objections must be filed not later than 30 days from the date of this notice, with evidence that a copy thereof has been served on the applicant. The claim or objections must be filed with the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001, within the time specified herein.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74–5258 Filed 3–6–74;8:45 am]

[C-033363 (943)]

WYOMING

Pasco Pipeline Co.; Notice of Pipeline Application

MARCH 1, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Pasco Pipeline Company has applied to to amend right-of-way grant C-033363 to construct an additional oil pipeline in the following townships:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 21 N., R. 86 W.,
T. 22 N., R. 86 W.,
Tps. 22, 23, 24, 25, and 26 N., R. 87 W.

The pipeline will convey oil from the Platte Pipeline at Casper, Wyoming to the Sinclair, Wyoming refinery.

The purpose of this notice is to allow any persons asserting a claim to the lands or having bona fide objections to the proposed pipeline right-of-way to file their objections in this office. Any claim or objections must be filed not later than 30 days from the date of this notice, with evidence that a copy thereof has been served on the applicant. The claim or objections must be filed with the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001, within the time specified herein.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74-5257 Filed 3-6-74;8:45 am]

[W-37034 (943)]

WYOMING

Phillips Petroleum Co.; Notice of Pipeline Application

MARCH 1, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Phillips Petroleum Company has applied to amend right-of-way grant W-37034 to construct a natural gas pipeline across the following lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 36 N., R. 67 W.,
Sec. 22, NE¼NE¼, S½NE¼, and E½SE¼.

The pipeline will convey natural gas from tank batteries in secs. 22 and 26, to an existing pipeline in sec. 22, all in T. 36 N., R. 68 W., Sixth Principal Meridian, Wyoming.

The purpose of this notice is to allow any persons asserting a claim to the lands or having bona fide objections to the proposed pipeline right-of-way to file their objections in this office. Any claim or objections must be filed not later than 30 days from the date of this notice, with evidence that a copy thereof has been served on the applicant. The claim or objections must be filed with the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001, within the time specified herein.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74-5249 Filed 3-6-74;8:45 am]

[W-21844 (943)]

WYOMING

Ralston Processing Associates, Inc.; Notice of Pipeline Application

MARCH 1, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Ralston Processing Associates, Inc. has applied to amend right-of-way grant W-21844 to expand the Oregon Basin Gas Plant right-of-way on the following land:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 51 N., R. 100 W.,
Sec. 8, NE¼NW¼.

The plant site will be enlarged to encompass an area 210 feet by 800 feet in size.

The purpose of this notice is to allow any persons asserting a claim to the lands or having bona fide objections to the proposed enlargement of the right-of-way to file their objections in this office. Any claim or objections must be filed not later than 30 days from the date of this notice, with evidence that a copy thereof has been served on the applicant. The claim or objections must be filed with the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001, within the time specified herein.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74-5251 Filed 3-6-74;8:45 am]

NEW MEXICO MULTIPLE USE ADVISORY BOARD

Notice of Meeting

Notice is hereby given that the New Mexico Multiple Use Advisory Board of the Bureau of Land Management will meet in Albuquerque, New Mexico, March 19-21, 1974, at the Panorama Inn at Rio Rancho Estates off NM Highway 528 as follows:

March 19 at 2:00 p.m.: Wildlife advisers from Grazing District Advisory Boards will meet to elect a representative to the Multiple Use Advisory Board, and to consider, discuss, and hear reports on duties and responsibilities of district wildlife representatives and Federal and State aspects of the Endangered Species Act.

March 20 at 8 a.m.: Field tour of lava flow "malpais" area south of Grants, New Mexico, to observe lands offered for proposed private exchange.

March 20, at 2 p.m.: Continuation of field tour through Mesa de Oro area west of Los Lunas, New Mexico, to observe lands selected for proposed private exchange of "malpais" lands.

March 21 at 8 a.m.: Election of officers; report on Bureau of Land Management activities, including the range management program, branding requirements, yearling conversion ratios, long-term permits, exotic game releases, and the U.S. energy development program.

Two committees selected by the cochairmen from members of the Board will deliberate during the afternoon on two topics and make recommendations at the close of the meeting. Committees will make recommendations as to a course of action as to the proposed Malpais exchange, and as to improving public participation in and understanding of the Bureau's planning system.

Meetings will be open to the public. Effort will be made on a space-available and time-available basis to accommodate members of the public wishing to participate in the field tour, and wishing to make written or oral statements to the Board, provided that notice of such desire and intent are communicated to the New Mexico State Director of the Bureau of Land Management not later than 4:00 p.m., March 18, 1974.

Written communications and requests for information on the meetings and tour should be directed to the State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Telephone requests or messages on the same subjects should be directed to Arthur W. Zimmerman, (505) 988-6217.

ARTHUR W. ZIMMERMAN,
State Director.

FEBRUARY 27, 1974.

[FR Doc.74-5259 Filed 3-6-74;8:45 am]

Bureau of Indian Affairs

PAULOFF HARBOR (SANAK)

Administrative Determination

Revised final decision concerning the ineligibility of Pauloff Harbor (Sanak) as a native village for purposes of Ancsa 1971 action upon protest.

This is a revised decision on a protest filed pursuant to 43 CFR, Part 2650 by the Aleut Corporation by and through its attorneys, Kay, Miller, Libbey, Kelly, Christie and Fuld, hereinafter referred to as protestant, First National Building, Suite 500, Anchorage, Alaska 99501. The protest of the Aleut Corporation was dated October 29, 1973, and it was received on October 30, 1973, by the Director, Juneau Area Office, Bureau of Indian Affairs.

Protestant objected to the Native Village of Pauloff Harbor (Sanak) being determined to be ineligible because protestant contended that the village does meet the requirements of 43 CFR 2651.2(b).

The Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688-716), and 43 CFR, Part 2650 provides for

the settlement of certain land claims of Alaska Natives and for other purposes. Section 11(b)(2) of the Act is quoted as follows:

Within two and one-half years from the date of enactment of this Act, the Secretary shall review all of the villages listed in subsection (b)(1) hereof, and a village shall not be eligible for land benefits under subsection 14 (a) and (b), and any withdrawal for such village shall expire, if the Secretary determines that * * *

(a) Less than twenty-five Natives were residents of the village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; * * *.

The 1970 Census is not, therefore, the exclusive source of information for the determination of residency. Part 43h of Title 25 of the Code of Federal Regulations provides for the enrollment of the Natives. A main source of "other evidence satisfactory to the Secretary of the Interior" is the official enrollment which not only contains evidence of race but of residence (on the 1970 Census date) as well.

Subpart 2651.2 of 43 CFR contains the authority for the Secretary of the Interior in the determination of the eligibility of Natives for land benefits under the Act. On October 3, 1973, the Area Director, pursuant to 43 CFR 2651.2(a)(2), published a proposed decision of ineligibility for the Village of Pauloff Harbor (Sanak), which decision was based upon information, including enrollment computer printouts, available at that time. The above referenced protest was timely received and considered, but since it failed to present facts upon which the proposed decision could be reversed the decision was affirmed on December 6, 1973 and the Area Director certified his final decision of ineligibility to the Ad Hoc Board.

The final decision was appealed to the Ad Hoc Board by the protestant on January 2, 1974, pursuant to 43 CFR 2651.2(a)(4). During the pendency of this appeal certain information became available concerning the enrollment of various individuals, which, if known prior to the Area Director's final decision, would have caused him to reverse his proposed decision of ineligibility. This fact was made known to the Ad Hoc Board in a reply brief of the Area Director to the appeal.

In ruling by the Ad Hoc Board, the matter was remanded to the Area Director in order that he might re-examine the record, develop new findings and publish his revised conclusions, if any, in the FEDERAL REGISTER. This revised Final Decision responds to the order of remand of the Ad Hoc Board.

As of January 24, 1974, 25 Natives had been enrolled to the Native Village of Pauloff Harbor (Sanak). On August 16, 1973, a field investigation was completed of Pauloff Harbor (Sanak) and at that time only three Natives who used the village as a place where they actually lived for a period of time in 1970 had been certified for enrollment to this village, however, as of January 24, 1974, the Area Director finds 13 Natives who used the village as a place where they actually lived for a period of time in 1970 had been approved for enrollment to this village. The field investigation also revealed, and the Area Director finds, that Pauloff Harbor (Sanak) had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Native's own cultural patterns and life style; that it is not modern and urban in character and that the 25 Natives enrolled to Pauloff Harbor (Sanak) are properly enrolled. In finding these facts the Area Director is able to conclude that Pauloff Harbor (Sanak) now meets the requirements of § 2651.2(b) of the regulations, and in so doing, is determined to be a village eligible for benefits under the Act.

Therefore, pursuant to the order of the Ad Hoc Board, the Director, Juneau Area Office, Bureau of Indian Affairs, having re-examined and re-evaluated the protest of the Aleut Corporation, together with the revised administrative record and final decision, does hereby revise his final decision of November 30, 1973, published in the FEDERAL REGISTER on December 6, 1973, (Vol. 38, Pages 33620 and 33621), and determines that the Native Village of Pauloff Harbor (Sanak) is now eligible for land benefits under said Act.

Pursuant to the order remanding the matter this revised final decision shall be published in the FEDERAL REGISTER and in one or more newspapers of general circulation in the State of Alaska and a copy of the revised final decision and findings of fact upon which the decision is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska and any other party of record. Such revised final decision shall become final unless appealed to the Secretary of the Interior by a notice filed with the Ad Hoc Board as established in 43 CFR 2651.2(a)(5), on or before April 8, 1974. Protests shall not be made directly to the Area Director.

Appellant shall have not more than 15 days from the date of filing of his notice of appeal within which to file an appeal brief, and the opposing parties shall have not more than 15 days from the date of receipt of the appellant's brief within which to file an answering brief. No more than 15 days shall be allowed for the filing of additional briefs in connection with such appeals. All hearings held in connection with such appeals shall be conducted in the State of Alaska.

The decision of the Ad Hoc Board shall be submitted to the Secretary of the Interior for his personal approval.

The Ad Hoc Board is now known as the Alaska Native Claims Appeal Board and its address is P.O. Box 2433, Anchorage, Alaska 99510.

CLARENCE ANTIOQUIA,
Acting Director.

FEBRUARY 15, 1974.

[FR Doc.74-5248 Filed 3-6-74;8:45 am]

National Park Service

GOLDEN GATE NATIONAL RECREATION AREA ADVISORY COMMISSION

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 2 p.m., on Saturday, March 16, 1974, at the Sixth Army Conference Room, Building No. 35, Mesa Street, The Presidio, San Francisco, California.

The Commission was established by Public Law 92-589 to advise on general policies and specific matters related to planning, administration, and development affecting the Golden Gate National Recreation Area and other units of the National Park System in Marin and San Francisco Counties.

The members of the Commission are as follows:

Ernest C. Ayala, San Francisco, Ca.
Richard Bartke, El Cerrito, Ca.
Fred C. Blumberg, Lafayette, Ca.
Frank C. Boerger, San Anselmo, Ca.
Joseph M. Caverly, San Rafael, Ca.
Lambert Lee Choy, San Francisco, Ca.
Mrs. Daphne Greene, Ross, Ca.
Peter Haas, San Francisco, Ca.
Mrs. Amy Meyer, San Francisco, Ca.
Joseph Mendoza, Pt. Reves Station, Ca.
John McGirr Mitchell, Mill Valley, Ca.
Merritt A. Robinson, San Francisco, Ca.
William Thomas, San Francisco, Ca.
Gene Washington, San Francisco, Ca.
Dr. Edgar Wayburn, San Francisco, Ca.

The purpose of the meeting is to attend to the organizational requirements of the Commission, and to receive activity reports on matters affecting the Golden Gate National Recreation Area.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

Persons who wish to file a written statement, or who want further information concerning this meeting, may contact William J. Whalen, Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, California 94123 (415 556-2920). Minutes of the meeting will be available for public inspection three weeks after the meeting at the Office of the Superintendent.

Dated February 25, 1974.

ROBERT M. LANDAU,
Liaison Officer, Advisory Commissions, National Park Service.

[FR Doc.74-5193 Filed 3-6-74;8:45 am]

Office of the Secretary

JOHN E. FORD, JR.

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of February 3, 1974.

Dated: February 3, 1974.

JOHN E. FORD, Jr.

[FR Doc.74-5260 Filed 3-6-74;8:45 am]

OTIS B. HOCKER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of January 29, 1974.

Dated: January 30, 1974.

OTIS B. HOCKER.

[FR Doc.74-5261 Filed 3-6-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

COCONINO NATIONAL FOREST ADVISORY COMMITTEE

Notice of Meeting

The Coconino National Forest Grazing Advisory Committee will meet at 1:30 p.m., March 29, 1974, in the Arizona Public Service Conference Room, 101 West Cherry Street, Flagstaff, Arizona 86001.

The purpose of this meeting is to review problems and matters of mutual interest to the livestock users and the Forest Service, and to discuss (1) Ownership of permitted livestock on National Forest lands, (2) Mogollon Rim Land use, and (3) permittee complaints.

The meeting will be open to the public. Visitors may speak up at any time during the meeting with recognition by the Chairman.

DON D. SEAMAN,
Forest Supervisor.

MARCH 1, 1974.

[FR Doc.74-5234 Filed 3-6-74;8:45 am]

RIO GRANDE NATIONAL FOREST GRAZING ADVISORY BOARD

Notice of Meeting

The Rio Grande National Forest Grazing Advisory Board will meet at 1:30 P.M. on April 5, 1974. The meeting will be held in the Forest Supervisor's Office, Monte Vista, Colorado.

The purpose of this meeting is to elect officers; to consider permittee request for informal review of grazing regulations as they apply to waiver of grazing permits; to review the Forest Supervisor's proposal for changes in application of the nonuse Policy; to review Forest commensurability policy, and to discuss Big Game Hunting and Livestock use coordination.

The meeting will be open to the public and written statements may be filed with the board before or after the meeting. Persons who wish to attend should contact Forest Supervisor James R. Mathers, telephone 303-852-5941. Participation by the public during the meeting will be permitted only at the invitation of the chairman.

RONALD R. SCHULZ,
Acting Forest Supervisor.

MARCH 1, 1974.

[FR Doc.74-5237 Filed 3-6-74;8:45 am]

SAN JUAN NATIONAL FOREST MULTIPLE USE ADVISORY COMMITTEE

Notice of Meeting

The San Juan National Forest Multiple Use Advisory Committee will meet at 9:30 a.m. April 5, 1974, at the Lodge at Purgatory, Highway 550, north of Durango, Colorado.

The purpose of this meeting is to discuss:

1. Land use planning.
2. The new timber management plan.
3. Chimney Rock Archeological Site development.
4. Manpower programs.
5. The Colorado Trail.
6. Wilderness management.
7. New mining regulations.
8. Power transmission lines.
9. Road closures.
10. Ski area development planning concepts.
11. Grazing and wildlife.
12. Public involvement.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 341, Durango, Colorado 81301, telephone number 303-247-4874. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: The public will be given the opportunity to make oral statements at specified times in the afternoon.

H. PETER WINGLE,
Forest Supervisor.

FEBRUARY 27, 1974.

[FR Doc.74-5235 Filed 3-6-74;8:45 am]

UINTA NATIONAL FOREST G-10 GRAZING ADVISORY BOARD

Notice of Meeting

The Uinta National Forest G-10 Grazing Advisory Board will meet at 2 p.m. Monday, April 1, 1974, in the Forest Supervisor's Office, upstairs in the Federal Building, 88 West 100 North, Provo, Utah.

The purpose of the meeting is to amend the Constitution and Bylaws necessitated by recent administrative boundary changes and plan the annual summer field trip.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 1428, Provo, Utah 84601, phone 801-377-5780. Written statements may be filed with the board before or after the meeting.

The board has established the following rule for public participation: Persons may make statements at board meetings, but advance notice must be given to the Chairman.

BRUCE B. HRONEK,
Forest Supervisor.

MARCH 1, 1974.

[FR Doc.74-5236 Filed 3-6-74;8:45 am]

DEPARTMENT OF COMMERCE

National Bureau of Standards

FEDERAL INFORMATION PROCESSING STANDARDS COORDINATING AND ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463 and Executive Order 11686, notice is hereby given that the Federal Information Processing Standards Coordinating and Advisory Committee (FIPSCAC) will hold a meeting from 9 a.m. to 12 noon on Wednesday, March 20, 1974, in Room B-255, Building 225, of the National Bureau of Standards in Gaithersburg, Maryland.

The purpose of the meeting is to review the actions of the Federal Information Processing Standards (FIPS) Task Groups and to consider other matters relating to Federal information processing standards.

The public will be permitted to attend, to file written statements, and, to the extent that time permits, to present oral statements. Persons planning to attend should notify the Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234 (Phone 301-921-3551).

Dated: March 1, 1974.

RICHARD W. ROBERTS,
Director.

[FR Doc.74-5195 Filed 3-6-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

LIBRARY RESEARCH AND DEMONSTRATION PROGRAM

Notice of Closing Date for Receipt of Applications

Notice is hereby given that pursuant to the authority contained in sections 201, 221, and 223 of title II, part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1021, 1031, and 1033), applications are being accepted from institutions of higher education and other public or private agencies, institutions and organizations (other than for profit) for grants for research and demonstration projects relating to the improvement of libraries or the improvement of the training in librarianship.

Applications must be received by the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets, SW., Washington, D.C. 20202 (mailing address: U.S. Office of Education, Application Control Center, 400 Maryland Avenue, SW., Washington, D.C. 20202, Attention: 13.475), on or before April 8, 1974.

An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than the fifth calendar day prior to the closing date (or if such fifth calendar day is a Saturday, Sunday, or Federal holiday, not later than the next following business day), as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

Regulations which will apply to grants to eligible applicants are published in the FEDERAL REGISTER in this issue as Notice of Proposed Rule Making and will be published in final form after opportunity for comment and public hearing.

Applicable provisions of the Office of Education General Provisions Regulations published in final form in the FEDERAL REGISTER on November 6, 1973, 38 FR 30654, apply to this program.

Institutions and agencies desiring to participate may obtain such application forms, proposal formats, and other pertinent information from the Division of Library Programs, Office of Institutional Development and International Education, Bureau of Postsecondary Education, U.S. Office of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202, ATTN: Library Research and Demonstration Program.

(20 U.S.C. 1021, 1031, 1033)

Dated: February 26, 1974.

JOHN OTTINA,
U.S. Commissioner of Education.

(Catalog of Federal Domestic Assistance Program No. 13.475; Library Research and Demonstration)

[FR Doc.74-5116 Filed 3-6-74;8:45 am]

Office of Education

LOANS TO PRIVATE NONPROFIT SCHOOLS FOR STRENGTHENING INSTRUCTION IN ACADEMIC SUBJECTS

Notice of Closing Date for Receipt of Applications

Pursuant to the authority contained in Part A, section 305, Title III of the National Defense Education Act (72 Stat. 1590, 20 U.S.C. 445), notice is hereby given that the U.S. Commissioner of Education has established a final closing date for receipt of applications for loans to private nonprofit elementary and secondary schools. Funds available for such loans include recently released fiscal year 1973 funds ($250,000) as well as fiscal year 1974 funds ($250,000).

Regulations governing the program are codified in 45 CFR Part 142. Pursuant to § 142.7 of the regulations, loans made under this notice will bear interest at the rate of seven and one-eighth percent (7⅛%) per annum.

Applications for loans must be received by the U.S. Office of Education, Division of Library Programs, Regional Office Building Three, 7th and D Streets, SW., Washington, D.C. 20202 (mailing address: U.S. Office of Education, Division of Library Programs, 400 Maryland Avenue SW., Washington, D.C. 20202), on or before June 3, 1974.

An application sent by mail will be considered to be received on time if:

(1) The application was sent by registered or certified mail not later than the fifth calendar day prior to the closing date (or if such fifth calendar day is a Saturday, Sunday, or Federal holiday, not later than the next following business day), as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. (In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.)

Application forms, instructions, and other pertinent information will be sent to all schools which have previously requested them. Other schools desiring to participate in the program may obtain such application forms, instructions, and other information from the Division of Library Programs, U.S. Office of Education, Washington, D.C. 20202.

(20 U.S.C. 442 (c), 445)

Dated: March 4, 1974.

(Catalog of Federal Domestic Assistance Number 13.479; School Equipment Loans to Nonprofit Private Schools)

JOHN OTTINA,
U.S. Commissioner of Education.

[FR Doc.74-5394 Filed 3-6-74;8:45 am]

Food and Drug Administration

LABELING FOR PRESCRIPTION DRUGS USED IN MAN

Notice of Intent to Solicit Comments on Draft Proposal

Recommendations relating to the format for prescription drug labeling are currently available in a statement of policy under § 3.74 (21 CFR 3.74), which sets forth the sequence and kinds of information to be presented in such labeling in order to furnish adequate information for safe and effective use of a drug as required under § 1.106(b) (21 CFR 1.106(b)).

On the basis of past experience and precedent demonstrated by the development of informative and useful labeling in cooperation with drug sponsors, users, and advisory committees, the Commissioner proposes to develop and implement more definitive and comprehensive standards regarding the kinds of information that must be included under specific headings. The primary objective of such standards is to provide as succinctly as possible the essential information needed to use these drugs safely and effectively by the elimination of extraneous information and by the provision of more explicit information on indications and precautions.

Prior to publishing a notice containing proposed new regulations in the FEDERAL REGISTER, the Commissioner is soliciting comment on a draft of such a notice from various professional, scientific, trade, and consumer organizations in order to insure maximum public participation in development of the regulation. A copy of the draft proposal has been placed on public display in the office of the Hearing Clerk, Food and Drug Administration, Rm. 6-86, 5600 Fishers Lane, Rockville, MD 20852, and will be available for public inspection during regular business hours, Monday through Friday. Copies of the draft are available upon request from the Hearing Clerk.

Any person who wishes to submit comments (preferably in quintuplicate) on the draft to the Hearing Clerk, or to meet with Food and Drug Administration officials, may do so on or before April 25, 1974.

Dated: March 5, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-5386 Filed 3-6-74;8:45 am]

Social and Rehabilitation Service

PUBLIC INFORMATION

Fee Schedule

Notice is hereby given of the establishment of the fee schedule set forth below for searching for records maintained in the Social and Rehabilitation Service and for reproduction, certification, or authentication, and forwarding thereof:

(a) *General policy.* The Social and Rehabilitation Service routinely provides information at no charge in response to requests and public inquiries. However, if a request for information involves significant staff time or duplicating services, fees may be charged in such amounts as to permit recovery by the Government of the costs for providing such services.

(b) *Charges for services.* Charges will be at the rates specified below.

1. Search for records $3.00 per hour; except that no charge will be made for the first one-half hour.

2. Reproduction, duplication, or copying of records 10 cents per page; except that no charge will be made when the total amount does not exceed 50 cents and except that when records are not susceptible to photocopying, e.g., punch cards or magnetic tapes, the amount charged will be actual cost, as determined on a case-by-case basis.

3. Certification or authentication of records $3.00 per certification or authentication.

4. For postage, insurance or other costs relating to shipment of information materials, charges are made on an actual cost basis. This applies only to the shipment of bulk materials; individual items of the type normally sent by first class mail will be sent through the mails at no charge to the addressee.

The notice appearing in the FEDERAL REGISTER, (34 FR 12969) Saturday, August 9, 1969, is hereby revoked.

Effective date. This notice will become effective on March 7, 1974.

Dated March 4, 1974.

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

[FR Doc.74-5348 Filed 3-6-74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 74-39]

ATCHAFALAYA RIVER (BERWICK BAY), LOUISIANA

Special Order To Assist Traffic

Notice is hereby given that S. G. Putzke, Captain, United States Coast Guard, Acting Commander, Eighth Coast Guard District, has issued the following order to assist traffic through the Lower Atchafalaya River, (Berwick Bay), Louisiana.

LOUISIANA—ATCHAFALAYA RIVER AND INTRACOASTAL WATERWAY

MORGAN CITY—PORT ALLEN (ALTERNATE ROUTE)

Atchafalaya River, Louisiana; Special Order to assist traffic through the reach of the Lower Atchafalaya River (Berwick Bay), in the vicinity of the Southern Pacific Railroad Bridge and both highway bridges at Morgan City, Louisiana.

1. *Background.* On 3 January 1974, by Special Notice to Mariners 1–74, the Commander, Eighth Coast Guard District, determined that an emergency condition exists due to the velocity of the flow of the Atchafalaya River in the vicinity of the Southern Pacific Railroad Bridge and both highway bridges at Morgan City, Louisiana; Special Notice 1–74 governs the movement of vessels and the composition of tows through the bridges.

2. *Purpose.* a. *General.* In order to enhance the safety of navigation through these waterways, this Special Notice 2–74 establishes an advisory Vessel Traffic System on the Atchafalaya River and Gulf Intercoastal Waterway in the Morgan City-Berwick Bay Area, with mandatory reporting for certain types of vessels and voluntary compliance by other vessels. This Special Notice 2–74 amends paragraph 12 of Special Notice 1–74 insofar as the system will provide the position of the Southern Pacific Railroad Bridge and marine traffic information.

b. *Specific.* The heart of the system will be a Vessel Traffic Center manned by the Coast Guard which will relay navigational safety information collected from masters or persons in charge of vessels and from the bridge tender of the Southern Pacific Railroad Bridge. The Vessel Traffic Center will disseminate that information to other vessels within the system so as to encourage mutual planning over the Bridge-to-Bridge Radio Telephone. The Vessel Traffic Center may make recommendations to vessels, but these recommendations will be advisory in nature. Compliance with any recommendation is encouraged but not mandatory.

3. *Application.* a. The following vessels are required to report into and out of the system:

(1) Every power driven vessel of 300 gross tons and upward while navigating;

(2) Every vessel of 100 gross tons and upward carrying one or more passengers for hire while navigating;

(3) Every towing vessel of 26 feet or over in length while navigating;

(4) Every dredge and floating plant engaged in or near a channel or fairway in operations likely to restrict or affect navigation of other vessels;

(5) Crewboats equipped with radio;

(6) Fishing vessels equipped with radio.

b. Any vessels not required above to meet the system requirements are strongly encouraged to do so in order that the system may be of maximum protection and benefit to all users of the waterways serving the Morgan City-Berwick Bay Traffic System Area.

4. *Definition of terms.* a. *Vessel Traffic System (VTS).* Vessel Traffic System is a generic term coined to encompass a variety of technologies employed to cope with the problem of vessel movements in or approaching a port area. In its broadest context the term embraces vessel navigation, communications, surveillance, information display, and certain decision processes.

b. *Vessel Traffic Center.* The facility manned by U.S. Coast Guard personnel which has communications capability to collect and disseminate information. The Center monitors and advises participating vessel traffic within the Vessel Traffic System Area and provides information concerning traffic conditions, weather, aids to navigation, unusual operations, and navigational hazards to participating vessels. A Coast Guard vessel in the vicinity of Berwick Bay will function as the Vessel Traffic Center.

c. *Initial Communication.* The radio contact which a vessel makes with the Vessel Traffic Center at the time or place, specified herein, preparatory to entering the Vessel Traffic System. In this communication, the Vessel Traffic Center is given certain information describing the vessel, including tow if applicable, and its movement.

d. *Rules of the road.* The statutes and regulations governing the navigation of vessels. (The compilation of these rules is published in Coast Guard Pamphlet 169, "Rules of the Road—International and Inland".)

e. *Vessels.* Any watercraft propelled by machinery.

5. *Description of the system.* a. *Geographic Boundaries.* All points on the Atchafalaya River between Stouts Point and the junction of Lower Atchafalaya River and Little Wax Bayou (ICW Light #2), and all points on the ICW between the northern tip of Long Island (MC–PA Alt. route) the eastern end of Bayou Boeuf Locks, and the junction of Lower Atchafalaya River and Little Wax Bayou (ICW Light "2").

b. *Vessel traffic center.* The Vessel Traffic Center will maintain a continuous listening watch on Channel 13 (156.65 MHz) VHF–FM, Channel 16 (156.8 MHz) VHF–FM, and 2738 KHz (HF–AM).

c. *Reporting Points.* (1) The reporting points are the northern tip of Long Island, Stouts Point, junction of Lower Atchafalaya River and Little Wax Bayou (ICW Light "2"), and the eastern end of Bayou Boeuf Locks. All vessels covered by the system shall contact the Vessel Traffic Center when abeam of these points. In the case of vessels entering Bayou Boeuf Locks Westward, an additional report of leaving the Locks will be given.

(2) Additionally, any vessel moored within the geographic boundaries of the

system shall contact the Vessel Traffic Center prior to unmooring.

6. *Operating procedures*—a. *General information.* (1) To insure the success and efficient operation of the Morgan City-Berwick Bay Vessel Traffic System, all participating vessels must observe these operating procedures. Participation in the system is mandatory for vessels falling under the Vessel Bridge-to-Bridge Radio Telephone Act, and for all other vessels listed in paragraph 3(a) (Application).

(2) The purpose of the Morgan City-Berwick Bay Vessel Traffic System is not to attempt to maneuver or navigate vessels from shore. Nothing in these procedures should be construed as contravening or modifying the Rules of the Road.

(3) The Vessel Traffic Center will give recommendations concerning entries into the system or movement within the system. The Center will also issue advisory messages on conditions affecting safety of navigation. However, the Master is not relieved of his traditional responsibility for safe navigation of his vessel.

b. *Communications procedures.* (1) Vessels subject to the Bridge-to-Bridge Radio Telephone Act shall call and work the "Vessel Traffic Center" on Channel 13 (156.65 MHz). All other vessels shall use Channel 13 (156.65 MHz) if so equipped. Vessels not equipped with Channel 13 (156.65 MHz) shall call and work the Vessel Traffic Center on 2738 KHz. Channel 16 (156.8 MHz) will be used only if a vessel is unable to communicate with the Vessel Traffic Center on Channel 13 (156.65 MHz) or 2738 KHz. Transmissions must be limited to the exchange of navigational safety information and be transmitted at the lowest possible power ratings.

(2) Nothing in these procedures should be construed as contravening or modifying the Vessel Bridge-to-Bridge Radio Telephone Act. The communications required between vessels by the Act shall be transmitted on Channel 13.

(3) The call sign of the Vessel Traffic Center is "Berwick Bay Traffic Center". After communications have been established, the abbreviated call sign "Traffic Center" may be used.

(4) Vessels will initiate communications with the Vessel Traffic Center in the following instances:

(a) To enter the system.

(b) To report passing an established reporting point.

(c) To request navigation information.

(d) To report leaving system.

(e) To report an item of navigation safety which might affect other vessels.

c. *Reporting procedures.* (1) All participating vessels are required to furnish the following information when making the initial communication with the Vessel Traffic Center:

(a) Name of vessel and horsepower.

(b) Number of barges and kind of cargo.

(c) Present location.

(d) Route and destination.

(e) ETA abeam Southern Pacific Railway Bridge.

(2) After initial communication has been made, any vessel which will have a 10 minute change in its ETA abeam Southern Pacific Railway bridge shall contact the Berwick Vessel Traffic Center at the earliest possible moment.

(3) Using the information provided by the vessels within the boundaries of the system and the Southern Pacific Railroad Bridge, the Berwick Bay Traffic Center will provide advisory information concerning marine traffic in the vicinity of the Southern Pacific Railroad Bridge to vessels reporting into the center, or upon request from any vessel.

(4) While the traffic system is in operation, all vessels will arrange for passage through the Southern Pacific Railway Bridge by contacting the "Berwick Bay Vessel Traffic Center" rather than the bridge.

7. *Emergencies.* a. Vessels losing communication with the Berwick Traffic Center after entering the system should communicate with the Southern Pacific Railroad Bridge as set forth in paragraph 12 of Special Notice to Mariners 1–74.

b. Under emergency conditions which prevent the Coast Guard vessel from functioning as the Berwick Vessel Traffic Center, the operation of the Vessel Traffic System may be suspended. Notice of such a suspension of operation and whether the waterway remains open for traffic will be given by a Notice to Mariners. If the traffic system's operation is suspended but the waterway through the bridges between Morgan City and Berwick Bay remains open to traffic, vessels should also communicate with the Southern Pacific Railroad Bridge as set forth in paragraph 12 of Special Notice to Mariners 1–74.

8. *Miscellaneous.* The establishment of the advisory vessel traffic system does not relieve any person from the obligation of complying with the Bridge-to-Bridge Radio Telephone regulations or the Rules of the Road. Mariners are reminded that Special Notice 1–74 contains an exception to the Rules of the Road, which grants right-of-way to vessels proceeding with the current.

9. *Effective date.* This order is effective commencing at Six O'Clock A.M. Central Daylight Time, Saturday, February 16, 1974.

10. *Authority and penalty.* This order is issued under the provisions of 33 CFR 6. Violation of this order is punishable by forfeiture of the vessel and its equipment and a fine of not more than $10,000.00, and imprisonment for not more than 10 years.

(33 CFR 6.18–1, 50 USC 192.)

Dated: March 1, 1974.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.74–5240 Filed 3–6–74;8:45 am]

Federal Highway Administration

UTAH

Proposed Action Plan

The Utah State Department of Highways has submitted to the Federal Highway Administration of the U.S. Department of Transportation a proposed Action Plan as required by Policy and Procedure Memorandum 90–4 issued on June 1, 1973. The Action Plan outlines the organizational relationships, the assignments of responsibility, and the procedures to be used by the State to assure that economic, social and environmental effects are fully considered in developing highway projects and that final decisions on highway projects are made in the best overall public interest, taking into consideration: (1) needs for fast, safe and efficient transportation; (2) public services; and (3) costs of eliminating or minimizing adverse effects.

The proposed Action Plan is available for public review at the following locations:

1. Utah State Department of Highways, State Office Building, Room 408, Salt Lake City, Utah 84116.

2. Utah State Department of Highways, District 1, 128–17th Street, Ogden, Utah 84404.

3. Utah State Department of Highways, District 2, 2410 West 2100 South, Salt Lake City, Utah 84119.

4. Utah State Department of Highways, District 3, 708 South 100 West, Richfield, Utah 84701.

5. Utah State Department of Highways, District 4, P.O. Box "R", Price, Utah 84501.

6. Utah State Department of Highways, District 5, 880 North Main, Cedar City, Utah 84720.

7. Utah State Department of Highways, District 6, 825 North 900 West, Orem, Utah 84057.

8. Utah Division Office—FHWA, 125 South State Street, Salt Lake City, Utah 84111.

9. FHWA Regional Office—Region 8, Building 40, Denver, Colorado 80225.

10. U.S. Department of Transportation, Federal Highway Administration, Environmental Development Division, Nassif Building—Room 3246, 400–7th St. S.W., Washington, D.C. 20590.

Comments from interested groups and the public on the proposed Action Plan are invited. Comments should be sent to the FHWA Regional Office shown above before April 8, 1974.

Issued on March 1, 1974.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.74–5262 Filed 3–6–74;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50–460]

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

Notice of Receipt of Application for Construction Permit and Facility License and Availability of Applicant's Environmental Report

Washington Public Power Supply System (the applicant), pursuant to Section

103 of the Atomic Energy Act of 1954, as amended, has filed an application, which was docketed October 18, 1973, for authorization to construct and operate a generating unit utilizing a pressurized water nuclear reactor. The application was tendered on July 16, 1973. Following a preliminary review for completeness, the application was rejected on August 20, 1973, for lack of sufficient information. The applicant submitted additional information on October 1, 1973, and the application was found to be acceptable for docketing. Docket No. 50–460 has been assigned to the application and it should be referenced in any correspondence relating to the application.

The proposed nuclear facility, designated by the applicant as the WPPSS Nuclear Project No. 1, is located on the applicant's site in Benton County, Washington, and is designed for initial operation at approximately 3619 megawatts thermal, and a net electrical output of approximately 1206 megawatts.

A notice of hearing with opportunity for public participation is being published separately.

Any person who wishes to have his views on the antitrust matters of the application presented to the Attorney General for consideration should submit such views to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Office of Antitrust and Indemnity, Directorate of Licensing, on or before February 19, 1974. The request should be filed in connection with Docket No. 50–460–A.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545, and at the Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

The applicant has also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in Appendix D to 10 CFR Part 50, an environmental report dated October 15, 1973. The report, which discusses environmental considerations related to the construction and operation of the proposed facility is being made available for public inspection at the aforementioned locations, and at the Office of the Governor, State Planning and Community Affairs Agency, Olympia, Washington 98504 and the Benton-Franklin Governmental Conference, 906 Jadwin Avenue, Richland, Washington 99352.

After the environmental report has been analyzed by the Commission's Director of Regulation or his designee, a draft environmental statement will be prepared by the Commission's regulatory staff. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement, with a request for comments from interested persons on the draft statement. The summary notice will aso contain a statement to the effect that comments of Federal agencies and State and local officials will be made available when received. Upon consideration of comments submitted with respect to the draft environmental statement, the Regulatory staff will prepare a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

Dated at Bethesda, Maryland, this 14th day of December, 1973.

For the Atomic Energy Commission.

A. SCHWENCER,
Chief, Light Water Reactors, Branch 2–3, Directorate of Licensing.

[FR Doc.73–27005 Filed 12–20–73;8:45 am]

[Docket 70–1257]

EXXON NUCLEAR COMPANY, INC.

Notice of Availability of Final Environmental Statement for Uranium Oxide Fuel Plant

Pursuant to the National Environmental Policy Act of 1969 and the United States Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that the Final Environmental Statement prepared by the Commission's Directorate of Licensing, related to the proposed issuance of a full-term license for Exxon Nuclear Company's Uranium Oxide Fuel Plant at Richland, Washington, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. and in the Richland Public Library, Swift and Northgate Streets, Richland, Washington. The Final Environmental Statement is also being made available at the Washington State Clearinghouse, Office of the Governor, State Planning and Community Affairs Agency, Olympia, Washington and the Regional Clearinghouse, Benton-Franklin Governmental Conference, 906 Jadwin Avenue, Richland, Washington.

The notice of availability of the Draft Environmental Statement for the Uranium Oxide Fuel Plant, and requests for comments from interested persons was published in the FEDERAL REGISTER on May 29, 1973 (38 FR 14121). The comments received from Federal agencies, State and local officials, and interested members of the public have been included as appendices to the Final Environmental Statement.

Single copies of the Final Environmental Statement may be obtained by writing the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Fuels and Materials, Directorate of Licensing, Regulation.

Dated at Bethesda, Maryland, this 26th day of February, 1974.

For the Atomic Energy Commission.

R. B. CHITWOOD,
Chief, Technical Support Branch Directorate of Licensing.

[FR Doc.74–5228 Filed 3–6–74;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket Nos. 26057 and 26075; Order No. 74–2–93]

NATIONAL AIRLINES, INC. AND BRITISH OVERSEAS AIRWAYS CORP.

Miami-London Market Capacity Reduction Agreement and Exemption

National Airlines, Inc. (National) and British Overseas Airways Corporation (BOAC) have submitted an application for prior Board approval, pursuant to section 412 of the Federal Aviation Act of 1958 (the Act), and 14 CFR 302, Subpart P, of an agreement between them which would establish maximum scheduled weekly nonstop frequency levels in the Miami-London market. Discussions which led to the adoption of this agreement were held, pursuant to Board authorization given in Order 73–11–34 (November 8, 1973), on November 14, 1973 in Washington, D.C., and on January 16, 1974 in New York.

The agreement will be implemented upon Board approval, and will terminate on March 31, 1974. The maximum weekly scheduled frequencies between Miami and London for each party will be as follows:

BOAC: 5 roundtrips with B–747 aircraft, operating Sunday, Monday, Thursday, Friday, and Saturday in both directions.

National: 6 roundtrips with DC–10 aircraft, operating Sunday (westbound only), Monday (eastbound only), and Tuesday, Wednesday, Thursday, Friday, and Saturday, in both directions. As with similar agreements, provision is made for the suspension of the limitations in the agreement during a period of cessation or curtailment of service by either party resulting from a labor dispute or other cause beyond the control of that party, and for the termination of the agreement by either party on five days notice.

In support of this agreement, the carriers say that each of them is experiencing shortages of fuel and anticipates continued shortages through the period covered by the agreement. The currently effective Mandatory Petroleum Allocation Program for aviation fuel (10 CFR 211, Subpart H, 39 FR 1924) provides that shortages of bonded jet fuel for international carriers will be supplemented only to the extent of 95 percent of the fuel used by said carriers in the base period 1972 on a month-to-month basis. Both of the carriers allege they are experiencing shortages of bonded fuel, and they have converted from narrow to wide-bodied equipment in the Miami-London market since early in the base period year. Further, the British government has announced mandatory reductions of fuel consumption for international air services which so far have been on the order of 10 percent below the comparable 1973 period. The carriers argue that the agreement, by facilitating carrier attempts to comply with these reductions, will provide for significant savings in fuel consumption.[1] The fact that

[1] National estimates a fuel saving to it during the term of the agreement of 52,000 gallons per week.

the term of the agreement is only two months (and it is terminable upon only five days' notice) will permit an early review of these coordinated capacity reductions in light of changing circumstances with regard to fuel availability. National and BOAC anticipate that they will hold further discussions when more definitive information concerning fuel availability beyond March is available.

The carriers further emphasize that the planned reductions in capacity are a matter of absolute necessity rather than actions which are merely made possible by this agreement. Reductions of this magnitude are being forced on the applicant carriers regardless of whether or not this agreement is approved and becomes effective. What this agreement does, according to its parties, is to provide that the inevitable reductions in service will be made on a coordinated basis which will better fit reduced capacity levels to the needs of the traveling public. They contend that the agreement maintains adequate capacity in the Miami-London market considering the constraints imposed by the shortage of fuel. BOAC estimates that under the agreement the carriers will experience a combined passenger load factor of 36 percent, assuming traffic growth of 10 percent over the comparable 1973 period. National estimates the combined load factor will be 47 percent based upon its expectation of 50 percent traffic growth. Based upon either carrier's growth forecast, they say there will be adequate capacity in the market during February and March under the agreement.

The applicants also request that the requirement of allowing 21 days for answers to their application, in accordance with 14 CFR 302.1608 (PR–138, September 28, 1973), be waived to enable the carriers to implement the agreement as planned. National also requests an exemption from section 405(b) of the Act and regulations thereunder, to permit it to implement schedule changes resulting from the agreement without 10 days' prior notice to the Postmaster General.

No comments in opposition to this application have been received to date.[2]

The air transportation industry is being faced with a critical shortage of fuel. As a result, National and BOAC, among others, must cut back on the fuel consumption on international services. In order to meet the cutback levels, the carriers must make fuel-saving adjustments to their schedules. The Board has heretofore noted its concern that those adjustments be made in a manner that provides the best service possible under the circumstances.[3] Accordingly, agreements on schedule reductions necessitated by the fuel emergency, which can be analyzed and monitored by the Board to the end that available capacity is operated under schedules that provide the public with the most convenient service practicable under the circumstances, will best serve the public interest.

Based on the foregoing, it is concluded that this agreement with respect to scheduled service between Miami and London should be approved, subject to certain conditions. The service proposed in this agreement reasonably satisfies the needs of the traveling public as well as saving large amounts of fuel. The London-Miami market is characterized by a reasonable level of frequencies which have experienced low load factors in the past, and, under the agreement, are estimated by the carriers to reach 36–47 percent.[4] Under these circumstances, the traveling public will continue to receive an adequate frequency of service and the carriers will be a step closer toward reaching their available fuel levels.

In view of the imminence of the implementation date, and the short period within which the carriers were compelled to adjust schedules, the request for waiver of 14 CFR 302.1608, the recent amendment to the Board's Procedural Regulations which would otherwise permit 21 days for answers to the application to be filed, will be waived, pursuant to 14 CFR 385.3. However, the Board will receive any comments hereafter filed in this docket as part of its ongoing evaluation of the impact of the agreement. It is also found, in accordance with 14 CFR 385.13(hh), that grant of National's request herein for exemption from section 405(b) of the Act and 14 CFR 231.5(b), which would otherwise require it to give 10 days' notice to the Postmaster General and to the Board before implementing schedule changes resulting from this agreement, is required by the impaired ability of the carrier to procure fuel.

The Board has repeatedly stated that the transfer of freed capacity to non-agreement markets will not be tolerated.[5] Also, in order to effectively monitor the implementation of this agreement, jurisdiction will be maintained for the purpurpose of modifying, amending, or revoking approval of this agreement at any future date.[6] Other reporting requirements, similar to those imposed on other agreements, will be imposed herein.

We have also considered the implications of the proposed agreement on National's employees. For the reasons detailed at length in Order 73–12–32, December 7, 1973, which are equally applicable herein, we are unable to conclude that the public interest requires the imposition of any labor protective conditions.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.13(p), it is found that the fuel-saving capacity reduction agreement discussed herein is not adverse to the public interest nor in violation of the Act and should be approved subject to the conditions stated herein. It is further found, pursuant to 14 CFR 385.6, that the action taken herein is governed by prior Board precedent and policy, and that immediate action is required in light of the fuel shortages. Therefore, it is determined that the filing of petitions for review of this order will not preclude this order from becoming effective immediately.

Accordingly, *It is ordered that:*

1. Agreement CAB 24180 be and it hereby is approved, subject to the following conditions:

(a) Jurisdiction shall be retained to modify, amend, or revoke approval at any time, or to take whatever other action may be appropriate in the public interest;

(b) All schedule changes resulting from this agreement shall be reported to the Board within 15 days after the end of each month, in accordance with the format of Appendix A, hereto;[7] copies of such reports shall be provided to all carriers requesting them;

(c) Within 28 days after the date of service of this order, the carriers shall file with the Board's Docket Section a report containing the following additional data for the Miami-London market:

a. Seats operated in 1972/1973 (November through March).
b. Passengers carried in 1972/1973.
c. Forecast passengers in 1973/1974.
d. Projected seats in 1973/1974.
e. Equipment type to be operated in each market.
f. Calculations used in developing fuel savings in these markets.
g. 1972/1973 fuel use by month for the system of each carrier.
h. 1972/1973 fuel use by month in this agreement market.

2. The request of the applicants for waiver of the 21 day waiting period for the filing of answers herein (14 CFR 302.1608) be and it hereby is granted;

3. The request by National for an exemption from section 405(b) of the Act and 14 CFR 231.5(b), to the extent necessary to enable it to implement schedule modifications without 10 days' prior notice, be and it hereby is granted;

4. Copies of this order shall be served on the United States Departments of

[2] Copies of the application were served, in accordance with 14 CFR 302.1605 on all persons upon whom Order 73–11–34 was served.

[3] See, for example, Orders 73–10–110 (October 31, 1973), 73–12–109 (December 28, 1973), and 74–1–111 (January 23, 1974).

[4] However, the Board is concerned with the low estimated load factor here, and further reduction of service, without depriving the market of daily nonstop service, might be called for.

[5] See, for example, Orders 73–10–110, note 8a; 73–12–109 (December 28, 1973), at page 5; and 74–1–111 (January 23, 1974), at page 4.

[6] The language of section 412(b) of the Act (49 U.S.C. 1382) requires the Board to disapprove any agreement, whether or not previously approved by it, that it finds to be adverse to the public interest or in violation of the Act.

[7] In addition, National shall file with the Board's Docket Section a report stating, on a system-wide basis, average seat miles operated per gallon of fuel used, by type of equipment; and shall maintain records, subject to inspection by the Board or by such other persons as the Board may authorize, detailing the fuel used each month, throughout its system, on a city-pair and flight-by-flight basis (including charter operations).

Defense, Justice and Transportation; the United States Postal Service; the Dade County Port Authority; and all certificated route and supplemental air carriers.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within seven days after the date of service of this order.

This order shall be effective immediately and the filing of a petition for review shall not preclude such effectiveness.

This order shall be published in the FEDERAL REGISTER.

Issued under delegated authority February 22, 1974.

EDWIN Z. HOLLAND,
Secretary.

APPENDIX A

	Type of equipment				
	2-engine	3-engine narrow body	4-engine narrow body	3-engine wide body	4-engine wide body
Agreement markets					
Miles scheduled weekly in preceding general schedule filed with CAB.					
Changes contained in this general schedule...					
Miles scheduled weekly in this general schedule.					
Nonagreement markets					
Miles scheduled weekly in preceding general schedule filed with CAB.					
Changes contained in this general schedule...					
Miles scheduled weekly in this general schedule.					

[FR Doc.74-5165 Filed 3-6-74;8:45 am]

[Dockets 24869 etc; Order 74-2-123]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Passenger Fares Within the Western Hemisphere

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 27th day of February, 1974.

Agreements adopted by members of the International Air Transport Association relating to passenger fares within the Western Hemisphere; Dockets 24869, 25513; Agreement C.A.B. 24088, R-1 through R-24; Agreement C.A.B. 24136, R-1 and R-2; Agreement C.A.B. 24139; Agreement C.A.B. 24179, R-1 through R-24; Agreement C.A.B. 24207, R-1 through R-13.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA). The agreements were adopted for April 1 or April 15, 1974 effectiveness by mail vote, and by the Special 55th and 56th Meetings of Traffic Conference 1.

The agreements, insofar as they affect air transportation as defined by the Act, propose across-the-board increases of three percent in all passenger fares between the United States and South America (except Colombia, Venezuela, Guyana, Surinam and French Guiana).[1] Between the United States and Central America (as well as Colombia), a general five percent increase is proposed.[2]

Most U.S.-Mexico fares would generally be increased by approximately seven percent.[3] In the New York/Philadelphia/Detroit–Mexico markets, the present 15-passenger group-inclusive tour (GIT) fare would be replaced by an individual inclusive-tour (IIT) fare at a level about seven percent higher, with an $11 weekend surcharge. A new 40-passenger, 5/21-day validity affinity-group fare is proposed in most U.S.-Mexico markets, while the present U.S.-Mexico advance-purchase travel group (APEX) fare would be eliminated. The new affinity-group fares would be about 10 percent higher than the current APEX levels, would permit no stopovers or weekend travel, and would be available all year except for a Christmas season blackout.

U.S.-Caribbean fares (as well as Venezuela, Guyana, Surinam and French Guiana) are proposed to be increased about five percent. (See Attachment B). In U.S.-Netherlands Antilles markets peak-season (22–28 November, 26 December–15 April, and 1 July–31 August) weekend travel would be prohibited on the 7/14-day GIT for groups of 10, and in U.S.-Venezuela markets the group—50 GIT would be eliminated entirely. The agreements propose continuation of the Caribbean area APEX fares. The carriers have also adopted a new optional baggage allowance system for Caribbean markets. The normal IATA free-baggage allowance is 30 kilograms (66 lbs.) for first-class passengers, 20 kilograms (44 lbs.) for economy class.[4] In the Caribbean, each carrier would now have the option of allowing one checked piece of not more than 70 lbs., and the sum of whose three dimensions do not exceed 62 inches; plus one carry-on piece whose dimensions do not exceed 45 inches.

The purpose of this order is to set procedural dates for the receipt of justification, comments and replies concerning those portions of the agreements which affect air transportation as defined by the Act. Carrier justification in support of the agreements, and comments from interested parties, shall be submitted within 10 calendar days from the date of this order, and replies shall be submitted 20 days.[5]

Accordingly, it is ordered, That:

1. All United States air carrier members of the International Air Transport Association shall file within ten calendar days after the date of this order, full documentation and economic justification for fares, charges and related conditions embodied in the subject agreements;

2. Comments and objections from interested persons and parties shall be submitted within ten calendar days after the date of this order; and

3. Replies to justifications received in response to ordering paragraph 1 above and replies to comments received pursuant to ordering paragraph 2 above shall be submitted within twenty calendar days after the date of this order.

[1] The agreements would also amend Resolution 084e governing group inclusive-tour fares between the United States and South America by prohibiting stopovers in Brazil on journeys originating at points south of Brazil. The agreements also propose substantial changes, involving both increases and decreases, in excursion, affinity-group and group inclusive-tour fares between New York, Miami and Los Angeles, on the one hand, and Belem and Manaus on the other hand.

[2] In addition, a new excursion fare is proposed at $200 for application between San Juan, on the one hand, and San Jose and San Salvador, on the other hand.

[3] Exceptions are the New York-Mexico City excursion fare, which would be increased over 17 percent, and group inclusive-tour fares in various U.S.-Mexico markets where new weekend surcharges are proposed. See Attachment A, filed as part of the original document.

[4] This matter is the subject of a currently pending Board investigation in Docket 24869, "Baggage Allowance Tariff Rules in Overseas and Foreign Air Transportation," instituted by Order 72-10-91, October 27, 1972.

[5] An original and ten copies should be filed with the Board's Docket Section.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[6]

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.74-5325 Filed 3-6-74;8:45 am]

[Docket 26131; Order 74-3-4]

BRITISH AIRWAYS BOARD

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 1st day of March, 1974.

Application of British Airways Board pursuant to section 402(g) of the Federal Aviation Act of 1958, for transfer of foreign air carrier permits held by British Overseas Airways Corporation, and for other relief.

British Overseas Airways Corporation (BOAC) is the holder of a foreign air carrier permit issued pursuant to Order E-26074, approved December 4, 1967, authorizing it to engage in foreign air transportation of persons, property and mail over various routes, and to engage in charter trips in foreign air transportation, subject to the provisions of part 212 of the Board's Economic Regulations.

In addition, BOAC holds a temporary foreign air carrier permit issued pursuant to Order 68-9-148, approved September 26, 1968, authorizing it, on scheduled flights operated between the United Kingdom and Japan, to engage in foreign air transportation of passengers, property and mail between the United Kingdom and Anchorage, Alaska, and to grant passenger stopover privileges at Anchorage. This authority expired by its terms on April 30, 1973, but continues in force under 5 U.S.C. 558(c) as a result of BOAC having filed a timely application for renewal in Docket 25479.

By application filed in Docket 26131, dated November 21, 1973, the British Airways Board (BAB) [1] requests approval of the transfer to it of the above-mentioned foreign air carrier permits of BOAC, such transfer to become effective April 1, 1974.[2] The BAB also has applied for permission to use the trade name "British Airways" alone or in conjunction with the initials "BOAC" pursuant to part 215 of the Board's regulations.[3]

In support of its application BAB asserts that it is fit, willing, and able to perform the proposed transportation. It states that the British Airways group has assets of approximately $1.3 billion and in the accounting period ended March 31, 1973, earned a net profit after interest and taxes of $13 million on revenues of $1.35 billion. The group's current assets exceed current liabilities by $37.7 million. The proposed operations will be conducted with the same inter-continental jet aircraft now owned or on order by BOAC. Presently, BOAC owns 62 such aircraft and has an additional 7 on order. Most of the management and personnel of BAB have been drawn from senior management of BOAC and British European Airways (BEA). BAB represents that the operations of British Airways will be undertaken by its Overseas Division, having essentially the same organizational structure as BOAC.

In regard to the control and ownership of BAB, its application indicates that the Chairman, Deputy Chairman, 12 of the 13 other members and all the principal management personnel of the British Airways Board are United Kingdom nationals. It also appears that the British Airways Board is a public corporation of the United Kingdom, and although British laws empower the Airways Board to create and issue stock with the consent of the Secretary of State for Trade and Industry, no capital stock or other security carrying voting rights has yet been issued. The United Kingdom government is the principal creditor of BAB and will continue as such after the acquisition of the property, rights and liabilities of BOAC and BEA on April 1, 1974. In matters of broad policy, BAB is subject to supervision of the Secretary of State for Trade and Industry and through him ultimately to the Parliament of the United Kingdom.

The Government of the United Kingdom has formally designated the British Airways Board under the Air Services Agreement between the United States and the United Kingdom, to take over the air services currently operated by BOAC.[4] Insofar as the application requests the transfer of BOAC's authority to perform foreign air transportation not included in the Air Services Agreement, the applicant contends that such transfer is in the public interest by reason of the principles of comity and reciprocity.

On the basis of the foregoing, the Board tentatively finds and concludes that:

(1) BAB is fit, willing, and able properly to perform the air transportation proposed in its application and to conform to the provisions of the Act and the rules, regulations and requirements of the Board thereunder;

(2) BAB is substantially owned and effectively controlled by nationals of the United Kingdom;

(3) BAB has been designated by the United Kingdom government as a United Kingdom carrier under the Bermuda Agreement with the intention that it take over all the services of BOAC thereunder effective April 1, 1974 and that as to BOAC's permit authority not included in the bilateral agreement the transfer to BAB is warranted on the basis of comity and reciprocity;

(4) BAB's use of the trade name "British Airways" alone or in conjunction with the initials "BOAC" is not contrary to the public interest under Part 215 of the Board's Economic Regulations;

(5) BAB should be subject to all of the terms, conditions and limitations presently applicable to BOAC;

(6) A hearing on the application is not required in the public interest; and

(7) The transfer to BAB of the permits held by BOAC is in the public interest.

Accordingly, we have decided to issue an order directing interested persons to show cause why we should not approve the transfer of BOAC's permits to the British Airways Board.[5]

All interested persons will be given 10 days following the service of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to direct their objections, if any, to specific issues, and to support such objections with detailed analyses. If an evidentiary hearing is requested, the objectors should name the specific markets or other issues with respect to which a hearing is requested and should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing. Vague, general, or unsupported objections will not be entertained.

Accordingly, it is ordered, That:

1. All interested persons be and they

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[6] Attachments A and B, Comparisons of Selected Present and Proposed Fares—U.S./Mexico and U.S./Caribbean, filed as part of the original document.

[1] A copy of the application has been transmitted to the President of the United States in accordance with the requirements of section 801 of the Act.

[2] By letter dated January 7, 1974 the applicant transmitted copies of "Air Corporations (Dissolution) Order 1973" issued by the U.K. Department of Trade and Industry, December 20, 1973 following its approval by resolution of each House of Parliament. The Applicant states that the Order represents the final official act of the British Government vesting the property rights and liabilities of British Overseas Airways Corporation in the British Airways Board and dissolving BOAC as a corporation all with effect on April 1, 1974.

[3] BOAC was authorized in Order 73-5-118 to use "British Airways" as a trade name in conjunction with "British Overseas Airways Corporation" or "BOAC."

[4] The designation was made so as to take effect on April 1, 1974.

[5] We have considered the fact that a separate section 402 permit authorizing charter foreign air transportation to and from the United States is held by British Airtours Limited (formerly BEA Airtours Ltd.—name change approved in Order 73-12-92), another part of the British Airways Group, but have determined that this should not affect our tentative findings and conclusions herein. We found in the proceeding granting the charter permit (Order 73-7-145) that while the carrier was a wholly owned subsidiary of BEA it was a separate corporate entity under British laws. In view of its relationship with BEA and the ownership of BEA and BOAC by the British Airways Board, we imposed conditions in Order 73-7-145 designed to insure that the charter carrier maintains its separate identity from BEA, BOAC and the British Airways Board and that it will retain the independent resources upon which the Board relied in granting it a permit. BAB has acknowledged that it will be bound by the terms of Order 73-7-145 as the successor to BOAC and BEA and we agree. In these circumstances we do not find that the existence of the outstanding permit to British Airtours Limited requires any change in the tentative findings and conclusions herein.

hereby are directed to show cause why the Board should not make final the tentative findings and conclusions herein and why an order should not be issued, subject to approval by the President pursuant to section 801 of the Act, transferring British Overseas Airways Corporation's permits to the British Airways Board;

2. Any interested persons having objections to the issuance of an order making final the tentative findings and conclusions, herein, and transferring the said permits, shall, within 10 days after service of this order, file with the Board and serve on the persons named in paragraph 5 a statement of objections specifying the part or parts of the tentative findings or conclusions objected to, together with a summary of testimony, statistical data and such evidence expected to be relied upon to support the statement of objections;

3. If timely and properly supported objections thereto are filed, full consideration will be accorded the matters or issues raised therein before further action is taken by the Board: *Provided,* That the Board may proceed to enter an order in accordance with the tentative findings and conclusions herein if it determines that there are no factual issues presented that warrant the holding of an evidentiary hearing; [*] and

4. In the event no objections are filed to this order, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions herein;

5. Copies of this order shall be served upon the British Airways Board, British Overseas Airways Corporation, British European Airways, British Airtours Limited, and the Ambassador of the United Kingdom of Great Britain and Northern Ireland.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.74-5329 Filed 3-6-74;8:45 am]

[Docket 26153; Order 74-2-129]

PAN AMERICAN WORLD AIRWAYS, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 28th day of February, 1974.

Petition of Pan American World Airways, Inc., for an order to show cause amending its certificates for routes 132 and 130 to permit flag-stop service at Bangor, Maine.

By petition filed November 28, 1973, Pan American World Airways, Inc. (PAA) requests the Board to issue an order to show cause amending its certificates for routes 130 and 132 [1] to add Bangor, Maine as a "flag stop" on such routes. The petition was filed in response to Press Release CAB 73-106, issued June 19, 1973, in which the Board invited inter alia, U.S.-flag carriers to apply for flag-stop or permissive authority to enplane and deplane cargo at Bangor International Airport.[2]

In support of its petition, PAA states that grant of such authority would facilitate the handling of international air cargo and offer the potential of furthering the development of the State of Maine; and, since PAA has been using Bangor International Airport as a technical stop for its aircraft, it will be in a position to use Bangor on a flag-stop basis and to afford the benefits set out in the Board's Press Release.

The City of Bangor, Maine and the Greater Bangor Area Chamber of Commerce, and the State of Maine filed answers in support of PAA's application. No answers in opposition to the petition have been received.

Upon consideration of the pleadings and all the relevant facts, we have decided to issue an order to show cause which proposes to add Bangor, Maine, as a temporary point on PAA's routes 130 and 132. The authority to serve Bangor will be limited to the carriage of cargo only on all-cargo or combination flights on a temporary permissive basis for a period of three years.

We tentatively find and conclude that the public convenience and necessity require the amendment of PAA's certificates as outlined above.[3] The facts and circumstances which we have tentatively found to support our proposed ultimate conclusion appear below.

In the Board's Press Release CAB 73-106, dated June 19, 1973, we invited U.S.-flag and foreign-flag airlines operating between the United States and Europe or the Orient to apply for the right to enplane and deplane cargo at Bangor International Airport in Maine on a "flag-stop" or permissive basis, without passenger traffic rights. We found that the airport is uncongested, offers carriers excellent facilities, and is on or close to the great circle route between much of the United States and Europe. Furthermore, we pointed out that Bangor flag-stop authority could facilitate the handling of international air cargo by alleviating the burden on existing cargo facilities, promoting the export of goods such as seafoods, and helping attract light manufacturing industries to the State of Maine, which is currently suffering relatively high rates of unemployment. Finally, we contemplated that the privileges would be granted on a temporary, experimental basis for a period of three years.

PAA is a large U.S.-flag combination carrier operating between the United States and Europe and the Orient, and already utilizes Bangor International Airport as a technical stop. Thus, we tentatively find that PAA is in an excellent position to use Bangor on a permissive basis and to provide the benefits accruing from Bangor flag-stop service which we set out in Press Release CAB 73-106. Moreover, we note that the State of Maine and the Bangor Parties support PAA's proposal, and no answers in opposition to the application have been received. Thus, under these circumstances and in view of these tentative findings, we tentatively conclude that amendment of PAA's certificates for routes 130 and 132 to authorize temporary permissive service at Bangor, Maine, limited to the carriage of cargo only, for an experimental period of three years is in the public interest.

Interested persons will be given twenty days following service of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the tentative findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If an evidentiary hearing is requested, the objector should state in detail why such a hearing is considered necessary and what relevant and material facts he would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.

Accordingly, it is ordered, That:

1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein, and amending the certificates of public convenience and necessity of Pan American World Airways, Inc. for routes 130 and 132 so as to add Bangor, Maine, as a temporary point thereto, subject to the condition that the authority to serve Bangor will be limited to the carriage of cargo on a permissive basis, for a period of three years;

2. Any interested persons having objection to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth herein shall, within 20 days after service of a copy of this order, file with the Board and serve upon all persons listed in paragraph 5 a statement of objections together with a summary of testimony, statistical data, and other

[*] All motions/petitions for reconsideration shall be filed within 10 days from the service date of this order and no further motions, requests, or petitions for reconsideration of this order will be entertained.

[1] Route 132 is a transatlantic route from various points in the U.S. to Europe and the Middle East; Route 130 is a transpacific route to the Orient.

[2] PAA is the second U.S.-flag carrier to request flag-stop authority at Bangor. Seaboard World Airlines, Inc. applied for similar authority, which the Board granted by Order 74-1-99, served January 21, 1974.

[3] We also tentatively find that PAA is fit, willing, and able properly to perform the air transportation authorized by the certificates proposed to be issued herein and to conform to the provisions of the Act and the Board's rules, regulations, and requirements thereunder.

evidence expected to be relied upon to support the stated objections;[4]

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. A copy of this order shall be served upon Pan American World Airways, Inc.; Seaboard World Airlines, Inc.; Delta Air Lines, Inc.; Governor, State of Maine; City Manager of Bangor; the Maine Department of Aeronautics; The Flying Tiger Line Inc.; Trans World Airlines, Inc.; National Airlines, Inc.; Northwest Airlines, Inc.; American Airlines, Inc.; and the Postmaster General (attention: Assistant General Counsel for Transportation), U.S. Postal Service.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.74-5326 Filed 3-6-74;8:45 am]

[Docket 26414; Order 74-3-2]

SOCIETE ANONYME BELGE D'EXPLOITATION DE LA NAVIGATION AERIENNE (SABENA)

Special Veterans Fares to Belgium; Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of February, 1974.

On January 31, 1974, Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA) filed tariff revisions to implement "veterans" fares pursuant to the order of the Government of Belgium, to become effective March 2, 1974.[1] These fares, established at round-trip levels of $220 and $240 basic and peak season, respectively, from New York to Brussels and return, would be available to (1) a relative of an American soldier killed in battle during World War II and buried in a cemetery of one of the Benelux countries;[2] (2) an American who served in the European Theater of Operations during World War II, his spouse and descendents and (3) members of marching bands that will participate in the ceremonies for the 30th Anniversary of the Liberation of Belgium. Documentary proof must be furnished to prove eligibility in the case of 1 and 2 above while a certificate by a competent Belgian authority is required attesting to the fact that the marching band is to participate in the liberation ceremonies and a certificate from the band organization that the passenger is a member of the band. All travel under this fare must be completed by midnight of the 45th day after December 31, 1974.

Upon consideration of the tariffs and all relevant factors, the Board finds that the fares may be unjust, unreasonable, unjustly discriminatory, unduly preferential or unduly prejudicial and should be suspended pending investigation. The limitations on the availability of the fares raise clear questions of discrimination, and the proposed levels are substantially out of line with the pattern of fares between the United States and Belgium recently approved by the Board in Order 73-12-104 dated December 26, 1973.

Unjust discrimination occurs when special fares, that are not similarly available to others, are offered to a particular person or class of traffic. Factors related to the status of the traffic and unrelated to transportation may not be considered in justification of a discriminatory fare.

The lowest present individual fare approved by the Board for round-trip travel from New York to Brussels is the 22/45-day excursion fare which is established at $293, $318, and $398, winter, shoulder and peak season, respectively. In contrast, the proposed veterans fares would be set at levels of $220 and $240, respectively, basic and peak season, representing discounts from the 22/45-day excursion fare ranging from 25 to 40 percent. In the Board's opinion, these levels represent unnecessary and unacceptable dilution of carrier revenues which warrants suspension and investigation before they are permitted to take effect.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 404, 801 and 1002(j) thereof;

It is ordered, That:

1. An investigation be instituted to determine whether the fares and provisions on the tariff pages specified in the Appendix, and rules, regulations and practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to take appropriate action to prevent the use of such fares and provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the fares and provisions on the tariff pages specified in the Appendix[3] are suspended and their use deferred to and including March 2, 1975 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. This order shall be submitted to the President[4] and shall become effective March 2, 1974;

4. The investigation ordered herein be assigned for hearing before an Administrative Law Judge of the Board at a time and place hereafter to be designated; and

5. Copies of this order will be served upon Societe Anonyme Belge d'Exploitation de la Navigation Arienne (SABENA) which is hereby made a party to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-5327 Filed 3-6-74;8:45 am]

[Order 74-3-3]

WORLD AIRWAYS, INC.

Baggage Liability Limitations; Order Rejecting Tariff Filings

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 1st day of March, 1974.

By tariff revisions[1] marked to become effective March 7, 1974, World Airways, Inc. (World) proposes a rule which provides that certain articles[2] will not be carried as baggage unless the passenger assumes full risk for any loss of, damage to, or delay in the delivery of such articles. World's tariff provides that it will accept no liability for the articles named.

World's proposed tariff rule would apply to foreign air transportation that is subject to the Warsaw Convention (49 Stat. 3000; T.S. 876). Articles 18 and 19 of the Warsaw Convention provide that, subject to other provisions of said convention, the carrier shall be liable for loss of, or damage to, or delay in the delivery of baggage.

The Board has consistently held that it may order canceled tariffs in conflict with applicable law or regulations and that such tariffs are subject to rejection.[3] The tariff provisions proposed by World provide for the continued acceptance of the named articles, but purport to relieve World of all liability for loss of, or damage to, or delay in the delivery of such articles regardless of the cause of the loss, damage or delay.

Acting pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403 and 404 thereof, the Board finds that the proposed tariff pro-

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[4] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further such motions, requests, or petitions for reconsideration of this order will be entertained.

[1] Air Tariffs Corporation, Agent, Tariff C.A.B. No. 44, 6th Revised Page 72e, Rule 233 and 20th Revised Page 253, Table 303.

[2] A relative is defined as the spouse, descendents, mother and/or father, brothers or sisters of a soldier, and their spouses and children.

[3] Appendix filed as part of the original document.

[4] This order was submitted to the President on February 13, 1974.

[1] Rule 15(e)(3) of World Airways Inc.'s Tariff C.A.B. No. 51.

[2] Fragile or perishable articles, jewelry, money, liquor, cameras and projectors, negotiable papers, wigs, securities, business documents, samples, paintings, antiques, manuscripts, irreplaceable books or publications, electronic amplification systems, radio and stereo equipment, and glassware.

[3] Order 72-6-7, dated June 2, 1972.

visions violate the provisions of the Warsaw Convention, and are therefore unlawful and should be rejected.

It is ordered, That:

1. 3rd Revised Page 5 of World Airways, Inc.'s C.A.B. No. 51 be and hereby is rejected; and

2. Copies of this order be served upon World Airways, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.74-5328 Filed 3-6-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

PAINT AND VARNISH INDUSTRY ADVISORY COMMITTEE

Notice of Meeting

Pursuant to P.L. 92-463, notice is hereby given that a meeting of the Paint and Varnish Industry Advisory Committee will be held from 9:00 a.m. to 4:30 p.m. on March 26 and 27, 1974, in the National Environmental Research Center, Wing B, Classroom 3, Research Triangle Park, North Carolina.

The meeting will be primarily concerned with a review of the draft final report on paint and varnish manufacturing operations submitted by Air Resources Inc., contractor for the study.

The meeting will be open to the public. Any member of the public wishing to attend or participate or present comments should contact Mr. John T. Dale, Executive Secretary, Paint and Varnish Industry Advisory Committee, (919) 688-8146, extension 295.

ROGER STRELOW,
Acting Assistant Administrator for Air and Water Programs.

MARCH 1, 1973.

[FR Doc.74-5247 Filed 3-6-74;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 689]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

FEBRUARY 25, 1974.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) Within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cut-off dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60 day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,

VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20936-C2-ML-74, Empire Dispatch, Inc. (KAA279). Mod. License to change control frequency from 454.30 to 454.05 MHz at Loc. #1: 0.5 mile SW of Greeley, Colorado; and change repeater frequency from 459.30 to 459.05 MHz at Loc. #3: Buckhorn Mtn., 15.5 miles WNW of Ft. Collins, Colorado.

20968-C2-P-74, Albert E. Armour, Jr. (New). C.P. for a new 1-way station to operate on 43.22 MHz to be located atop Sacaton Peak, 10 miles NNE of Casa Grande, Arizona.

20969-C2-P-74, Central Telephone Company (New). C.P. for a new 1-way station to operate on 152.84 MHz to be located at corner of West Seventh Street and Lincoln Street, Fairmont, Minnesota.

20970-C2-P/L-74, Houston Radiophone Service (KKA344). C.P. to change antenna location operating on 454.100 MHz to 6222 Skyline Drive, Houston, Texas.

20971-C2-P/L-74, Houston Mobilfone, Inc. (KKA343). C.P. to change antenna location operating on 454.050 MHz to 6222 Skyline Drive, Houston, Texas.

20972-C2-P-74, Wisconsin Telephone Company (KSJ615). C.P. to change antenna system, location, and replace transmitter operating on 152.81 MHz to be located at 344 South 6th Avenue, West Bend, Wisconsin.

20973-C2-ML-74, RCC of Virginia, Inc. (KIY 783). Mod. License to change antenna system and replace transmitter operating on 152.09 MHz located at 1318 Spratley Street, Portsmouth, Virginia.

20974-C2-P-(3)-74, Duane L. and Velma E. Williams d/b as Custom Radio (KOK342). C.P. for additional base facilities to operate on 152.06 MHz and additional repeater facilities to operate on 459.275 MHz at Loc. #1: 8 miles South of Casper, Wyoming; and additional control facilities to operate on 454.275 MHz at Loc. #2: 212 N. Nichols Street, Casper, Wyoming.

20975-C2-P-74, Mobile Radio Systems, Ltd. (KQZ702). C.P. to change antenna system and location and replace transmitter operating on 152.24 MHz to be located at 7th and Adams Streets, Springfield, Illinois.

20976-C2-P/L-74, Radio Dispatch, Inc. (KLB-701). C.P. to change antenna location operating on 454.200 MHz to 6222 Skyline Drive, Houston, Texas.

20978-C2-P-74, Yakima Telephone Answering Service, Inc. (New). C.P. for a new 1-way station to operate on 158.70 MHz to be located at Ahtanum Ridge, 5 miles South of Yakima, Washington.

20980-C2-ML-74, Electropage, Inc. (KMD 986). C.P. to change antenna system and replace transmitter operating on 43.58 MHz to be located at 1127 11th Street, Sacramento, California.

Major amendment

3202-C2-P-73, Fennimore Telephone Company (New). Fennimore, Wisconsin. Amend to change base station location to 1.5 miles West of Fennimore Hill on US #18, Fennimore, Wisconsin. All other particulars to remain as reported in PN #622 dated November 13, 1972.

Correction

Application file number 20620-C2-P-74 on PN #678 dated 12-10-73, should have been listed as a major amendment to 1262-C2-P-73. All other particulars are to remain as reported on PN #678.

POINT-TO-POINT MICROWAVE RADIO SERVICE

3089-C1-P-74, South Central Bell Telephone Company (KLU69). 3951 Erato Street, New Orleans, Louisiana. Lat. 29°57'14" N., Long. 90°05'54" W. C.P. to add freq. 6226.9H MHz toward Paradis, La. on azimuth 243°-01'.

3090-C1-P-74, same (KGF92), 5.0 Miles South of Paradis, Louisiana. Lat. 29°48'-36" N., Long. 90°25'17" W. C.P. to add freq. 5974.8V MHz toward New Orleans, La. on azimuth 62°51'; freqs. 5974.8H, 6034.2H, 6152.8H MHz toward Thibodaux, La. on azimuth 266°13'.

3091-C1-P-74, same (KGG21), 204 Back Street, Thibodaux, Louisiana. Lat. 29°47'-11" N., Long. 90°49'14" W. C.P. to add freq. 6226.9V MHz toward Paradis, La. on azimuth 86°01'; freq. 6375.2V MHz toward Morgan City, La. on azimuth 256°08'.

3092-C1-P-74, same (WAN71). Corner of 9th and Willard Streets, Morgan City, Louisiana. Lat. 29°42'14" N., Long. 91°12'03" W. C.P. to add freq. 6123.1H MHz toward Thibodaux, La. on azimuth 75°57'.

3093-C1-P-74, The Pacific Telephone and Telegraph Company, 1455 Van Ness Avenue, Fresno, California. Lat. 36°44'22" N., Long. 119°47'37" W. C.P. to change point of communication on freq. 3710V MHz toward Fresno, Calif. on azimuth 15°39'.

3114-C1-P-74, same (KPP94), 0.7 Mile NNW of Sage, California. Lat. 33°35'27" N., Long. 116°56'23" W. C.P. to add freq. 4050H MHz toward Julian, Calif. on azimuth 147°38'; freq. 3970H MHz toward Ranger, Calif. on azimuth 21°07'.

3115-C1-P-74, same (KPP95), 5.6 Miles North of Julian, California. Lat. 33°09'33" N., Long. 116°36'53" W. C.P. to add freq. 4010H MHz toward Sage, Calif. on azimuth 327°49'.

3116-C1-P-74, same (KNL59) Ranger, 6 Miles SSE of Banning, California. Lat. 33°50'32"

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations and other requirements.

[2] The above alternative cut-off rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio and Local Television Transmission Services (Part 21 of the Rules).

N., Long. 116°49'24" W. C.P. to add freq. 4090H MHz toward Sage, Calif. on azimuth 201°11'; freq. 4010H MHz toward Keller Peak, Calif. on azimuth 332°13'.

3117–C1–P–74, same (KMW60) Keller Peak, 10 Miles NE of Highland, California. Lat. 34°11'49" N., Long. 117°02'54" W. C.P. to add freq. 3970H MHz toward Ranger, Calif. on azimuth 152°06'; freq. 4050H MHz toward San Bernardino, Calif. on azimuth 224°59'.

3118–C1–P–74, same (KMQ34), 455 Second Street, San Bernardino, California. Lat. 34°06'07" N., Long. 117°17'33" W. C.P. to add freq. 4090H MHz toward Keller Peak, Calif. on azimuth 64°51'.

3228–C1–P–74, American Telephone and Telegraph Company (KPV22), 228 West Adams Street, Phoenix, Arizona. Lat. 33°-26'58" N., Long. 112°04'35" W. C.P. to change antenna system and point of communication on freqs. 3710H, 3730V, 3810V, 3870H, 3890V, 3970V, 4050V, 4110H, 4130V MHz toward Apache Jct., Ariz. via Passive Reflector.

3229–C1–P–74, Same (KPV21), Apache Junction, 7.5 Miles NW of Apache, Arizona. Lat. 33°29'39" N., Long. 111°38'26" W. C.P. to change antenna system and point of communication on freqs. 3750H, 3770V, 3830H, 3850V, 3910H, 3930V, 3990H, 4010V, 4070H, 4090V, 4150H, 4170V, 4190H MHz toward Phoenix, Ariz. via Passive Reflector.

Corrections

3076–C1–P–74, Correct Applicant's Name to Read: Telecommunications, Inc. (KPR28) (All other particulars same as reported on Public Notice #688, dated 2–19–74.)

3077–C1–P–74, Correct Applicant's Name to Read: Telecommunications, Inc. (KPR29) (All other particulars same as reported on Public Notice #688, dated 2–19–74.)

[FR Doc.74–5323 Filed 3–6–74;8:45 am]

[FCC 74–117]

REGIS T. SKEEHAN, JR., AND CHESAPEAKE AND POTOMAC TELEPHONE CO. OF VIRGINIA

Memorandum Opinion and Order

In the matter of Regis T. Skeehan, Jr., Falls Church, Virginia, complainant, v. The Chesapeake and Potomac Telephone Company of Virginia, Richmond, Virginia, defendant.

1. We have before us for consideration a formal complaint filed under Section 208 of the Communications Act of July 19, 1971 by Regis T. Skeehan, Jr. (hereinafter "complainant") of Falls Church, Virginia against the Chesapeake and Potomac Telephone Company of Virginia (hereinafter "C&P") and also complainant's supplemental complaint filed on September 24, 1973. Complainant's prior informal complaint, filed on March 30, 1971 and served on C&P on April 16, 1971, was not resolved to his satisfaction. He contends in his formal complaint and other correspondence that he was overcharged by $0.45 (or 10 percent) for an interstate toll telephone call to Pittsburgh, Pennsylvania on November 17, 1970. He also alleges that he personally timed the call in question with his wristwatch and that the duration of the call was 30 minutes. C&P billed complainant for 33 minutes. He alleges that either C&P's timing and billing equipment are inaccurate or that an error was made when C&P transcribed the charge to his telephone bill. As damages, complainant requests $11.75, that sum representing 10 percent of his interstate toll charges from August 1, 1970 to August 1, 1971, plus tax and accrued interest. Complainant's supplemental complaint amended his request for damages to include an additional $20.05, this sum representing 10 percent of his interstate toll charges from August 1, 1971 to December 13, 1972, plus tax and accrued interest. In requesting such damages complainant contends that he was overcharged by 10 percent on all toll calls he made during the aforementioned periods. He also requests that we order an investigation into the accuracy of the equipment utilized by C&P in timing toll telephone calls. In its responsive pleading and other correspondence C&P denies that it overcharged complainant by 10 percent for the November 17, 1970 toll call or for any other toll call placed by complainant from August 1, 1970 to December 13, 1972 and alleges that its automatic timing equipment and the equipment and methods utilized in preparing customer bills are extremely accurate and reliable and are constantly checked (through various measures such as parity checks, random sample techniques, etc.) to assure accuracy and reliability. C&P requests that we dismiss the complaints.

2. We conclude that complainant is entitled to a refund from C&P of $0.45 plus any taxes thereon. We are ordering such refund because of C&P's improper destruction of written records containing specific information regarding the November 17, 1970 toll call, which records, if retained, could possibly support C&P's general claim that it properly billed complainant. In view of the uncertainty regarding the destruciton date of pertinent timing and billing tapes we are unable to determine whether their destruction in this case was improper. In its letter of November 17, 1972 C&P admitted that it destroyed pertinent written records notwithstanding that C&P was served the informal complaint on April 16, 1971, at which time it clearly had in its possession written records going back six months, or to on or about September 16, 1970. As we stressed in our recent January 3, 1974 decision on the formal complaint of Richard N. Maller v. New England Telephone Company, FCC 73–1361, it is the duty of the carriers under our jurisdiction, upon being served by us with an informal or formal complaint, to examine promptly and preserve all records then in its possession that are relevant and material to a resolution of the questions raised by the complaint until such time as the complaint is finally resolved. Thus, C&P was unable to show in this case that its own automatic timing equipment actually recorded 33 minutes of chargeable time for the call in question. C&P is able to show only that its own automatic timing equipment could have recorded 33 minutes for this call. Although we are ordering a refund on the November 17, 1970 toll call, we are not ordering a refund on any other toll call complainant made between August 1, 1970 and December 13, 1972. Complainant merely assumes that he was overcharged on other toll calls and alleges no facts whatsoever to support such claim. There is no allegation, for example, that he attempted to time any of these calls himself.

3. We also note that C&P has submitted pursuant to our requests, detailed and specific information describing the functioning of its automatic timing equipment and its billing equipment and describing the billing procedures relating thereto. We have examined such information and are of the opinion that defendant is using equipment and following practices that are generally used and followed throughout the industry and that there is no reason for us to take any further action at this time to require any changes in such equipment or practices. However, we are making no specific finding regarding the degree of accuracy or inaccuracy of C&P's timing and billing equipment or of its billing procedures nor are we approving or disapproving the various measures utilized by C&P to verify the accuracy and reliability of its equipment and its billing procedures. We hold only in this case that C&P, upon being served by us with the complaint herein, should have retained its records to show the timing of the call as recorded by its automatic timing equipment and that, failure to do so, warrants refund of the amount claimed by the customer based upon his own timing of the call.

4. *Accordingly, it is ordered*, That C&P shall within 30 days from the release date hereof, refund $0.45 plus any taxes thereon to complainant; and that within 10 days after such refund has been paid to complainant, C&P shall certify to the Commission in writing that such payment has been effected.

5. *It is further ordered*, That complainant's request for relief is granted to the extent indicated above and is otherwise denied.

Adopted: February 6, 1974.

Released: March 1, 1974.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] VINCENT J. MULLINS, *Secretary.*

[FR Doc.74–5322 Filed 3–6–74;8:45 am]

FEDERAL DEPOSIT INSURANCE CORPORATION

INSURED STATE NONMEMBER BANKS

Statement of Policy and Guidelines for Investments in "Leeway Securities"

On August 4, 1972, the Board of Directors of the Federal Deposit Insurance Corporation adopted a statement of policy which announced an adjustment in the Corporation's examination policies to enable insured State nonmember banks to invest in certain equity and capital debt securities, without fear of criticism by the Corporation or its exam-

[1] Chairman Burch's statement to follow at a later date.

iners, subject to the condition, among others, that such investments are not in conflict with the Voluntary Foreign Credit Restraint guidelines promulgated by the Board of Governors of the Federal Reserve System.

On January 29, 1974, following actions by the Department of the Treasury to reduce the interest equalization tax to zero and by the Department of Commerce to terminate its foreign direct investment restriction, the Board of Governors of the Federal Reserve System terminated its Voluntary Foreign Credit Restraint guidelines.

In order to reflect the termination of those guidelines, the fourth paragraph of the Federal Deposit Insurance Corporation's "Statement of Policy and Guidelines for Investments in 'Leeway Securities'," as published in the FEDERAL REGISTER of August 11, 1972 (37 FR 16228–29), is hereby amended to read as follows:

The Corporation does not wish to impede those banks that feel a strong sense of responsibility from providing limited financial assistance under the circumstances described. Accordingly, the Board of Directors is adjusting the Corporation's examination policies to enable those insured State nonmember banks that so desire to invest in equity or capital debt securities [1] falling within broad categories such as those discussed without fear of criticism by the Corporation or its examiners, subject to the following conditions:

(1) That such investments are allowed for State nonmember banks by applicable State law; [2]

(2) That the aggregate total of all such investments not exceed the amount authorized by applicable State law or 10 percent of the bank's total capital or surplus accounts, exclusive of capital notes and debentures, whichever is less; [3] and

(3) That all such investments have been approved by the bank's board of directors or trustees as "Leeway Securities" and are so identified on the bank's general or subsidiary ledger records.

Effective date. The amendment enunciated herein shall be effective on January 29, 1974.

By order of the Board of Directors, March 1, 1974.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] ALAN R. MILLER,
Executive Secretary.

[FR Doc.74–5335 Filed 3–6–74;8:45 am]

[1] The phrase "capital debt securities" does not include direct loans or discounts.

[2] The word "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

[3] In the case of insured commercial banks, this limitation would equal 10 percent of the figure reportable at Item 35 on FDIC Form 64—Call (Revised June 1969). In the case of insured mutual savings banks, this limitation would equal 10 percent of the figure reportable at Item 24 on FDIC Form 64 (Savings) (Revised December 1971).

FEDERAL MARITIME COMMISSION

MOORE-McCORMACK LINES, INC. AND EMPRESA LINEAS MARITIMAS ARGENTINAS, S.A.

Notice of Agreements Filed

Notice is hereby given that the followings agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old 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 27, 1974. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:
J. D. Straton, Manager
Rates and Conferences
Moore-McCormack Lines, Incorporated
2 Broadway
New York, New York 10004

Agreement No. 10038–1, between Moore-McCormack Lines, Inc. and Empresa Lineas Maritimas Argentinas S.A., modifies the approved basic agreement covering the apportionment of general liner cargo transported by the parties in the Northbound and Southbound trade between the East Coast of the United States and Argentina by (1) deleting item c, subpargraph VII of Article 7 of both Annex I (Northbound) and Annex II (Southbound), in relation to the computation of pool penalty payments and to substitute therefor a revised pool penalty formula as more fully set forth in the modification, and (2) extending the terms of the agreement, as amended, for three years from January 1, 1974, to December 31, 1976.

Agreement No. 10038, as presently constituted, is set to expire on May 3, 1974, unless extended. The first accounting period under the agreement ended on December 31, 1973; the second accounting period commencing on January 1, 1974.

Dated: March 4, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74–5331 Filed 3–6–74;8:45 am]

BLUE SEA LINE JOINT SERVICE

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 27, 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.

Notice of agreement filed by:

Mr. Sanford C. Miller, Haight, Gardner, Poor & Havens, One State Street Plaza, New York, New York 10004.

Agreement No. 8529–4 entered into by the Ocean Transport and Trading Limited, and the China Mutual Steam Navigation Co., Ltd. (operating as one party only as the "Blue Funnel Line" under approved Joint Service Agreement No. 7568, as amended), and Aktiebolaget Svenska Ostasiatiska Kompaniet, is an updated restatement and modification of the approved Joint Service Agreement No. 8529 of these carriers operating as the "Blue Sea Line" to and from ports of the United States and Canada, on the one hand, and ports on the Mediterranean Sea, Red Sea, Gulf of Aden, Somalia, Saudi Arabia, ports in Southwest, South, Southeast and East Africa as well as islands in the Indian Ocean including Madagascar, Reunion, Mauritius, the Comores and Seychelles and the islands of Ascension and St. Helena, Malaysia, Thailand, Brunei, Indonesia, Hong Kong, Formosa, China, Korea, Pacific Coast of the U.S.S.R., Republic of the Philippines, Japan, Panama Canal Zone, Central America, West Indies, Caribbean Sea ports and Mexico, on the other hand.

The purpose of this modification is to amend agreement No. 8529 to reflect the change in name of one of the parties, "Ocean Steam Ship Company, Ltd." to "Ocean Transport and Trading Limited."

By Order of the Federal Maritime Commission.

Dated: March 1, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-5330 Filed 3-6-74;8:45 am]

AMERICAN EXPORT LINES, INC. ET AL.

Notice of Agreement Filed

Notice is hereby given that the following agreement, accompanied by a statement of justification, has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement and the statement of justification at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement and the statement of justification at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old 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 27, 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.

AMERICAN EXPORT LINES, INC., ATLANTIC CONTAINER LINE, DART CONTAINERLINE CO., LTD., HAPAG-LLOYD AG, SEA-LAND SERVICE, INC., SEATRAIN LINES, INC., UNITED STATES LINES, INC.

Notice of agreement filed by:

Howard A. Levy, Esq., Suite 631, 17 Battery Place, New York, New York 10004.

Agreement No. 10118 among the above-named carriers provides that all or any of the parties may enter into arrangements among themselves to (1) slot-charter space on each others' vessels; (2) make terminal, operating and other arrangements relative to such slot-charter services; (3) reduce vessel speeds; (4) lay-up or withdraw tonnage; and (5) exchange booking data and other traffic information necessary to achieve the purposes of the Agreement. The purpose of the Agreement is to enable the parties to reduce their aggregate consumption of marine fuels and other energy resources in the trade between the Atlantic Coast of the United States and North Europe.

By Order of the Federal Maritime Commission.

Dated: March 4, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-5332 Filed 3-6-74;8:45 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (CASUALTY)

Notice of Issuance of Certificate

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

The Shipping Partnership for M.S.
Lindblad Explorer and
Lindblad Cruising Expeditions S.A.
c/o Lindblad Travel, Inc.
133 East 55th Street
New York, New York 10022

Dated: March 4, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-5333 Filed 3-6-74;8:45 am]

CERTIFICATE OF RESPONSIBILITY (PERFORMANCE)

Notice of Issuance of Certificate

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

The Shipping Partnership for M.S.
Lindblad Explorer and
Lindblad Cruising Expeditions S.A.
c/o Lindblad Travel, Inc.
133 East 55th Street
New York, New York 10022

Dated: March 4, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-5334 Filed 3-6-74;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. ID-1723]

FRANK N. BIEN

Notice of Application

FEBRUARY 27, 1974.

Take notice that on February 20, 1974, Frank N. Bien (Applicant), filed an initial application pursuant to Section 305(b) of the Federal Power Act seeking authority to hold the following positions:

Director and Executive Vice President, Ohio Power Company, Public Utility.
Vice President, Beech Bottom Power Company.[1]
Director and Vice President, Cardinal Operating Company.[1]
Director, Ohio Valley Electric Corporation, Public Utility.

Beech Bottom Power Company, whose stock is owned in equal proportions by Ohio Power Company and West Penn Power Company, operates the Windsor Station at Power, West Virginia.

Cardinal Operating Company operates the Cardinal Station, which presently is comprised of two steam generating units, one of which is owned by Ohio Power Company and the other of which is owned by Buckeye Power, Inc. A third generating unit, which is presently under construction, will be owned by Buckeye Power, Inc.

Ohio Valley Electric Corporation provides generation and transmission facilities to supply part of the electric power requirements of the Atomic Energy Commission's gaseous diffusion project at Portsmouth, Ohio. Ohio Valley Electric Corporation's stock is owned by the sponsoring companies.[2] Pursuant to contractual arrangements with the sponsoring companies, Ohio Valley Electric Corporation is entitled to purchase power from the sponsoring companies when necessary to supply the Atomic Energy Commission project. The sponsoring companies are entitled to purchase any power produced by Ohio Valley Electric Corporation which is not needed to supply such requirements.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 25, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein

[1] Applicant is advised by counsel that this Company is not within the purview of section 305(b) of the Federal Power Act. The portion of this application which refers to this Company is not to be regarded as an admission to the contrary and is filed in view of the position taken by the Commission in previous matters of this kind.

[2] The sponsoring companies are as follows: Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus and Southern Ohio Electric Company, The Dayton Power and Light Company, Indiana & Michigan Electric Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monogahela Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, and West Penn Power Company.

must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5200 Filed 3-6-74;8:45 am]

[Docket No. RP74-56]

CASCADE NATURAL GAS CORP.

Notice of Extension of Time and Postponement of Hearing

FEBRUARY 27, 1974.

On February 12, 1974, Cascade Natural Gas Corporation filed a motion for an extension of the procedural dates fixed by notice issued January 15, 1974, in the above-designated matter. The motion states all participants including the staff, have been consulted and all are agreeable to the extension.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Evidence by Cascade, March 15, 1974.
Service of evidence by Staff, April 8, 1974.
Hearing, April 18, 1974 (10:00 a.m.).

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5201 Filed 3-6-74;8:45 am]

[Docket No. RP74-4]

CITIES SERVICE GAS CO.

Notice of Extension of Time and Postponement of Prehearing Conference and Hearing

FEBRUARY 27, 1974.

On January 14, 1974, Staff Counsel filed a motion to reset the service and hearing dates fixed by notice issued November 28, 1973 in the above-designated matter. The time was extended to and including February 1, 1974 for Staff to file its testimony and exhibits. The other procedural dates were to be modified by further notice.

On January 31, 1974, Staff Counsel filed a motion for a further extension of the hearing and service dates. On February 4, 1974, staff filed a motion submitting a revised schedule. The motion stated that the parties had not been contacted but Staff Counsel would advise the Commission upon conferring with them.

As a result of the responses received to the motion filed February 4, 1974, Staff Counsel filed a motion with a revised procedural schedule. By letter dated February 19, 1974, Gas Service Company advised that a conflict existed with the date for the prehearing conference. By letter dated February 26, 1974, Staff Counsel recommended that the prehearing conference be scheduled for April 23, 1974.

Upon consideration, notice is hereby given that the procedural dates are further modified as follows:

Staff Service, March 18, 1974.
Prehearing Conference, April 23, 1974 (10 a.m., EDT).
Intervenor Service, May 20, 1974.
Company Rebuttal, June 17, 1974.
Hearing, July 2, 1974 (10 a.m., EDT).

MARY B. KIDD,
Assistant Secretary.

[FR Doc.74-5202 Filed 3-6-74;8:45 am]

[Docket No. CP74-209]

COLORADO INTERSTATE GAS CO.

Notice of Application

FEBRUARY 28, 1974.

Take notice that on February 19, 1974, Colorado Interstate Gas Company, a division of Colorado Interstate Corporation (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP74-209 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to expand the capacity of its Wyoming pipeline system and to revise its delivery obligation to Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate facilities to increase the peak day supply capacity of its existing Wyoming pipeline system by 21,860 Mcf per day in the 1974-75 heating season. The proposed facilities are 14.0 miles of 24-inch pipeline in Weld County, Colorado, extending the existing loop on the 22-inch Wyoming main line, and 17.1 miles of 24-inch pipeline in Sweetwater and Carbon Counties, Wyoming extending the existing loop on the 22-inch Wyoming main line.

Applicant also proposes to reduce the daily capacity of its daily delivery obligation to Kansas-Nebraska during the months of December, January, and February from 21,000 Mcf to 5,000 Mcf and states that firm daily deliveries during the remainder of the year will be increased to 26,240 Mcf in order to retain the existing annual obligation.

Applicant states that it intends to begin the operation of the new facilities on or before October 1, 1974, and the new delivery obligations are also to be effective on October 1, 1974.

Applicant estimates that the cost of the proposed facilities is $3,676,812, and will be financed from funds on hand, funds from operations, short-term borrowing, or long-term financing.

The application states that with existing Wyoming Line facilities and the substantial loss of peak day supplies on the Southern System,[1] which is supply-limited, Applicant has insufficient physical capacity, as well as insufficient gas supplies, to meet its existing 1974-75 peak day delivery obligations. Both of the proposals herein (the Kansas-Nebraska delivery obligation change and the Wyoming Line capacity increase) bear on Applicant's ability to meet its peak day obligations in 1974-75. The combined effect of both proposals is shown in the following tabulation:

[1] A peak day supply decline of 32,103 Mcf is anticipated from 1973-1974 to 1974-1975.

1974-1975

Particulars	Existing	Proposed	
		December, January, and February	October, November, and March
Pipeline capacity:			
Wyoming system	437,778	459,638	459,638
Southern system [1]	666,474	666,474	666,474
Fort Morgan storage	294,951	294,951	294,951
Boehm storage	20,000	20,000	20,000
Total capacity	1,419,203	1,441,063	1,441,063
Peak day obligation	1,424,098	1,408,098	1,429,338
Capacity excess (deficiency):			
Existing supply deficiency	(5,819)	(5,819)	(5,819)
Delivery obligation change		16,000	(5,240)
Existing spare capacity	924	924	924
New spare capacity		21,860	21,860
Total excess (deficiency)	(4,895)	32,965	11,725

[1] This represents the maximum available supply rather than the physical capacity.

The application states that the 21,860 Mcf of increased capacity proposed herein, plus the 924 Mcf of existing spare capacity, or a total of 22,784 Mcf, will represent spare capacity for new supply additions in the 1974-1975 heating season and fiscal 1975. The 32,965 Mcf available in December, January, and February and the 11,725 Mcf available during the remaining nine months of the year could be used to relieve other supply sources on Applicant's system.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 22, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Pro-

cedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5204 Filed 3-6-74;8:45 am]

[Docket Nos. RP72-37 and RP71-18, *et al.*]

COLUMBIA GAS TRANSMISSION CORP. AND COLUMBIA GULF TRANSMISSION CO.

Order Accepting for Filing and Approving Plan for Distribution of Supplier Refunds

FEBRUARY 28, 1974.

Columbia Gas Transmission Corporation (Columbia) on October 27, 1972, tendered for filing a plan of refunds to Columbia's 83 jurisdictional customers in the amount of $1,248,917 which represents the jurisdictional portion of the principal and interest associated with refunds it received from its suppliers. In addition, Columbia proposes to refund the amount associated with the interest it has earned through its investment of the refunds so received. The major portion of the refunds were received by Columbia in July and August, 1972, and a minor portion $50,807, is attributable to amounts of supplier refunds held by Columbia's predecessor companies at the time of merger, which relate to various periods of time between May 1, 1960, and July 1, 1971, the date of merger. The refunds relate to gas purchases during some 65 different periods of time, during the last 19 years, and involve Columbia's sales in Docket No. RP72-37 and 37 of its predecessors' rate proceedings, as follows:

United Fuel Gas Company: G-12195 *et al.*, G-20270, RP66-2, RP69-29, RP71-19.

Atlantic Seaboard Corporation: G-12196 *et al.*, G-20272, RP65-49, RP69-31, RP71-20.

Kentucky Gas Transmission Corporation: G-12199 *et al.*, G-20271, RP66-8, RP69-30, RP71-21.

The Ohio Fuel Gas Company: G-1965, G-2281, G-16818 *et al.*, RP66-7, RP71-22.

Cumberland & Allegheny Gas Company: G-17226, RP71-23.

The Manufacturers Light and Heat Company: G-1967, G-2176, G-2453, G-12197 *et al.*, G-20510, RP66-5, RP69-33, RP71-24.

Home Gas Company: G-1966, G-2175, G-12198 *et al.*, G-20511, RP66-6, RP69-32, RP71-25.

Columbia requests permission to deviate from refund flow-through procedures applicable in its and its predecessors' prior rate proceedings, and to be permitted to flow through these aggregate refunds according to the proposed plan. The proposed refund is the flow-through of $1,273,639 refund of principal and interest received from suppliers, as adjusted to reflect net storage injections and withdrawals, and is based upon sales and storage volumes for the 12 months period ended July 31, 1972, rather than according to the varying refund procedures in the 37 rate proceedings. Columbia states that 89.24 percent ($1,136,642) of the accumulated refunds are attributable to the period January 1, 1970 through March 31, 1972.

Copies of the refund plan have been mailed to each of Columbia's jurisdictional customers and interested State Commissions. On February 1, 1973, and on April 2, 1973, the Commission issued notices of the filing of the refund plan which were published in the FEDERAL REGISTER (38 FR 3548, 9116).

No parties have filed objections to the proposed refund plan based upon our review of Columbia's proposed plan to distribute the supplier refunds on the basis of sales for the 12 months period ended July 31, 1972, rather than according to the varying prescribed refund procedures in the various dockets we believe that the refund plan as filed is reasonable and equitable to all parties. Accordingly, it should be approved.

The Commission finds:

Columbia's proposed plan of distribution of refunds received from its gas suppliers applicable to the periods of time and the proceedings listed above involving Columbia's and its predecessor companies' rates and charges, is just and reasonable and not unduly discriminatory or preferential, and should be accepted for filing, approved and made effective as ordered below.

The Commission orders:

(A) Columbia's proposed plan of distribution of gas supplier refunds, as filed on October 27, 1972, is hereby accepted for filing, approved and made effective as proposed. Within 30 days after making such refunds to its customers, as proposed by Columbia, it shall file a report with the Commission indicating the principal and interest amounts paid to each customer and the date or dates on which payments were made.

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

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-5203 Filed 3-6-74;8:45 am]

[Docket No. RP74-23]

EL PASO NATURAL GAS CO.

Notice of Certification of Settlement

FEBRUARY 28, 1974.

Take notice that on February 22, 1974 the presiding administrative Law Judge in the above captioned proceeding certified to the Commission a Stipulation and Agreement in settlement of a Rate Proceeding filed by El Paso. The Agreement is intended to dispose of issues related to a special overriding royalty Rate Adjustment and terminate the proceeding pending at Docket No. RP74-23.

Under the agreement Northwest Pipeline Corporation would adjust its rates to (1) amortize the jurisdictional portion of $4,921,357 over the period October 1, 1974, through September 30, 1975 and (2) to recover, on an annualized basis, the jurisdictional portion of $1,611,108. The Commission Staff opposed the Agreement on the record.

Copies of this filing are on file with the Commission and are available for public inspection. Any person desiring to comment upon the Agreement should file such comments with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 11, 1974.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5206 Filed 3-6-74;8:45 am]

[Docket Nos. E-8170 and E-7548]

GEORGIA POWER CO.

Notice of Changes in Tariff

FEBRUARY 28, 1974.

Georgia Power Company (Georgia Power) on February 4, 1974, tendered for filing revised sheets Nos. 3A, 3C and 3I to its FPC Electric Tariff, Original Volume No. 1. Georgia Power states that these tariff revisions to its Index of Purchasers cover changes effective in the fourth quarter of 1973 and in the first quarter of 1974, consisting of four new Cooperative delivery points and the conversion of one existing Cooperative delivery point to the WR-7 rate.

Also included in the filing are supplements (executed by Applicant only) to five contracts with Rural Cooperatives and Municipalities: Coastal Electric Membership Corporation (Delivery Point No. 4); Sumter Electric Membership Corporation (Delivery Point No. 9—Louvale); Carroll Electric Membership Corporation (Delivery Point 12); Cobb County Rural Electric Membership Corporation (Delivery Point 8—Fair Oaks); and Flint Electric Membership Corporation (Delivery Point 17—Henderson).

No statement is included in the filing briefly describing the proposed changes; nor does it indicate whether service has been made of copies of the filing on interested persons, pursuant to §§ 35.13(a); and 1.17(b) and no form of notice for publication in the FEDERAL REGISTER is included, as required by § 35.8(a) of the Commission's Regulations Under the Federal Power Act.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 8, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must

file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5205 Filed 3-6-74;8:45 am]

[Docket No. CP74-211]

IROQUOIS GAS CORP. ET AL.

Notice of Application

FEBRUARY 28, 1974.

Take notice that on February 20, 1974, Iroquois Gas Corporation (Iroquois), 10 Lafayette Square, Buffalo, New York 14203, Pennsylvania Gas Company (Penn Gas), 213 Second Avenue, Warren, Pennsylvania 16365, and United Natural Gas Company (United Natural), 308 Seneca Street, Oil City, Pennsylvania 16301, filed in Docket No. CP74-211 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they are in the process of consummating a plan of reorganization to simplify their corporate and administrative operations, as partially outlined in their application filed together with NFG Gas Corporation (NFG) in Docket No. CP73-294. As part of this plan, Iroquois and Penn Gas will merge into United Natural, which as the surviving corporation will be engaged in production, storage and interstate transmission of natural gas.[1] The construction proposed herein is contemplated to begin before Iroquois and Penn Gas merge into United Natural.

Applicants seek authorization to construct and operate 50 meters in order to measure gas deliveries to NFG after the planned reorganization. Applicants state that 25 meters are planned for existing Iroquois pipelines, including 11 turbine meters and 14 orifice meters; 7 meters are planned for existing Penn Gas pipelines, including 5 rotary displacement meters and 2 orifice meters; and 18 meters are planned for existing United Natural pipelines, including 4 orifice meters, 9 turbine meters and 5 diaphragm displacement meters. These facilities will be located in either New York or Pennsylvania. United Natural further seeks authorization to construct and operate a "jumper", consisting of approximately 200 feet of 12-inch pipe at its Mercer, Pennsylvania, control station and to cut and cap its Line T east of Line T-M 214, which feeds gas to Fredonia, Pennsylvania. Applicants assert that the "jumper" will enable United Natural to avoid the installation of 44 meters in the area near Sharon and Greenville, Pennsylvania, and Andover, Ohio, which would otherwise be necessary for measurement of gas to be sold by United Natural after reorganization. Applicants estimate a cost savings of $100,000 by the proposed "jumper" construction in lieu of the meter construction. Total cost of the construction proposed herein is estimated at $507,920, which Applicants plan to finance from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 22, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice, that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5207 Filed 3-6-74;8:45 am]

[Docket No. RP73-102]

MICHIGAN-WISCONSIN PIPE LINE CO.

Notice of Certification of Settlement

FEBRUARY 28, 1974.

Take notice that on February 21, 1974, the Presiding Administrative Law Judge certified to the Commission a proposed Stipulation and Agreement (Agreement), a motion for waiver of intermediate decision with respect to two issues, and a copy of the transcript and all exhibits in the above referenced docket. The Agreement, presented at the initial hearing on February 19, 1974, relates to a proceeding directed by Commission order of May 30, 1973 regarding an application of Michigan-Wisconsin Pipe Line Company (Mich-Wis) for changes in its FPC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 2, which would effect an increase in jurisdictional revenues of $37.7 million based on sales for the twelve month period ended January 31, 1973, as adjusted. The order also suspended the proposed increase until November 1, 1973.

The Agreement purports to settle all of the issues in the docket with the exception of the inclusion in cost of service of annual delay rental payments relating to a proposed coal gasification project and the Commission Staff's position that a further hearing is required with respect to Mich-Wis' prospective rate design. All parties present at the hearing, including the Commission Staff, expressed their respective concurrences with the Agreement on the record.

Any person wishing to comment upon said certification should file comments with the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426. All such comments should be filed on or before March 22, 1974.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5208 Filed 3-6-74;8:45 am]

[Docket No. E-8617]

MISSOURI PUBLIC SERVICE CO.

Notice of Tariff Changes

FEBRUARY 27, 1974.

Take notice that on February 4, 1974, Missouri Public Service Company (Missouri) tendered for filing proposed changes in its FPC Electric Service Tariffs for Wholesale Firm Power Service to supersede and replace those rate provisions of contract rate schedules presently in effect which relate to seven wholesale customers located in the State of Missouri. Missouri requests an effective date of April 1, 1974.

Missouri states that the proposed changes would increase revenues from jurisdictional sales and service by $80,332 based on the twelve month period ending September 30, 1973. Missouri also claims that its rate of return on allocated rate base and cost of service for Municipalities-Resale was 1.93 percent for the above twelve month period. In addition, Missouri alleges that it has experienced substantial increases in all elements of its costs, including fuel, labor, interest, taxes and construction to provide additional capacity and meet environmental requirements.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such peti-

[1] Applicants state that this reorganization plan has been approved by the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio. Applicants have also applied to the Securities and Exchange Commission and the New York Public Service Commission for approval of the transactions related to the proposed reorganization.

tions or protests should be filed on or before March 14, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5210 Filed 3-6-74;8:45 am]

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON THE IMPACT OF INADEQUATE ELECTRIC POWER SUPPLY

Establishment of Committee and Designation of Initial Membership and Chairmanship

FEBRUARY 28, 1974.

The Federal Power Commission hereby determines that establishment of a National Power Survey Technical Advisory Committee to be designated Technical Advisory Committee on the Impact of Inadequate Electric Power Supply is in the public interest and necessary and appropriate for the purposes of the Federal Power Act, 16 USC 791(a) *et seq.* The Commission establishes said advisory committee in accordance with the provisions of the Commission's order issued June 29, 1972, 37 FR 13380—Order Authorizing The Establishment of National Power Survey Advisory Committees and Prescribing Procedures, the Commission's order issued September 28, 1972, 37 FR 20999—Order Establishing National Power Survey Technical Advisory Committee and Designating Initial Membership and Chairmanship, the Commission's order issued December 19, 1972, 37 FR 28658—Order Amending National Power Survey Orders—and the provision of this order.

By notice published in the FEDERAL REGISTER on February 13, 1974, 39 FR 5531, the Chairman of the Commission has determined and certified that establishment of this advisory committee is necessary in the public interest in connection with performance of duties imposed on the Commission by law. The Office of Management and Budget, Committee of Management Secretariat, has ascertained that formation of this advisory committee is in accord with the requirements of the Federal Advisory Committee Act, 86 Stat. 770, 773-4.

1. *Purpose.* The Technical Advisory Committees shall be subordinate to the National Power Survey Executive Advisory Committee and shall report to such Committee, to the Director of the National Power Survey (Director), and to the Commission on all matters delegated to it pertaining to the planning, conduct and execution of the National Power Survey. The principal functions of the Technical Advisory Committees shall be as follows: (1) to carry out all directions of the National Power Survey Executive Advisory Committee, the Director or the Commission pertaining to the planning, conduct and execution of the National Power Survey; (2) to recommend guidelines as requested by the National Power Survey Executive Advisory Committee, the Director or the Commission for the detailed work encompassed in the conduct of the National Power Survey and to allocate work assignments to any task forces organizationally subordinate to them; (3) to recommend a proposed time schedule for the development and completion of all assignment phases of the National Power Survey; (4) to coordinate all facets of work allocated to any organizationally subordinate task forces; (5) to submit periodic reports to the National Power Survey Executive Advisory Committee, the Director and the Commission as to the progress and status of the National Power Survey, together with such recommendations pertaining thereto as may be appropriate; and (6) to furnish such other assistance and advice to the National Power Survey Executive Advisory Committee, the Director and the Commission as they may be called upon from time-to-time to contribute for the successful planning and conduct of the National Power Survey.

2. *Selection of committee members.* Unless otherwise directed by the Commission, all committee members and persons designated to act as committee chairmen or vice chairmen, shall be selected and designated by the Chairman of the Commission with the approval of the Commission and are designated in the appendix attached hereto.

3. *Conduct of meetings.* The Chairman of the Commission, or, in his absence, the Vice Chairman of the Commission, or any full-time salaried officer or employee of the Commission, or of another agency or department of the Federal Government, designated by the Chairman of the Commission, who shall act as chairman of a committee, shall be responsible for opening, conducting and adjourning committee meetings when, in his judgment, adjournment is in the public interest. When a committee is chaired by a person, designated by the Chairman of the Commission, as a chairman of that committee, who is not a full-time salaried officer or employee of the Commission, no meeting of such committee shall be held except at the call of, or with the advance approval of, a full-time salaried officer or employee of the Commission, designated by the Chairman of the Commission, and with an agenda formulated or approved by such officer or employee; and all such meetings shall be conducted in the presence of such full-time salaried officer or employee of the Commission, or a full-time salaried officer or employee of another agency or department of the Federal Government, designated by the Chairman of the Commission, who shall be responsible for opening the meeting, assisting in the conduct thereof, and for adjourning any meeting whenever he considers adjournment to be in the public interest.

4. *Minutes and records.* The Chairman of the Commission having made the determinations as reflected in the Commission's order of December 19, 1972, it is directed: (1) that National Power Survey advisory committees shall not be permitted to receive, compile, or discuss data or reports showing the current or projected commercial operations of identified business enterprises; (2) that the records of all National Power Survey advisory committee meetings or proceedings shall be accurate and include as detailed minutes with respect to each, showing (a) the time and place of the meeting, an explanation of the extent to which the meeting was open to the public, an identification and listing of committee members and all other persons present and participating in the meeting, together with the interests or affiliations they represent and an explanation of the manner and extent of public participation in the meeting by members of the public who attended but did not present oral or written statements to the committee, including an estimate of the number of such persons; (b) a complete and accurate description of all matters discussed and all conclusions reached; (c) the written information made available for consideration by the committee, including copies of all reports received, issued or approved by the committee; (d) all recommendations made and reasons therefore; and (e) the respective advisory committee chairman's designation of a person to record the committee meeting minutes, which person shall be the same person as designated by the Chairman of the Commission as the Secretary or Alternate Secretary of the committee, and the advisory committee chairman's certification as to the accuracy of such minutes; and that in addition to the foregoing, (3) one form of the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agendas or other documents which were made available to or prepared for or by each National Power Survey advisory committee shall be lodged and retained within the public files of the Commission.

5. *Secretary of the commission.* The Chairman of the Commission shall appoint a secretary of each committee, including alternate secretaries where indicated, from among the members of the Commission staff or from another agency or department of the Federal Government, who shall be responsible for preparing agendas, listing matters to be considered, supplying copies thereof and notifying committee members of the meetings, all in accordance with the requirements of paragraph 3 above, preparing detailed minutes of all committee meetings, and maintaining all records related to organization, membership and operations of the committee. As a part of such records, the Secretary or Alternate Secretary of each committee shall compile and report at least annually committee membership, functions and actions. The Secretary or Alternate Secretary shall be present during all committee meetings and the person so present shall include within his certification as to the accuracy of all minutes of the proceed-

ing so recorded, the certification of the committee chairman.

6. *Location and time of meetings.* Unless otherwise directed by the Chairman of the Commission, committee meetings will convene at the call of the Chairman of the Commission at such time and place as he shall direct, or at such time and place as may be designated by the chairman of the committee with the advance approval of the Chairman of the Commission. Ordinarily, these meetings will be held at the Washington, D.C. office of the Federal Power Commission during regular working hours of the Federal Power Commission.

7. *Advice and recommendations offered by the committee.* The advice and recommendations of the members of the committees may be presented to the Commission at committee meetings either orally or in written form. The advice of all committees shall be limited to matters relating solely to the planning and carrying out of the National Power Survey. Ultimate decisions based on the committees' advice or recommendations are reserved to the Federal Power Commission.

8. *Duration of the committee.* All committees shall terminate not later than two years subsequent to their respective dates of formation, unless the Commission determines in writing, not more than 60 days prior to the expiration of such two-year period, that continued existence of a committee is in the public interest. A like determination by the Commission shall be required not more than 60 days prior to the end of each subsequent two-year period to continue the existence of each committee thereafter.

The Secretary of the Commission shall file with the Chairman, Committee of Commerce, United States Senate, Chairman, Interstate and Foreign Commerce Committee, House of Representatives, and Librarian, Library of Congress, copies of all Commission orders, together with a copy of this order, as constituting the charters of the National Power Survey advisory committees.

The Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

APPENDIX

TECHNICAL ADVISORY COMMITTEE ON THE IMPACT OF INADEQUATE ELECTRIC POWER SUPPLY

CHAIRMAN

Dr. Irwin M. Stelzer
President
National Economic Research Associates

MEMBERS

Dr. Thomas H. Burbank
Vice President
Economics and Administrative Services Division
Edison Electric Institute

Mr. Gordon R. Corey
Vice-Chairman
Commonwealth Edison Company

Prof. Alfred E. Kahn
Dean, College of Arts and Sciences
Cornell University

Mr. T. Justin Moore, Jr.
President
Virginia Electric and Power Company

Mr. P. H. Robinson
Chairman
Houston Lighting & Power Company

Dr. Sam H. Schurr
Director—Energy Systems Economics and Conservation Division
Electric Power Research Institute

Mr. William A. Vogely
Deputy Asst. Secretary, Program Development & Budget
U.S. Department of the Interior

Mr. Alvin W. Vogtle, Jr.
President
The Southern Company

Mr. C. Howard Hardesty, Jr.
Executive Vice-President
Continental Oil Company

FPC COORDINATING REPRESENTATIVES

Mr. Bernard B. Chew
Chief
Division of Power Surveys and Analyses
Bureau of Power

Mr. Robert G. Uhler
Acting Chief
Division of Economic Studies
Office of Economics

SECRETARY

Mr. B. E. Biggerstaff
Head
Section of Power Surveys
Bureau of Power

ALTERNATE SECRETARY

Mr. Norton Savage
Head
Section of Power Supply and Reliability Reporting
Bureau of Power

[FR Doc.74-5221 Filed 3-6-74;8:45 am]

[Docket No. CP74-206]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

FEBRUARY 27, 1974.

Take notice that on February 11, 1974, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP74-206 an application pursuant to section 7(c) of the Natural Gas Act as implemented by § 157.7(d) of the Regulations thereunder (18 CFR 157.7(d)) for a certificate of public convenience and necessity authorizing the construction over a three-year period commencing January 1, 1974, and operation of certain natural gas facilities for the testing and development of underground storage reservoirs, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment Applicant's ability to engage in a continuing program of testing and developing reservoirs for the underground storage of natural gas for the benefit of Applicant's system operations and service to its customers.

Applicant proposes to investigate the more promising structures through the acquisition of surface and subsurface rights that may be necessary or convenience for testing operations, drill structure test holes and wells and run pump tests to determine relevant reservoir characteristics.

Applicant further proposes to make gas injections and withdrawals in additional underground storage reservoirs as they are located in order to test and develop only those reservoirs anticipated to respond favorably to development as usable storage facilities. Applicant states that in this regard it will drill injection and withdrawal wells and construct and operate compressor, pipeline and appurtenant facilities as may be required to effectuate the proposed injections and withdrawals of gas to test properly and develop such potential storage reservoirs.

Applicant states that the total volume of natural gas to be injected into the prospective storage fields will not exceed 10,000,000 Mcf, with no more than 2,000,000 Mcf being injected into any single field. Total expenditures for the proposed three-year project will not exceed $3,000,000 and will not exceed $1,000,000 in any one year. Applicant proposes to finance these costs from funds on hand.

Applicant states that upon successful completion of the testing and development of any underground storage reservoir Applicant will file an application for authorization to utilize said storage reservoir as an integral part of its transmission system.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-5211 Filed 3-6-74;8:45 am]

[Docket No. CP74-205]

NORTHERN NATURAL GAS CO.

Notice of Application

FEBRUARY 27, 1974.

Take notice that on February 12, 1974, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP74-205 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell and deliver natural gas to West Texas Natural Gas Company (WTNG) for resale in the State of Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell and deliver up to 350,000 Mcf of gas per month and 2,280,000 Mcf of gas annually to WTNG to enable WTNG to provide gas service heretofore provided by Applicant's People Natural Gas Division (Peoples) in certain areas of west Texas. The application states that Peoples has recently entered into an agreement with WTNG whereby Peoples will sell and transfer to WTNG effective May 31, 1974, all of its distribution system properties and services in areas of west Texas, adjacent to Applicant's present pipelines located in Carson, Gray, Oldham, Potter, Wheeler, Armstrong, Briscoe, Castro, Childress, Collingsworth, Deaf Smith, Donely, Hale, Hall, Hockley, Lubbock, Parmer, Randall, Swisher, Terry, Yoakam, Andrews, Crockett, Gaines, Irion, Martin, Midland, Pecos, Reeves, Reagan, Schleicher, Sutton, Upton, Val Verde, Ward and Winkler Counties, Texas.

The application states that Applicant presently operates certain sales measuring station facilities to deliver volumes of natural gas to Peoples for the direct sale and distribution to Applicant's right-of-way grantors and other customers for residential, irrigation fuel and other high-priority uses in these rural areas. Applicant proposes to sell and deliver natural gas to WTNG for resale through said facilities to enable the latter to continue the services presently rendered by Peoples.

Applicant states that the initial rates for the total gas volume delivered through all delivery stations in each rate area shall be in accord with Applicant's FPC Gas Tariff, Original Volume No. 2, which provides for the following rates:

Rate Area	*Rate Per Mcf (cents)*
Permian	37.08
Plains	38.58
Panhandle	40.58

Applicant states that WTNG has also agreed to provide gas service to any and all right-of-way grantors to Applicant through existing delivery stations in the subject areas, or, after appropriate authorization, through the establishment of new delivery stations for such grantors not in the immediate proximity of existing delivery stations or existing service facilities of WTNG.

Applicant states that the proposed delivery and sale of natural gas to WTNG will not impair Applicant's ability to render service to its other high-priority customers.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-5212 Filed 3-6-74;8:45 am]

[Docket No. E-8599]

OTTER TAIL POWER CO.

Notice of Application

FEBRUARY 27, 1974.

Take notice that on February 19, 1974, Otter Tail Power Company (Applicant), of Fergus Falls, Minnesota, filed an Application seeking an order, pursuant to section 204 of the Federal Power Act, authorizing the issuance of 271,757 Common Shares, par value $5.00 per share, for public sale and an exemption from competitive bidding requirements in connection therewith.

The common shares will be issued to repay short-term borrowings made to finance Applicant's 1973 and 1974 construction programs.

Any person desiring to be heard or to make any protest with reference to such Application should, on or before March 26, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Persons desiring to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and is available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5213 Filed 3-6-74;8:45 am]

[Docket No. CP74-207]

PACIFIC INDONESIA LNG CO.

Notice of Application

FEBRUARY 27, 1974.

Take notice that on February 15, 1974, Pacific Indonesia LNG Company (Applicant), 720 West Eighth Street, Los Angeles, California 90017, filed in Docket No. CP74-207 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate certain facilities to receive, unload, store and vaporize imported quantities of liquefied natural gas (LNG) and the sale and delivery of vaporous gas derived therefrom to Southern California Gas Company (SoCal), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states on September 6, 1973, an affiliate of Applicant, Pacific Lighting International, S.A. (PLI), contracted to purchase from Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina), the State Oil and Gas Enterprise of the Republic of Indonesia (the Pertamina contract) an average daily quantity of LNG containing approximately 619.71 billion Btu, which is equivalent to approximately 546,000 Mcf of natural gas per day at 1,135 Btu per cubic foot, for a term of twenty years to begin at the conclusion of a start-up period during which lesser quantities will be purchased. The application states further that on November 28, 1973, Applicant contracted to purchase said quantities of LNG from PLI on a cost-of-service basis. On November 30, 1973, Applicant filed with the Commission, in Docket No. CP74-160, an application for authorization under Section 3 of the Natural Gas Act to import into the United States the LNG to be purchased from PLI, less quantities evaporated during shipment.

Applicant requests authorization in this application for the construction and

operation of facilities to be located near Port Hueneme, California, for the receipt, unloading, storage and vaporization of the imported LNG and the sale of the resulting vaporous gas to SoCal, with which it has entered into a natural gas sales agreement dated February 4, 1974.

The application states that the supply of gas from which the LNG will be provided is located in an area known as Contract Area "B" in northwest Sumatra, Indonesia, and will be produced by Pertamina and Mobil Oil Indonesia Inc. The gas will be liquefied and sold by Pertamina to PLI at ship's rail in northwest Sumatra, Indonesia. PLI will be responsible for transporting the LNG to a predetermined point of sale enroute to the United States, at which point Applicant shall purchase and take title to the LNG and shall assume responsibility for transporting such LNG to the west coast of the United States.[1]

Applicant proposes to construct certain facilities including a marine terminal and vaporization facility near Port Hueneme into which it will discharge this subject LNG. The application states that the facilities will include a berthing installation, to be built by the Oxnard Harbor District, for receiving and unloading LNG ships; an LNG transfer system comprised of two 30-inch cryogenic liquid lines and 12-inch vapor return line, to transfer the LNG 1.5 miles inland to the storage and vaporization site; two 550,000-barrel storage tanks and an adjoining vaporization facility with a nominal capacity of over 500,000 Mcf per day and a peak capacity of 1,000,000 Mcf per day. Assuming that governmental authorizations and financing are obtained without delay, construction will begin in September 1975 and will be completed by July 1978. Applicant estimates that the cost of the facilities, on the basis of 1978 costs, will be $140,494,000.

Applicant states that natural gas derived from imported quantities of LNG will amount to approximately 190 million Mcf of natural gas per year for a term equivalent to that of the Pertamina contract. Applicant proposes to sell and SoCal to purchase these quantities on a cost-of-service basis in conformity with Applicant's Rate Schedule PI–1.

The application states the estimated price of the LNG in the first year of full deliveries, expected to be 1981, will be $1.58 per million Mbtu delivered to Applicant's receiving terminal and vaporization facility in southern California and $1.82 delivered as vaporous gas to SoCal. Using the base price in the Pertamina contract for the cost of the LNG, and estimated ship and vaporization facility construction and operation costs as of 1973 without escalation, the estimated cost would be $1.32 delivered to the receiving terminal in southern California and $1.50 delivered as natural gas to SoCal.

The application states that SoCal has informed Applicant that it will file an application with the California Public Utilties Commission for a certificate of public convenience and necessity to construct and operate a 36-inch natural-gas pipeline, 12.2 miles in length, to connect its intrastate pipeline system to the outlet of Applicant's proposed vaporization facility.

The application states that SoCal has been forced to reduce the level of service normally provided to its industrial and wholesale customers because of curtailment in contracted-for deliveries of natural gas and that SoCal advises that by 1978 it may be necessary to curtail service to firm customers as well. Applicant states that the proposed import project will provide a new supply of natural gas to supplement declining domestic supplies and alleviate the severity of anticipated curtailments of service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 74–5214 Filed 3–6–74;8:45 am]

[1] Applicant has entered into the Liquefied Natural Gas Shipping Agreement with an affiliate, Pacific Lighting Marine Company, from which it will obtain ships for the purpose of transporting the LNG which it purchases under the LNG Purchase and Sales Agreement. Such ships shall be made available to PLI for the performance of its transportation obligations, under the terms and conditions to be agreed upon between Applicant and PLI.

[Docket No. E–8361]

ROSEAU ELECTRIC COOPERATIVE, INC.

Order Setting Hearing

FEBRUARY 27, 1974.

On August 6, 1973 (as supplemented on September 12 and October 9, 1973) the Roseau Electric Cooperative, Inc. (Applicant) filed an application, pursuant to section 202(e) of the Federal Power Act, with the Commission requesting an order authorizing the transmission of electric energy from the United States to Canada in an amount not to exceed 90,000 Kwh annually at a rate of transmission not to exceed 37.5 Kw. The application states that the energy proposed to be exported by the Applicant will be delivered to the Northwest Angle Indian Reserve No. 33 (hereafter Reserve), Province of Ontario, Canada, in accordance with the terms and conditions and at the rates and charges set forth in (1) a contract for electric service, dated July 17, 1973, between Applicant and the Reserve, and (2) the rate schedule of the Applicant for the Northwest Angle area of Lake of the Woods County in the State of Minnesota. The contract and rate schedule were included as Exhibits A and G, respectively, in the tendered application, and will be treated under § 35 of the Commission's Regulations, 18 CFR § 35.0, et seq., as one initial export rate schedule.[1] The application further states that the electric energy proposed to be exported [2] by the Applicant will be utilized in the homes, school, store and headquarters of the Reserve. The source of the energy proposed to be exported will be the electric supply for Applicant's Northwest Angle service area, which is furnished by Minnkota Power Cooperative, Inc.

Concurrently, the Applicant seeks permission, pursuant to Executive Order No. 10485, dated September 3, 1953, to construct, operate, maintain and connect at the international border between the United States and Canada, certain electric transmission facilities for the purpose of transacting the proposed exportation of energy.

Written notice of the application has been given to the Public Service Commission of Minnesota and to the Governor of that State. Notice of the application was also given by publication in the Federal Register on November 7, 1973, 38 FR 30785, inviting petitions to intervene or protests in accordance with the Commission's rules of practice and

[1] The contract and rate schedule referred to above are designated in the Commission's files as Cooperative's Export Rate Schedule FPC No. 1. The contract is for an initial period of five years from the date of commencement of electric service by Cooperative to the Indian Reserve and may continue after the expiration of such period until cancelled in accordance with its provisions. The rate schedule specifies a multi-step monthly energy charge, including 10¢ per Kwh for the first 50 Kwh and 3¢ per Kwh for all energy in excess of 200 Kwh. The minimum monthly charge under the rate schedule is $10.

procedure, 18 CFR 1.8, *et al.* No petition or protest or request to be heard in opposition to the granting of the application has been received.

Because of the current energy shortage in the United States, it is appropriate and in the public interest to order a public hearing in this case. The purpose of the hearing will be to determine whether the proposed transmission of electric power and energy from the United States to Canada would in this case impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

In order to accomplish this goal it will be necessary to consider in the hearing, such matters as types, availabilities and supply requirements of fuel used in the generation of power to be exported to Canada. The effects of the sale and transmission upon the overall reliability of the supplying utility and those utilities with whom the supplier is interconnected should also be considered. In this regard, it may be necessary to examine the types of facilities to be used in association with the sale and with regard to Applicant's interconnection with other companies. It may also be important in making a determination in the public interest to establish in the record what effect, if any, this sale might have upon the ratio of total power exported to total power imported to the United States.

The issues discussed above are not intended to limit the scope of the hearing. It is suggested that they are among the most important issues which should be discussed.

Applicant also filed an application for Presidential Permit to construct facilities at the international border between the United States and Canada. The purpose of those facilities was to provide a means of actually transporting the energy which would be authorized for export pursuant to section 202(e) of the Federal Power Act [16 U.S.C. 824a(e)]. The Commission will reserve ruling on this application until after completion of the hearing pursuant to section 202(e).

The Commission finds:

It is appropriate and in the public interest to hold a public hearing for the purpose of determining whether the proposed export of electric power and energy would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

The Commission orders:

(A) A hearing shall be held for the purpose set forth in this order.

(B) Applicant shall file its case in chief directed to matters set forth in this order no later than March 22, 1974. Staff shall file its case no later than April 5, 1974. A hearing shall commence on April 16, 1974, at 825 North Capitol Street, Washington, D.C. 20426, at 10:00 a.m. (e.d.t.) on April 16, 1974.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-5215 Filed 3-6-74;8:45 am]

[Docket No. RP73-49]

SOUTH GEORGIA NATURAL GAS CO.

Notice of Revision to Tariff

FEBRUARY 28, 1974.

Take notice that on February 21, 1974, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of Original Volume No. 1 to its FPC Gas Tariff the following revised tariff sheets:

Fifth Revised Sheet No. 3A, Thirtieth Revised Sheet No. 5, Twenty-Ninth Revised Sheet No. 6, Twenty-First Revised Sheet No. 9, Nineteenth Revised Sheet No. 11, Twenty-Third Revised Sheet No. 12B.

South Georgia states that the above sheets represent a rate change under its PGA clause, such clause approved to become effective April 14, 1973, by Commission Order in FPC Docket No. RP73-49 issued April 13, 1973. The company further states that it proposes to increase its rates $401,926 for the purpose of tracking a rate increase filing by Southern Natural Gas Company (Southern) on February 20, 1974, which would increase South Georgia's cost of gas $684,139 annually. An effective date of April 6, 1974 is requested.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 15, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application area on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5216 Filed 3-6-74;8:45 am]

[Docket Nos. RP73-64, RP72-91 (Phase II), *et al*]

SOUTHERN NATURAL GAS CO.

Notice of Proposed Changes in FPC Gas Tariff

FEBRUARY 28, 1974.

Take notice that Southern Natural Gas Company (Southern) on February 20, 1974 tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1 to become effective April 6, 1974. Southern asserts that such filing is pusuant to Section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FPC Gas Tariff, Sixth Revised Volume No. 1 and Article III of the Stipulation and Agreement approved by the Commission's Order dated July 23, 1973 in Southern's Docket Nos. RP72-91 (Phase II), *et al.* The proposed changes, it is alleged, reflect a decrease in its demand rates and an increase in its commodity and one-part rates which would increase revenues from jurisdictional sales by $14,554,,772. The increase is made up of the following items:

(1) A Current Adjustment for an increase in the cost of gas purchased from pipeline suppliers amounting to $7,110,-331, or 1.163¢ per Mcf as reflected on Sixth Revised Sheet No. 4A which will become effective on April 6, 1974; and

(2) A Current Adjustment for an increase in the cost of gas purchased from independent producers amounting to $7,444,441, or 1.217¢ per Mcf as reflected on Sixth Revised Sheet No. 4A as a result of the increase in Louisiana severance taxes effective January 1, 1974.

Copies of the filing are being served upon the company's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practices and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 15, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5217 Filed 3-6-74;8:45 am]

[2] The electric energy proposed to be exported by Applicant will be transmitted by it from the above-mentioned Northwest Angle area in Minnesota to the Reserve in Ontario by means of a proposed armored 25 Kv, two conductor 1/0 aluminum cable, operated at 7.2 Kv, 60 hertz, running under the Northwest Angle Inlet of the Lake of the Woods. The cable will originate at the metering point located on the Minnesota shore in the SE½ of the NE¼ section 27, Range 34 W, Twp. 168 N. Lake of the Woods County, and will extend underwater approximately 7,500 feet in a northwesterly direction to the Reserve on the Ontario shore. The cable will cross the United States-Canadian Border at a point approximately 4,000 feet northwest of the metering point. That portion of the proposed submarine cable located within the United States if covered by and subject to Applicant's Permit referred to above.

[Docket No. RI74-161]

SUBURBAN PROPANE GAS CORP.

Notice of Petition for Special Relief

FEBRUARY 27, 1974.

Take notice that on February 20, 1974, Suburban Propane Gas Corporation (Petitioner), 2210 Mercantile Bank Building, Dallas, Texas 75201, filed a petition for special relief in Docket No. RI74-161, pursuant to § 2.76 of the Commission's general policy and interpretations. Petitioner requests that it be permitted to increase its rate to 30.65¢ per Mcf with 1.0¢ per Mcf escalation per annum for sales of natural gas under its FPC Gas Rate Schedule Nos. 9 and 10 to Valley Gas Transmission, Inc. from the Hosston and James Lime Formations, respectively, in Chatham Field, Jackson Parish, Louisiana. The petition for relief is based on the installation of compression facilities in an attempt to increase the quantities of gas available for delivery to Valley.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 19, 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5225 Filed 3-6-74;8:45 am]

[Docket No. RP74-35]

UNITED NATURAL GAS CO.

Notice of Extension of Time and Postponement of Prehearing Conference and Hearing

FEBRUARY 27, 1974.

On February 5, 1974, Staff Counsel filed a motion to extend the service and hearing dates fixed by order issued December 10, 1974, in the above-designated matter. The motion states that United Natural reserved the right to file comments to this motion. No comments were filed.

Upon consideration, notice is hereby given that the procedural dates are modified as follows:

Service of evidence by staff, March 29, 1974.

Prehearing conference, April 5, 1974 (10:00 a.m. EDT).

Service of Intervener's Evidence, April 12, 1974.

Service of Rebuttal Evidence, April 30, 1974.

Hearing, May 7, 1974 (10:00 a.m. EDT).

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5218 Filed 3-6-74;8:45 am]

[Docket No. E-8628]

WISCONSIN POWER AND LIGHT CO.

Notice of Wholesale Power Agreement

FEBRUARY 27, 1974.

Take notice that on February 20, 1974, Wisconsin Power and Light Company (Wisconsin) tendered for filing a wholesale power agreement dated June 18, 1968, between Wisconsin and the City of Shullsburg, Wisconsin.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 13, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.74-5219 Filed 3-6-74;8:45 am]

[Docket No. E-8627]

WESTERN MASSACHUSETTS ELECTRIC CO.

Notice of Proposed Purchase Agreement

FEBRUARY 28, 1974.

Take notice that Western Massachusetts Electric Company (WMECO) on February 15, 1974, tendered for filing a proposed Purchase Agreement With Respect To Doreen Gas Turbine Unit, dated as of December 31, 1973, between WMECO and Montaup Electric Company.

WMECO states that the filing is made pursuant to Part 35 of the Commission's Regulations and provides for sale to Montaup Electric Company of specified percentages of capacity and energy from a gas turbine generating unit for the period January 1, 1974 to April 30, 1974, together with related transmission service. WMECO requested an effective date of January 1, 1974.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 12, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR FDoc.74-5220 Filed 3-6-74;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST AT ORLANDO CORPORATION

Order Approving Acquisition of Bank

First at Orlando Corporation, Orlando, 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 Florida State Bank of Tallahassee, Tallahassee, Florida ("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 this Federal Reserve Bank 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, the third largest banking organization in Florida, controls 39 banks which have deposits of $1.5 billion or 7.1 percent of deposits in all commercial banks of the state. (All banking data are as of June 30, 1973, and reflect acquisitions and formations approved by the Board through February 1, 1974.) Acquisition of Bank, having deposits of $10.2 million, would increase Applicant's share of Florida commercial bank deposits by less than one percent, and would not change Applicant's ranking among banking organizations in the state. No undue concentration of banking resources in Florida would result.

Applicant is seeking to make its initial entry into Leon County, the relevant banking market, which is located in the northern part of Florida. Tallahassee, the state capital, is the central city of this market. Applicant in acquiring Bank, the sixth largest bank in the market with deposits representing 3.9 percent of deposits held by commercial banks in the market, will not be gaining a dominant position, since four other banking organizations control 88 percent of market deposits.

Applicant's closest subsidiary bank is at Gainesville, Florida, 147 miles southeast of Bank. No competition exists between Applicant's banking subsidiaries and Bank, and it is not likely that significant future competition would develop between them because of the distances involved and Florida's restrictive branching laws. It therefore appears that the acquisition would have no adverse competitive effects in any relevant area.

The financial and managerial resources and prospects of Applicant, its subsidiaries, and Bank are satisfactory in light of Applicant's program to increase capital in its other subsidiary banks; future prospects appear favorable. The record contains no evidence that the banking needs of the community

are not being met; however, the proposed affiliation with Applicant will allow Bank to make available to the public mortgage loan, computer, investment advisory, and trust services. Considerations relating to the convenience and needs of the community to be served lend some weight toward approval of the application. It is this Federal Reserve Bank's judgment that consummation of the proposed transaction would be 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 consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Federal Reserve Bank of Atlanta acting under delegated authority for the Board of Governors of the Federal Reserve System, effective February 26, 1974.

[SEAL] KYLE K. FOSSUM,
First Vice President.

[FR Doc.74-5244 Filed 3-6-74;8:45 am]

FIRST BANCGROUP OF OHIO

Acquisition of Bank

First BancGroup of Ohio, Inc., Columbus, Ohio, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares (less directors' qualifying shares) of The Citizens Baughman National Bank, Sidney, Ohio. 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 Cleveland. 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 27, 1974.

Board of Governors of the Federal Reserve System, February 27, 1974.

[SEAL] ELIZABETH L. CARMICHAEL,
Assistant Secretary of the Board.

[FR Doc.74-5241 Filed 3-6-74;8:45 am]

MID-AMERICA BANCORPORATION, INC.

Formation of Bank Holding Company

Mid-America Bancorporation, Inc., East Moline, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 per cent of the voting shares (less directors' qualifying shares) of the successor by merger to State Bank of East Moline, East Moline, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than March 20, 1974.

Board of Governors of the Federal Reserve System, February 27, 1974.

[SEAL] ELIZABETH L. CARMICHAEL,
Assistant Secretary of the Board.

[FR Doc.74-5242 Filed 3-6-74;8:45 am]

UNITED MISSOURI BANCSHARES, INC.

Order Approving Acquisition of Bank

United Missouri Bancshares, Inc., Kansas City, Missouri, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of The First National Bank of Milan, Milan, Missouri ("Bank").

The application has been processed by the Federal Reserve Bank of Kansas City pursuant to authority delegated by the Board of Governors of the Federal Reserve System under the provisions of section 265.2(f)(24) of the Rules Regarding Delegation of Authority.

As required by section 3(b) of the Act, the Reserve Bank gave written notice of receipt of the application to the Comptroller of the Currency. The Comptroller offered no objection to approval of the application. Notice of receipt of the application was published in the FEDERAL REGISTER on January 4, 1974 providing an opportunity for interested persons to submit comments and views with respect to the proposal. The United States Department of Justice was given notice of receipt of the application. Time for filing comments and views has expired and none has been received. The Reserve Bank has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the fifth largest banking organization in Missouri, controls 14 banks with aggregate deposits of approximately $619 million,[1] representing 4.59 percent of the commercial bank deposits in the State. Acquisition of Bank would increase Applicant's share of State deposits only slightly, and would not result in a significant increase in the concentration of banking resources in Missouri. Applicant's ranking among banking organizations in the State would remain unchanged.

Bank ($9.8 million in deposits) is the largest of 6 commercial banks in the Milan banking market (approximated by Sullivan County) and holds approximately 32.2 per cent of the deposits in commercial banks in the market. Applicant's nearest subsidiary is located in Brookfield, Missouri, 32 miles south of Milan. The record indicates that there is no significant existing competition between Bank and any of Applicant's subsidiaries. Furthermore, it is not likely that significant future competition would develop in view of the distances involved, the numerous banking alternatives, and Missouri's restrictive branching laws. Applicant's entry into the Sullivan County market de novo does not appear likely, because of the existing low population-to-bank ratio. Competitive considerations are, therefore, consistent with approval of the application.

The financial condition and managerial resources of Applicant and its subsidiaries appear satisfactory and future prospects of all seem favorable. The financial condition of Bank is satisfactory and its future prospects appear favorable. Affiliation with Applicant should provide Bank with an adequate source of qualified managerial and technical resources to enable Bank to offer expanded and more efficient banking services. Applicant has expressed its intention to extend the banking hours and increase the variety of time deposit accounts available, as well as introduce an installment loan department at Bank. These factors, as they relate to the convenience and needs of the community to be served, lend some weight for approval of the application. It is the Reserve Bank's judgment that consummation of 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 consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

[SEAL] WILBUR T. BILLINGTON,
Senior Vice President.

FEBRUARY 19, 1974.

[FR Doc.74-5243 Filed 3-6-74;8:45 am]

UNITED MISSOURI BANCSHARES, INC.

Order Approving Acquisition of Bank

United Missouri Bancshares, Inc., Kansas City, Missouri, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of United Missouri Bank of Jefferson City ("Bank"), National Association, Jefferson City, Missouri, a proposed new bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given

[1] All banking data are as of June 30, 1973, and reflect bank holding company formations and acquisitions approved by the Board through December 31, 1973.

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 including those of the Exchange National Bank of Jefferson City, The Central Trust Bank, and Jefferson Bank of Missouri, all in Jefferson City, Missouri (hereinafter collectively referred to as "Protestants"), in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the fifth largest banking organization and bank holding company in Missouri, controls fourteen banks with aggregate deposits of $619 million, which represent 4.6 per cent of total deposits in commercial banks in the State.[1] Since Bank is a proposed new bank, its acquisition would neither eliminate any existing competition nor immediately increase Applicant's share of commercial bank deposits.

Bank will be located 1.7 miles west of Jefferson City's central business district and will represent the initial entry by Applicant into the Jefferson City banking market. It is anticipated that the Jefferson City banking market will continue to experience a steady growth in population with an attendant need for additional sources for banking services.[2]

Applicant's closest subsidiary bank is located 55 miles northwest of the proposed Bank and there are numerous banks in the intervening area. Applicant's acquisition of Bank would have a procompetitive effect as it would mark the first entry into this market of a banking institution not associated with an existing Jefferson City bank. The market is heavily concentrated with the largest organization controlling over 65 per cent of market deposits; the entrance of Applicant should stimulate competition without having adverse effects on any competing bank.

During the course of its consideration of this application the Board has received comments from Protestants which contend that affiliation of Applicant with Bank would contravene Missouri's Statute prohibiting branch banking. The facts of record indicate that Bank will be a separate corporation, with its own capital stock and a loan limit based on such capital stock; that Bank will be managed by its own officers; that Bank's board of directors will be generally separate and independent from the boards of Applicant and of Applicant's subsidiaries; and that Bank will maintain its own separate books of account, issue its own distinctive checks, and use its own stationery. Applicant states that no officers or employees of its other banking subsidiaries will perform services directly for customers of Bank, nor exercise any managerial supervision over the business of Bank. Applicant represents further that it will purchase Bank's shares through use of its own capital resources. Further, Applicant represents that money deposited at Bank will not be credited to the account of a depositor at any other banking subsidiary of Applicant and, conversely, any money deposited at any other banking subsidiary of Applicant will not be credited to the account of a depositor at Bank.

Protestants contend that through Applicant's Blue Banner Account program, a depositor with an account in Applicant's lead bank, United Missouri Bank of Kansas City, could make a withdrawal from such an account by means of a check cashed at another banking subsidiary of Applicant, including Bank. Similarly, a person with an account in Bank could effect a withdrawal from such an account by means of a check cashed by United Missouri Bank of Kansas City. In response, Applicant states that the Blue Banner account card is used as an identification card for the purpose of cashing a check, and use of such a card does not amount to a withdrawal of funds; furthermore, that the bank cashing the check bears the risk of loss. The Board is satisfied from its examination of the facts as presented that Applicant's Blue Banner Account program does not permit it to establish a unitary operation between Bank and any of Applicant's other banking subsidiaries, and that the use of the Blue Banner account card is for identification purposes only.

Accordingly, the Board concludes that affiliation of Bank with Applicant will not contravene Missouri's statute prohibiting branch banking. Based on these and other facts of record, the Board further concludes that Applicant is a "traditionally recognized bank holding company which, with its own capital, invests in or buys the stock of banks," Whitney National Bank v. Bank of New Orleans, 323 F. 2d 290 (D.C. Cir. 1963), rev'd on other grounds, 379 U.S. 411 (1965).

The financial condition, management, and prospects of Applicant and its subsidiary banks are regarded as satisfactory. Bank has no operating financial history. It will open with satisfactory capital. Its prospects are favorable and the banking factors are consistent with approval. Considerations relating to the convenience and needs of the community to be served lend some weight toward approval as Bank will provide an additional source of full banking services. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, and (c) United Missouri Bank of Jefferson City, Jefferson City, Missouri, shall be opened for business not later than six months after the effective date of this Order. Each of the periods described in (b) and (c) may be extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[3] effective February 28, 1974.

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

[FR Doc.74-5245 Filed 3-6-74;8:45 am]

[1] All banking data are as of June 30, 1973, and reflect bank holding company formations and acquisitions approved by the Board as of January 31, 1974.

[2] Between 1960 and 1970 the population in Jefferson City increased by 14.8 per cent as compared with a Statewide increase of 8.3 per cent.

[3] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Brimmer, Sheehan, Bucher, and Holland.

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

DOMESTIC COAL CO. ET AL.

Applications for Initial Permits; Electric Face Equipment Standard; Opportunity for Hearing

Correction

In FR Doc. 74-4528, appearing on page 7624 in the issue for Wednesday, February 27, 1974, the number in the last line of item (4) reading "No. 44 032333 0" should read "No. 44 03233 0".

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice No. 74-16]

NASA RESEARCH AND TECHNOLOGY ADVISORY COUNCIL; COMMITTEE ON MATERIALS AND STRUCTURES

Notice of Meeting and Agenda

The Materials and Structures Committee of the NASA Research and Technology Advisory Council will meet on March 13 and 14, 1974, at the NASA Lewis Research Center, Cleveland, Ohio. The meeting will be held in Room 215 of the Administration Building. The meeting is open to the public. Admittance will be on a first-come, first-served basis. The available seating capacity of the room is about 30 persons. All visitors must be identified prior to admittance and should check in at the main gate.

The NASA Research and Technology Advisory Committee on Materials and Structures serves in an advisory capacity only. In this capacity, the Committee is concerned with materials science, materials engineering, advanced concepts and materials applications, structural design and analysis, and structural loads and dynamics. The current Chairman is Ira G. Hedrick. There are 13 members. The following list sets forth the approved agenda and schedule for the March 13 and 14, 1974, meeting. For further information, please contact Mr. George C. Deutsch, Area Code 202, 755-3264.

MARCH 13, 1974

Time	*Topic*
8:30 a.m.	Chairman's and Executive Secretary's Reports (Purpose. To approve past meeting minutes, to review results of Research and Technology Advisory Council (RTAC) meeting, and to discuss recent changes in the NASA organization.)

Time	Topic
9:30 a.m.	Ad Hoc Panel Report on Aerospace Vehicle Dynamics and Control (Purpose: To take final action on the report of the Ad Hoc Panel on interdisciplinary aspects of dynamics and control of space vehicles and aircraft.)
10:30 a.m.	Transonic Wind Tunnel Test Technology (Purpose: To recommend to NASA possible improvements to transonic wind tunnel testing techniques.)
11:30 a.m.	Short Haul Technology (Purpose: The Committee will comment on a recent NASA study on applications of composite materials to short takeoff and landing aircraft.)
12:00 Noon	NASA Center Reports (Purpose: NASA Committee members will report on recent technological progress in materials and structures.)
1:30 p.m.	Lewis Research Center Program Review (Purpose: Members of the Lewis Research Center staff will review recent programs of interest to the Committee.)
3:45 p.m.	Lewis Research Center Energy Program (Purpose: Members of the Lewis Research Center staff will discuss the assistance provided to other Government agencies as part of the national energy program.)

MARCH 14, 1974

Time	Topic
8:30 a.m.	General Discussion of Lewis Research Center Presentations (Purpose: To comment on the presentations made by the Lewis staff the previous afternoon.)
9:00 a.m.	Aerospace Need for Refractory Metals (Purpose: To discuss recent reviews and make final recommendations to NASA on refractory metals research.)
10:15 a.m.	Computer Programs Development and maintenance (Purpose: To discuss NASA's role in development and Maintenance of new computer programs and recommend action to NASA.)
11:30 a.m.	Members' Reports (Purpose: To present reports of recent accomplishments in research and development programs in members' organizations.)
1:30 p.m.	Plans for Next Meeting (Purpose: To discuss time and place for next meeting.)
2:00 p.m.	New Critical Issues (Purpose: To review topics identified during preceding sessions and decide on further Committee action in this regard.)
4:00 p.m.	Adjourn.

DAVID WILLIAMSON, Jr.,
Acting Associate Administrator, National Aeronautics and Space Administration.

FEBRUARY 28, 1974.

[FR Doc.74-5194 Filed 3-6-74;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

NATIONAL ENDOWMENT FOR THE ARTS; FEDERAL-STATE PARTNERSHIP/SPECIAL PROJECTS ADVISORY PANEL

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a meeting of the Federal-State Partnership/Special Projects Advisory Panel to the National Endowment for the Arts will be held at 10:00 a.m. on March 11 and at 10:00 a.m. on March 12, 1974 in the eighth floor conference room of the McPherson Building, 1425 K Street NW., Washington, D.C.

A portion of this meeting will be open to the public on March 11 from 10 a.m. to 1 p.m. on a space available basis. Accommodations are limited. During the open session, the following areas will be discussed: 1) Review of activities since December, 1973. 2) Regional Projects. 3) State Study.

The remaining sessions of this meeting, March 11 and March 12 from 10 a.m. to 5 p.m., 1974, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of January 10, 1973, this meeting, which involves matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b)(4), (5), and (6)), will not be open to the public.

Further information with reference to this meeting can be obtained from Mrs. Luna Diamond, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 382-5871.

PAUL BERMAN,
Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.74-5263 Filed 3-6-74;8:45 am]

NATIONAL ENDOWMENT FOR THE ARTS; MUSEUM ADVISORY SUBPANEL

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a closed meeting of the Museum Advisory Subpanel to the National Endowment for the Arts will be held at 10:00 a.m. on March 10, 1974 in the twelfth floor conference room of the Shoreham Building, 806 15th Street, NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of January 10, 1973, this meeting, which involves matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b)(4), (5), and (6)), will not be open to the public.

Further information with reference to this meeting can be obtained from Mrs. Luna Diamond, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 382-3308.

PAUL BERMAN,
Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.74-5264 Filed 3-6-74;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR ECONOMICS

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (P.L. 92-463), notice is hereby given of a meeting of the Advisory Panel for Economics to be held at 9 a.m. on March 29 and 30, 1974, in Room 338 at 1800 G Street NW., Washington, D.C. 20550.

The purpose of this Panel is to provide advice and recommendations as part of the review and evaluation process for specific proposals and projects. The agenda will be devoted to the review and evaluation of research proposals.

This meeting is concerned with matters which are within the exemptions of 5 U.S.C. 552(b) and will not be open to the public in accordance with the determination by the Director of the National Science Foundation dated December 17, 1973, pursuant to the provisions of Section 10(d) of P.L. 92-463.

For further information concerning this Panel, contact Dr. James H. Blackman, Program Director, Economics

Program, Room 205, 1800 G Street NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director for Administration.

FEBRUARY 26, 1974.

[FR Doc.74-5355 Filed 3-6-74;8:45 am]

NATIONAL TRANSPORTATION SAFETY BOARD

[Docket No. SA-443]

AIRCRAFT ACCIDENT AT JOHNSTOWN, PENNSYLVANIA

Notice of Change of Hearing Date

In the matter of investigation of accident involving an Air East, Inc., Beechcraft 99A of United States Registry N125AE, at Johnstown, Pennsylvania, January 6, 1974.

Notice is hereby given that the date of the Accident Investigation Hearing on the above matter is changed from March 19, 1974 to April 2, 1974. The hearing will commence on the latter date at 9 a.m., e.d.t., in the Heritage Room of the Holiday Inn, 1540 Scalp Avenue, Johnstown, Pennsylvania.

Dated this 28th day of February 1974.

[SEAL] LESLIE D. KAMPSCHROR,
Hearing Officer.

[FR Doc.74-5266 Filed 3-6-74;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

REQUESTS FOR CLEARANCE OF INFORMATION REPORTS

List

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 4, 1974 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529).

NEW FORM

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service, Application for Clearance of Labels on Export Food Products, Form FAS 633, Occasional, Lowry, Food processors and exporters.

Forest Service, Forest Recreation Policy Survey (New England) Form ____, Single time, NRD/Planchon, All citizens who provided F.S. with suggestions on development of N.E. Management data.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute of Education, Student Questionnaire/School Organization Program, Form NIE 26, Annual, Planchon, Students in grades 5, 6, 7, 9, and 12 in Howard Cty. schools, Maryland.

National Institutes of Health, Questionnaires for Source Directory—Animals for Research, Form NIH RR-4, Annual, Caywood, Commercial suppliers of laboratory animals

U.S. CIVIL SERVICE COMMISSION

1974 PATC Scope of Survey Data Collection Form, Form ____, Single time, Raynsford, Selected industries excluded from PATC.

Health Benefits Registration Form, Form BRI 41-221, Occasional, Lowry, Civil Service annuitants.

REVISIONS

FEDERAL RESERVE BOARD

Report of Condition, Form FR 105, Quarterly, Hulett, State member commercial banks.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration, Pretest for Household Questionnaire for Health and Nutrition Examination Survey, Stands 66-100, Form HRANCHS 0304, Single time, Reese, Sample of 20 households in Atlanta, Ga.

National Institutes of Health, Patient Questionnaire and Relative Summaries for Honolulu Heart Study/Japan-Hawaii Cancer Study, Form NIH CA 14, Single time, Reese, Japanese and Caucasian individuals living in Hawaii.

RAILROAD RETIREMENT BOARD

Statement of Wife of Employee Annuitant, Form G-318, Occasional, Caywood, Wife of Employee Annuitant.

Employee Annuitant's Statement Regarding Family and Earnings, Form G-319, Occasional, Caywood, Employee annuitant.

EXTENSIONS

DEPARTMENT OF DEFENSE

Departmental, Bidders Mailing List Application Supplement, Form DD 558-1, Occasional, Evinger, (x), DOD contractors.

DEPARTMENT OF COMMERCE

Economic Development Administration, Market and Capacity Information Report, Form ED 220T, Occasional, Evinger, (x).

DEPARTMENT OF COMMERCE

Economic Development Administration, Economic Development Impact Report, Form ED 221T, Occasional, Evinger, (x).

Employment Information Schedule, Form ED 223T, Occasional, Evinger, (x).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Equal Opportunity, Monthly Sales Report—Insured Home Mortgage Programs, Form 935.1, Monthly, CVA, (x).

Affirmative Fair Housing Marketing Plan, Form 935.2, Occasional, CVA, (x).

Certification of Intent Not to Market Housing, Form 935.3, Occasional, CVA, (x).

Housing Production and Mortgage Credit, Borrower's Statement Regarding its Financial Condition, Form HUD 4302, Occasional, CVA, Educational institutions.

Depository Bank Acceptance and Confirmation Statement, Form HUD 4304, Occasional, CVA, Educational institutions.

Requisition and Voucher for Bond Payment or Advance, Form HUD 4300, Occasional, CVA, Educational institutions.

Requisition for Government Advance, Form HUD 4300-A, Occasional, CVA, Educational institutions.

Calculation of Net Amount Due for Bond Purchase, Form HUD 4301, Occasional, CVA, Educational institutions.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.74-5397 Filed 3-6-74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[811-176]

ABERDEEN MANAGEMENT CORP.

Filing of Application for an Order Declaring That Company Has Ceased To Be an Investment Company

FEBRUARY 26, 1974.

Notice is hereby given that Aberdeen Management Corporation ("Applicant") 1730 K Street NW., Washington, D.C. 20006, formerly the Depositor for Aberdeen Fund, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Aberdeen Fund has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein which are summarized below.

Aberdeen Fund is a New Jersey common law trust organized under a Trust Indenture dated April 1, 1933, as subsequently amended, and is registered under the Investment Company Act of 1940.

Pursuant to an Agreement and Plan of Reorganization ("Plan") dated January 25, 1973, between Aberdeen Fund and Steadman Fiduciary Investment Fund, Inc., which Plan was approved by the owners of beneficial interest of Aberdeen Fund on December 31, 1971, substantially all of the assets of Aberdeen Fund were transferred to Steadman Fiduciary Investment Fund, Inc., now Steadman Investment Fund, Inc., on January 25, 1973, in exchange for its shares which were thereupon distributed to the holders of beneficial interest of Aberdeen Fund in liquidation of Aberdeen Fund pursuant to the Plan.

Applicant represents that Aberdeen Fund has no holders of beneficial interests outstanding at the present time; that Aberdeen Fund has no assets at the present time; that the public offering of shares of beneficial interest of Aberdeen Fund has been terminated; and that Aberdeen Fund has, therefore, been liquidated and dissolved.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so

declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than March 25, 1974, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following March 25, 1974, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–5307 Filed 3–6–74;8:45 am]

[70–5351]

APPALACHIAN POWER CO.

Post-Effective Amendment Regarding Issue and Sale of Notes to Banks

FEBRUARY 28, 1974.

Notice is hereby given that Appalachian Power Company ("Appalachian"), 40 Franklin Road Roanoke, Virginia 24009, an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed with this Commission, pursuant to section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and rule 50(a)(5) promulgated thereunder, a post-effective amendment to the application previously filed in this matter. All interested persons are referred to the application as now amended, which is summarized below, for a complete statement of the proposed transaction.

By order dated June 29, 1973 (Holding Company Act Release No. 18015), this Commission, among other things authorized the issue and sale of short-term notes by Appalachian to 84 banks in an aggregate amount up to $27,753,000 outstanding at any one time. At the time of said order, the maximum amount of short-term indebtedness which Appalachian could incur at any one time could not exceed $100,000,000.

It is now proposed that Appalachian issue and sell such short-term notes to 83 banks in an aggregate amount of $30,673,000. Each note payable to a bank to be issued by Appalachian will be dated as of the date of the borrowing which it evidences and will mature not more than 270 days after the date of issuance or renewal thereof. The notes were to be issued from time to time prior to December 31, 1974, as funds were required, provided that none of the notes would mature later than June 30, 1975.

Each such note will bear interest no greater than the prime rate of commercial banks at the time of issuance or in effect from time to time and will be prepayable at any time without premium or penalty. It is stated that Appalachian will not pay any fees or charges to any of the banks in connection with the issuance and sale of such notes. Sufficient bank balances to meet operating and financial needs are kept at such banks to satisfy any compensating balance requirements in connection with the borrowings. If the average of such bank balances were maintained solely in order to fulfill the prevailing compensating balance requirements of such banks, generally between 15 and 20 per cent, the effective interest cost to Appalachian of the issuance and sale of such notes to banks, assuming a 9 per cent prime interest rate, would range between 10.59 per cent and 11.25 per cent.

The proceeds from the issue and sale of the notes will be used by Appalachian to reimburse its treasury for past expenditures made in connection with its construction program and to pay part of the cost of its future construction program. Such construction expenditures for the year 1974 is estimated to total $105,000,000. The application states that, unless otherwise authorized by the Commission, all of the short-term debt of Appalachian will be retired by June 30, 1975, from internal cash resources, debt or equity financing, or cash capital contributions.

The Virginia State Corporation Commission has authorized the transaction proposed by Appalachian. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than March 26, 1974, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 50 miles from the point of mailing) upon the applicant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–5309 Filed 3–6–74;8:45 am]

[File No. 500–1]

APPLIED DEVICES CORP.

Notice of Suspension of Trading

FEBRUARY 26, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, conv. sub. deb. 6s Series A and conv. sub. deb. 6s Series B of Applied Devices Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:00 p.m. (EDT) February 26, 1974 through March 7, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–5288 Filed 3–6–74;8:45 am]

[File No. 500–1]

BBI, INC.

Notice of Suspension of Trading

FEBRUARY 27, 1974.

The common stock of BBI, Inc., being traded on the American Stock Exchange and the Philadelphia-Baltimore-Washington Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of BBI, Inc. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities ex-

change is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from February 28, 1974 through March 9, 1974.

By the Commission.

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

[FR Doc.74-5282 Filed 3-6-74;8:45 am]

[File No. 500-1]

BUILDING SYSTEMS, INC.

Notice of Suspension of Trading

FEBRUARY 26, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Building Systems, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:00 p.m. (e.d.t.) February 26, 1974 through March 7, 1974.

By the Commission.

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

[FR Doc.74-5302 Filed 3-6-74;8:45 am]

[File No. 500-1]

CANADIAN JAVELIN, LTD.

Notice of Suspension of Trading

FEBRUARY 26, 1974.

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from February 27, 1974 through March 8, 1974.

By the Commission.

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

[FR Doc.74-5299 Filed 3-6-74;8:45 am]

[70-5457]

CENTRAL AND SOUTH WEST CORP.

Proposed Amendment to Certificate of Incorporation; Solicitation of Stockholders' Proxies

FEBRUARY 28, 1974.

Notice is hereby given that Central and South West Corporation ("Central"), 300 Delaware Avenue, Wilmington, Delaware 19899, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating sections 6, 7, and 12(f) of the Act and Rule 62 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Central proposes (1) to amend its Certificate of Incorporation to increase its authorized common stock from 48,000,000 shares to 51,500,000 shares, par value $3.50, and (2) to restate the Certificate of Incorporation, as amended, to integrate into a single instrument, as permitted by Delaware law, all of the currently effective and operative provisions of the Certificate. Central further proposes to submit the amendment and restatement to their stockholders at the annual meeting to be held on April 18, 1974.

Central also proposes to solicit proxies from its respective common stockholders in respect of the amendment and restatement in addition to the election of directors and the appointment of auditors and has filed proposed material in connection with such solicitation. Approval for the adoption of the amendment and restatement requires the affirmative vote of the holders of a majority of the outstanding shares of the common stock of Central entitled to vote at the meeting of stockholders.

It is stated that the proposed restatement would not change or affect any of the currently effective or operative provisions of the Certificate of Incorporation, as amended, except that it would revise the wording of the present formula for exchange of the 453 remaining outstanding shares of Central and South West Utilities Company, one of Central's predecessors, for common stock of Central. Certain factors which were not fixed and determined when the present exchange formula became effective have subsequently become fixed and determined. The proposed restatement would not change the rights of holders of outstanding common stock of Central and South West Utilities Company or affect holders of common stock of Central.

The fees and expenses to be paid by Central in connection with the proposed transaction are $4,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person, may, not later than April 3, 1974, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulation promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that the declaration, insofar as it proposes the solicitation of proxies from Central's common stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies of Central's common stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

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

[FR Doc.74-5310 Filed 3-6-74;8:45 am]

[File No. 500-1]

C M INDUSTRIES

Notice of Suspension of Trading

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of C M Industries being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:30 P.M. (E.D.T.) on February 28, 1974 through midnight (E.D.T.) on March 9, 1974.

By the Commission.

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

[FR Doc.74-5295 Filed 3-6-74;8:45 am]

[File No. 500–1]

CAPEZIO & THINGS, INC.

Notice of Suspension of Trading

FEBRUARY 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Capezio & Things, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:30 P.M. (e.d.t.) on February 27, 1974 through March 8, 1974.

By the Commission.

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

[FR Doc.74–5291 Filed 3–6–74;8:45 am]

[File No. 500–1]

CROSS COUNTRY INDUSTRIES, INC.

Notice of Suspension of Trading

FEBRUARY 28, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Cross Country Industries, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:30 P.M. (e.d.t.) on February 8, 1974 through midnight (e.d.t.) on March 9, 1974.

By the Commission.

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

[FR Doc.74–5293 Filed 3–6–74;8:45 am]

[File No. 500–1]

DECAIR CORP.

Notice of Suspension of Trading

FEBRUARY 28, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Decair Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:30 P.M. (e.d.t.) on February 28, 1974 through midnight (e.d.t.) on March 9, 1974.

By the Commission.

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

[FR Doc.74–5294 Filed 3–6–74;8:45 am]

[File No. 500–1]

ECOLOGY, INC.

Notice of Suspension of Trading

FEBRUARY 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Ecology, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:30 p.m. (e.d.t.) on February 27, 1974 through March 8, 1974.

By the Commission.

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

[FR Doc.74–5290 Filed 3–6–74;8:45 am]

ELECTROGASDYNAMICS, INC.

[File No. 500–1]

Notice of Suspension of Trading

FEBRUARY 26, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Electrogasdynamics, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1 p.m. (e.d.t.) February 26, 1974 through March 7, 1974.

By the Commission.

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

[FR Doc.74–5298 Filed 3–6–74;8:45 am]

EQUITY FUNDING CORPORATION OF AMERICA

[File No. 500–1]

Notice of Suspension of Trading

FEBRUARY 20, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, warrants to purchase the stock 9½ percent debentures due 1990, 5½ percent convertible subordinated debentures due 1991, and all other securities of Equity Funding Corporation of America being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from February 21, 1974 through March 2, 1974.

By the Commission.

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

[FR Doc.74–5284 Filed 3–6–74;8:45 am]

[File No. 500–1]

FRANKLIN INDUSTRIES, INC.

Notice of Suspension of Trading

FEBRUARY 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Franklin Industries, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:30 p.m. (e.d.t.) on February 27, 1974 and continuing through March 8, 1974.

By the Commission.

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

[FR Doc.74–5281 Filed 3–6–74;8:45 am]

WALTER HARVEY CORP.

[File No. 500–1]

Notice of Suspension of Trading

FEBRUARY 27, 1974.

The common stock of Walter Harvey Corporation being traded on the National Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Walter Harvey Corporation being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from 1:30 p.m. (e.d.t.) February 27, 1974 through midnight (e.d.t.) March 8, 1974.

By the Commission.

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

[FR Doc.74–5283 Filed 3–6–74;8:45 am]

LASER SCIENCES, INC.

[File No. 500–1]

Notice of Suspension of Trading

FEBRUARY 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Laser Sciences, Inc. being traded otherwise than on a national securities

exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:30 p.m. (e.d.t.) on February 27, 1974 through March 8, 1974.

By the Commission.

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

[FR Doc.74-5289 Filed 3-6-74;8:45 am]

MASSACHUSETTS INVESTORS TRUST

[812-3563]

Application for an Order Exempting the Sale by an Open-end Company of Its Securities at Other Than the Public Offering Price

FEBRUARY 28, 1974.

Notice is hereby given that Massachusetts Investors Trust ("Applicant"), 200 Berkeley Street, Boston, Massachusetts 02116, a common law trust existing under the laws of Massachusetts and registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, has filed an application pursuant to Section 6(c) of the Act for an order of exemption from Section 22(d) of the Act to permit Applicant to issue its redeemable securities at a price other than the current offering price in exchange for substantially all of the assets of Smith Estates, Inc. ("Smith"), a Rhode Island corporation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Smith, a personal holding company all of whose outstanding stock is owned of record by ten individuals, four trusts and by custodians for four minor children, and beneficially by not more than forty-five persons, is exempt from registration under the Act by reason of the provisions of Section 3(c)(1) thereof.

In November, 1973, Applicant and Smith entered into an Agreement and Plan of Reorganization ("Agreement") whereby substantially all of the assets of Smith, consisting of securities and cash, are to be transferred to Applicant in exchange for shares of beneficial interest of Applicant. Pursuant to the Agreement, the number of shares of beneficial interest of Applicant to be delivered to Smith is to be determined by dividing the aggregate market value, subject to certain adjustments as set forth in the Agreement, of the assets of Smith to be transferred to Applicant by the net asset value per share of Applicant, both of which are to be determined on the "Delivery Date", the day on which Smith's assets are delivered to Applicant's custodian, for the account of Applicant. The adjustment provided for in the Agreement requires that, in determining the number of shares of Applicant to be delivered to Smith, the aggregate market value of the assets of Smith shall be reduced to compensate the Applicant for any increased tax liability which may result by reason of its acquisition of the assets of Smith. If the delivery date had been September 30, 1973, when the net assets of Smith to be transferred to Applicant amounted to $13,478,653.32, and the net asset value per share of Applicant was $11.82, Smith would have received 1,140,326 shares of Applicant on the next business day.

Applicant represents that the Agreement is contingent upon Smith receiving either a ruling from the Internal Revenue Service or an opinion from its counsel to the effect that the proposed exchange constitutes a tax-free reorganization within the meaning of section 368(a)(1)(C) of the Internal Revenue Code.

Applicant states that no affiliation exists between Applicant and Smith and that the Agreement was negotiated at arms-length by the parties. Applicant also represents that it intends to retain in its portfolio at least 70% in value, taken at market, of the portfolio securities of Smith to be acquired in the exchange.

Section 22(d) of the Act provides, in pertinent part, that no registered open-end investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. The current offering price of Applicant's shares, as stated in its prospectus, includes a sales charge. Section 6(c) of the Act permits the Commission, upon application, to exempt a transaction from any provision or provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that its management believes that the proposed transaction will be beneficial to Applicant's shareholders in that: (1) Applicant will save brokerage commissions it would otherwise incur by purchasing these same securities in the market and (2) the resulting increase in assets will tend to reduce per share expenses of Applicant.

Notice is further given, that any interested person may, not later than March 21, 1974, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

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

[FR Doc.74-5304 Filed 3-6-74;8:45 am]

[811-2377]

MERIDIAN INCOME SECURITIES, INC.

Proposal To Terminate Registration

FEBRUARY 27, 1974.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order upon its own motion that Meridian Income Securities, Inc. ("Fund"), 10 Light Street, Baltimore, Maryland 21202, registered under the Act as a closed-end, diversified management investment company, has ceased to be an investment company.

Fund was organized as a Maryland corporation on April 19, 1973, and filed a Notification of Registration on Form N-8A and a Registration Statement on Form N-8B-1 with the Commission on April 23, 1973. On that same date, Fund filed a Form S-5 Registration Statement under the Securities Act of 1933 ("1933 Act"), which 1933 Act Registration Statement was withdrawn by the Commission on January 15, 1974.

The Commission's records indicate that Fund has suspended its plans to offer its shares to the public. Fund presently has no assets and no public shareholders.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, on its own motion or upon application, finds a registered investment company has ceased to be an investment company, it shall so declare by order, and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than March 25, 1974, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of

such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the Fund at the address set forth above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

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

[FR Doc.74–5308 Filed 3–6–74;8:45 am]

[812–3492]

NEUWIRTH FUND, INC. ET AL.

Application for Amendment of Order Exempting Applicants

FEBRUARY 27, 1974.

Notice is hereby given that Neuwirth Fund, Inc. ("Neuwirth Fund"), Neuwirth Century Fund, Inc. ("Century"), and Neuwirth Income Development Corporation ("NIDCO") (collectively the "Funds"), registered under the Investment Company Act of 1940 ("Act") as open-end management investment companies, Neuwirth Management and Research Corporation ("NMRC"), and Neuwirth Financial Corporation ("NFC"), Middletown Bank Building, Middletown, New Jersey 07748 (collectively the "Advisers"), (collectively the "Applicants"), have filed an application pursuant to section 6(c) of the Act to amend an order granting temporary exemptions from the provisions of sections 15(a) and 15(c) of the Act to the extent noted below. All interested persons are referred to the application, as amended, on file with the Commission for a statement of the representations contained therein, which are summarized below.

Henry Neuwirth, the controlling stockholder of the Advisers died on July 28, 1973. By operation of law, the voting securities of the Advisers owned by Neuwirth passed to his estate. The existing investment advisory contracts between the Funds and the Advisers each provided, as required by Section 15 of the Act, that it would terminate in the event of an assignment. An assignment is defined by Section 2(a)(4) of the Act to include any direct or indirect transfer of a controlling block of the outstanding voting securities of the assignor by a security holder of the assignor. The investment advisory contracts may, therefore, be deemed to have been terminated upon Neuwirth's death by the transfer of controlling interests in the investment advisers.

Section 15(a) of the Act prohibits any person from serving as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such investment company. Section 15(c) of the Act prohibits any registered investment company having a board of directors from entering into, renewing, or performing any investment advisory or underwriting contract unless the terms of the contract and any renewal thereof are approved by the vote of a majority of the directors, who are not parties to such contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

On July 31, 1973, the directors of the Funds, all of whom serve on the boards of each of the Funds, voted to ratify the performance of the Advisers from July 28 to July 31, 1973 and to readopt the terminated advisory contracts for the period from August 1 to October 31, 1973. On September 20, 1973, an order was issued (Investment Company Act Release No. 7998) granting exemptions to the Applicants from Sections 15(a) and 15(c) of the Act, during the period from July 28 to July 31, 1973, and from Section 15(a) of the Act during the period from August 1 to October 31, 1973, so as to permit the Advisers to continue to render investment advisory services to the Funds at the same fees provided for under the terms of the terminated contracts, subject to the condition that the shareholders of each of the Funds, at meetings held on or before November 1, 1973, ratify the rendition of investment advisory services by the Advisers to the respective Funds at such fees. Such meetings were not held within the time provided. Applicants now apply to amend that order so as to extend to February 28, 1974, the date for holding such special shareholder's meetings.

On October 10, 1973, after considering the many management alternatives available after Neuwirth's death, the Boards of Directors of Neuwirth Fund and Century voted to recommend to shareholders that Clark, Dodge & Co. Incorporated ("Clark, Dodge") be retained as investment adviser to Neuwirth Fund and Century, and the Board of Directors of NIDCO voted to liquidate and dissolve NIDCO subject to shareholder approval.

Applicants assert that, as a result of the time required for consideration of management alternatives, the Boards of Directors of the Funds were unable to call the special shareholders' meetings by November 1, 1973 as required by the order of September 20, 1973. Applicants represent that unnecessary expenses would be avoided by submitting to shareholders, at the same meetings of shareholders at which they would be called upon to approve new investment advisory services with Clark, Dodge, and in the case of NIDCO, its liquidation and dissolution, the ratification of the performances by the investment advisors of investment advisory services from July 28 to October 31, 1973. Applicants submit that no prejudice to shareholders will result from the delay in holding special shareholder's meetings to ratify the rendition by the Advisers of investment advisory services since the periods during which such services were rendered by Advisers without contracts were no longer than was contemplated by the first order.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally exempt any persons or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the requested exemptions from sections 15(a) and 15(c) of the Act are in the public interest and consistent with the general policies of the Act.

Notice is further given that any interested person may, not later than March 25, 1974, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following March 25, 1974, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

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

[FR Doc.74–5306 Filed 3–6–74;8:45 am]

[70–5461]

NEW ENGLAND ELECTRIC SYSTEM ET AL.

Proposed Issue and Sale of Notes by Subsidiary Companies to Banks, and/or Holding Company; Request for Exception From Competitive Bidding

FEBRUARY 28, 1974.

Notice is hereby given that New England Electric System ("NEES"), a reg-

istered holding company, and its electric utility subsidiary companies, Granite State Electric Company ("Granite"), Massachusetts Electric Company ("Mass Electric"), The Narragansett Electric Company ("Narragansett") and New England Electric Power Company ("NEPCO"), 20 Turnpike Road, Westborough, Massachusetts 01581, have filed an application-declaration with this Commission designating sections 6(a), 7, 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 43, and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

The NEES electric utility subsidiaries propose to issue from time to time through March 31, 1975, notes to banks and/or NEES. Mass Electric and NEPCO also propose to issue notes to dealers in commercial paper. Borrowings by Mass Electric and NEPCO from banks and NEES in the proposed maximum amounts of $28,000,000 and $124,000,000, respectively, will be reduced by the principal amount of any commercial paper at the time outstanding. The proceeds of the proposed borrowings are to be used by each borrowing company to pay its then outstanding notes initially issued to banks, dealers in commercial paper and/or NEES at or prior to maturity, and to provide new money for capitalizable expenditures or to reimburse the treasury therefor.

The proposed borrowings from banks and/or NEES will be evidenced by notes payable maturing in less than one year from the date of issuance and will provide for prior payment in whole or in part without premium. The notes will bear interest at not in excess of the prime rate in effect at the time of the borrowing. It is stated that the borrowing companies maintain sufficient operating bank balances to meet the lending banks' compensating balance requirements. If such balances were maintained to fulfill compensating balance requirements of 10 percent or 20 percent, the effective interest cost to the borrowing companies would be approximately 10 percent or 11.250 percent per annum, assuming a prime rate of 9 percent.

The following table shows for each borrowing company the estimated maximum amount of notes to be outstanding with banks and/or with NEES at any one time during the period April 1, 1974 to March 31, 1975.

Borrowing Co.:	*Proposed Maximum short-term debt to be outstanding at any one time (thousands of dollars) Banks or NEES (a)*	
Granite	$8,900	(1)
	100	(2)
Mass Electric	23,000	(1)
	2,500	(3)
	500	(4)
	500	(5)
	900	(6)
	600	(7)
NEPCO	121,500	(1)
	2,500	(3)
Narragansett	1,500	(1)
	9,500	(8)
	6,000	(9)

(a) Or Commercial Paper in the case of Mass Electric and NEPCO.

(1) The First National Bank of Boston, Boston, Massachusetts.

(2) National Bank of Lebanon, Lebanon, New Hampshire.

(3) Worcester County National Bank, Worcester, Massachusetts.

(4) Guaranty Bank and Trust Company, Worcester, Massachusetts.

(5) The Mechanics National Bank, Worcester, Massachusetts.

(6) South Shore National Bank, Quincy, Massachusetts.

(7) Middlesex Bank, N.A., Everett, Massachusetts.

(8) Industrial National Bank of Rhode Island, Providence, Rhode Island.

(9) Rhode Island Hospital Trust National Bank, Providence, Rhode Island.

It is proposed that the amounts shown above, indicating the amount each company may borrow from a particular bank, may be increased or decreased during the year, but at no time will the aggregate amount of short-term borrowings from all banks for each company exceed the authorization requested hereunder.

It is proposed that the borrowing companies may prepay their notes to NEES in whole or in part, with borrowings from banks or from sale of commercial paper, or that their borrowings from banks may be prepaid, in whole or in part, with borrowings from NEES, or from the sale of commercial paper. In the event of borrowings for the purpose of prepaying notes to NEES from banks at a higher interest rate, or the sale of commercial paper at a higher effective interest cost, NEES will credit the borrowers for any excess interest from the date of issuance of the new notes or commercial paper to the normal maturity date of the notes to NEES being prepaid. Conversely, in the event of borrwing from NEES to prepay notes to banks, the interest rate of notes issued to NEES will be the lower of (1) the interest rate on the notes being prepaid or (2) the prime interest rate then in effect, but with respect to (1) only to the maturity date of the notes so prepaid, and thereafter at the prime interest rate in effect at the time the new notes are issued.

Mass Electric and NEPCO also propose to issue and sell commercial paper directly to Lehman Commercial Paper Incorporated ("Lehman") and/or A. G. Becker & Co., Incorporated ("Becker"), dealers in commercial paper. The commercial paper will be issued during the period April 1, 1974 through March 31, 1975, will have varying maturities of not more than 270 days after the date of issue, will be sold in varying denominations of not less than $50,000 and not more than $1,000,000, and will not by their terms be prepayable prior to maturity. Lehman and/or Becker will purchase the commercial paper at a discount which will not exceed the discount rate prevailing at the date of issuance for commercial paper of comparable quality and like maturity. The effective interest cost will not exceed the effective interest cost prevailing at the date of issue for borrowings from The First National Bank of Boston ("First National"), except that, in order to obtain maximum flexibility, commercial paper may be issued with maturities which in the aggregate do not exceed more than 90 days from the date of original issue of the commercial paper if the effective cost is in excess of such effective interest cost from First National.

Lehman and Becker, as principals, will reoffer the commercial paper at a discount rate not more than ⅛ of 1 percent per annum less than the prevailing discount rate to the issuer. The notes will be reoffered by Lehman and Becker to not more than 100 of their respective customers whose names appear on nonpublic lists prepared in advance by Lehman and Becker. No additions will be made to such lists of customers which are composed of institutional investors. It is expected that such commercial paper will be held to maturity by the purchasers from the dealers, but, if any such purchaser wishes to resell prior to maturity, Lehman and Becker, as the case may be, pursuant to an oral repurchase agreement will repurchase the paper for resale to others on said lists of customers.

Mass Electric and NEPCO request exception of the sale of their commercial paper notes from the competitive bidding requirement of Rule 50 pursuant to Section (a)(5) thereof. It is also requested that the certificate of notification under Rule 24 regarding all of the proposed transactions be filed quarterly.

Fees and expenses related to the proposed transaction are estimated at $3,000, including New England Power Service Company expenses (at cost) of $1,000.

NEPCO and Granite are seeking authorization from the New Hampshire Public Utilities Commission with respect to the notes proposed to be issued by NEPCO and Granite. It is stated that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than March 28, 1974, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the

Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from its rules under the Act as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will received notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5303 Filed 3-6-74;8:45 am]

[File No. 500-1]

PATTERSON CORP.

Notice of Suspension of Trading

FEBRUARY 28, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Patterson Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from March 1, 1974 through March 10, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5285 Filed 3-6-74;8:45 am]

PBW STOCK EXCHANGE, INC.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

FEBRUARY 28, 1974.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Fresnillo Company	7-4552
National Semiconductor Corp	7-4553
Rite Air Corp	7-4554

Upon receipt of a request, on or before March 16, 1974 from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5305 Filed 3-6-74;8:45 am]

[File No. 500-1]

REPUBLIC NATIONAL LIFE INSURANCE CO.

Notice of Suspension of Trading

FEBRUARY 26, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Republic National Life Insurance Company being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from February 27, 1974 through March 8, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5292 Filed 3-6-74;8:45 am]

[File No. 500-1]

GAIL ROBERTS, INC.

Notice of Suspension of Trading

FEBRUARY 28, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Gail Roberts, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:30 P.M. (e.d.t.) on February 28, 1974 through midnight (e.d.t.) on March 9, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5296 Filed 3-6-74;8:45 am]

[File No. 500-1]

ROYAL PROPERTIES INC.

Notice of Suspension of Trading

FEBRUARY 26, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Royal Properties Incorporated being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from February 27, 1974 through March 8, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5297 Filed 3-6-74;8:45 am]

[File No. 500-1]

UNITED GENERAL CORP.

Notice of Suspension of Trading

FEBRUARY 26, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of United General Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:00 p.m. (e.d.t.) February 26, 1974 through March 7, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-5300 Filed 3-6-74;8:45 am]

[File No. 500-1]

URBAN COMPUTER SYSTEMS, INC.

Notice of Suspension of Trading

FEBRUARY 26, 1974.

It appearing to the Securities and Exchange Commission that the summary

suspension of trading in the common stock of Urban Computer Systems, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1:00 p.m. (e.d.t.) February 26, 1974 through March 7, 1974.

By the Commission.

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

[FR Doc.74-5301 Filed 3-6-74;8:45 am]

[File No. 500-1]

U.S. FINANCIAL INC.

Notice of Suspension of Trading

FEBRUARY 28, 1974.

The common stock of U.S. Financial Incorporated being traded on the New York Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of U.S. Financial Incorporated being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from February 28, 1974 through March 9, 1974.

By the Commission.

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

[FR Doc.74-5286 Filed 3-6-74;8:45 am]

[File No. 500-1]

WESTGATE CALIFORNIA CORP.

Notice of Suspension of Trading

FEBRUARY 28, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock (class A and B), the cumulative preferred stock (5 percent and 6 percent), the 6 per cent subordinated debentures due 1979 and the 6½ percent convertible subordinated debentures due 1987 being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from March 1, 1974 through March 10, 1974.

By the Commission.

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

[FR Doc.74-5287 Filed 3-6-74;8:45 am]

[License No. 06/06-0169]

SMALL BUSINESS ADMINISTRATION

LOUISIANA EQUITY CAPITAL CORP.

Notice of Issuance of License To Operate as a Small Business Investment Company

On January 30, 1974, a notice was published in the FEDERAL REGISTER (39 FR 3873) stating that Louisiana Equity Capital Corporation, 451 Florida Street, Baton Rouge, Louisiana 70801, 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. 06/06-0169 to Louisiana Equity Capital Corporation, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

Dated: February 27, 1974.

JAMES THOMAS PHELAN, *Deputy Associate Administrator for Investment.*

[FR Doc.74-5265 Filed 3-6-74;8:45 am]

TARIFF COMMISSION

[337-34]

CONVERTIBLE GAME TABLES AND COMPONENTS THEREOF

Notice of Temporary Exclusion Order Action

On October 26, 1972, ATI Recreation, Inc. (now ATI Recreation, Division of All-Tech Industries, Inc.) of Miami Lakes, Florida, filed a complaint (as supplemented) under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) alleging unfair methods of competition and unfair acts in the importation and sale of certain convertible game tables which, among other allegations, are said to be embraced with the claim(s) of U.S. Patent No. 3,711,099 owned by the complaint.

The U.S. Tariff Commission conducted a preliminary inquiry with respect to the matters alleged in said complaint pursuant to section 203.3 of the Commission's rules of practice and procedure (19 CFR 203.3) and, on August 30, 1973, pursuant to section 203.4 of the Commission's rules of practice and procedure (19 CFR 203.4), ordered that an investigation be instituted with respect to the alleged violations in the importation and sale in the United States of certain convertible game tables and components thereof. Public hearings were held in connection with this investigation on October 15-17, 1973, and on February 5, 1974, pursuant to § 203.5 of the Commission's rules of practice and procedure (19 CFR 203.5).

The U.S. Tariff Commission on February 13, 1974, recommended (Vice Chairman Parker dissenting) that the President issue a temporary exclusion order in accordance with section 337(f), with respect to certain convertible game tables embraced within the claim(s) of U.S. Patent No. 3,711,099, or the table top(s) therefor. The recommendation is being forwarded to the President for his consideration and his determination as to the issuance of a temporary exclusion order.

Notice of complaint received and the institution by the Commission of a preliminary inquiry into the issues raised in the complaint was published in the FEDERAL REGISTER of November 17, 1972 (37 FR 24473). Notice of the investigation and of the date of the hearing was given in the FEDERAL REGISTER of September 12, 1973 (38 FR 25236). Notice of the date for resumption of the hearing was given in the FEDERAL REGISTER of November 1, 1973 (38 FR 30797).

By order of the Commission.

Issued: March 4, 1974.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.74-5338 Filed 3-6-74;8:45 am]

[337-L-70]

ANTENNA ROTATOR SYSTEMS

Extension of Time

On February 6, 1974, the U.S. Tariff Commission issued notice of the receipt of a complaint received under section 337 of the Tariff Act of 1930, filed by The Alliance Manufacturing Company, Inc., Alliance, Ohio, alleging unfair methods of competition and unfair acts in the importation and sale of antenna rotator systems (39 FR 5375). Interested parties were given until March 8, 1974, to file written views pertinent to the subject matter of a preliminary inquiry into the allegations of the complaint. The Commission has extended the time for filing written views until the close of business April 8, 1974.

By order of the Commission.

Issued: March 4, 1974.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.74-5339 Filed 3-6-74;8:45 am]

[TEA-W-228]

SBICCA OF CALIFORNIA

Workers' Petition for a Determination; Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expan-

sion Act of 1962, on behalf of the workers and former workers of Sbicca of California, South El Monte, California, the United States Tariff Commission, on March 1, 1974, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in item 700.45 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued: March 4, 1974.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.74-5340 Filed 3-6-74;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 18]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER APPLICATIONS

MARCH 1, 1974.

The following applications (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 Special Rule 1100.24[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the Federal Register of a notice that the proceeding has been assigned for oral hearing.

No. MC 340 (Sub-No. 28), filed January 28, 1974. Applicant: QUERNER TRUCK LINES, INC., 1131-33 Austin Street, San Antonio, Texas 78208. Applicant's representative: M. Ward Bailey, 2412 Continental Life Building, Fort Worth, Texas 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refined copper and materials and supplies* used in the manufacture and distribution of refined copper (except in bulk in tank vehicles), from the plant site and storage facilities of American Smelting and Refining Company, Inc., at or near Amarillo, Tex., to all points in the United States (except Alaska and Hawaii).

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Amarillo, Tex.

No. MC 2202 (Sub-No. 458), filed January 4, 1974. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, Ohio 44309. Applicant's representative: William O. Turney, 2001 Massachusetts Ave. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) serving the facilities of the Tappan Company located at or near Oberlin, Ohio, as an off-route point in connection with carrier's regular route operations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Cleveland, Ohio, or Washington, D.C.

No. MC 2900 (Sub-No. 253), filed January 28, 1974. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408, Jacksonville, Fla. 32203. Applicant's representative: John Carter (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles*, from the plantsite and storage facilities of Continental Steel Corporation located at or near Kokomo, Ind., to points in Minnesota, Iowa, Nebraska, Colorado, Oklahoma, Texas, and points east thereof, restricted to traffic originating at the plantsite and storage facilities of Continental Steel Corporation at or near Kokomo, Ind., and destined to points in the named destination states.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Atlanta, Ga.

No. MC 3018 (Sub-No. 29), filed January 25, 1974. Applicant: McKEOWN TRANSPORTATION COMPANY, 10449 South Western Avenue, Chicago, Ill. 60643. Applicant's representative: Gregory J. Scheurich, 111 West Washington Street, Chicago, Ill. 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquefied hydrogen* in shipper-owned containers, from McCook, Ill., to points in Alabama, Florida, and Texas, under a continuing contract with Union Carbide Corporation.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 7832 (Sub-No. 26), filed January 24, 1974. Applicant: SAM LOWENSTEIN AND STANLEY LOWENSTEIN, doing business as SUPER M FOODS DELIVERY, 411A North Wood Avenue, Linden, N.J. 07036. Applicant's representative: Bert Collins, Suite 6193, 5 Trade Center, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise*, as is dealt in by wholesale, retail, chain grocery, department stores and food business houses (except commodities in bulk) and, in connection therewith, *equipment, materials, and supplies* used

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

in the conduct of such business (except commodities in bulk), from Edgewater, N.J., to Central Islip, N.Y., under a continuing contract with Waldbaum, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 10173 (Sub-No. 15), filed January 7, 1974. Applicant: MARVIN HAYES LINES, INC., P.O. Box 468, Clarksville, Tenn. 37040. Applicant's representative: Walter Harwood, P.O. Box 15214, Nashville, Tenn. 37215. 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 Dover and Memphis, Tenn.: (1) From Dover over U.S. Highway 79 to Memphis and return over the same route, and (2) From Dover over U.S. Highway 79 to junction U.S. Highway 45E at or near Milan, Tenn., thence over U.S. Highway 45E to junction U.S. Highway 45, thence over U.S. Highway 45 to junction Interstate Highway 40, at or near Jackson, Tenn., thence over Interstate Highway 40 to junction Interstate Highway 240, thence over Interstate Highway 240 to Memphis, and return over the same route, (1) and (2) serving no intermediate points and restricted against the transportation of traffic originating at, destined to, or interchanged at Louisville, Ky., and Nashville, Tenn., and points in their respective commercial zones as defined by the Commission.

NOTE.—If a hearing is deemed necessary, applicant does not specify location.

No. MC 13250 (Sub-No. 126), filed January 28, 1974. Applicant: J. H. ROSE TRUCK LINE, INC., 5003 Jensen Drive, P.O. Box 16190, Houston, Tex. 77022. Applicant's representative: James M. Doherty, 500 West Sixteenth Street, Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (except truck tractors) *and parts, implements, attachments, accessories, and supplies*, from Dallas and Houston, Tex., to points in Texas, Arizona, New Mexico, and California.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority at Houston, Tex., to provide through service from points in Texas to points in Arizona, New Mexico, and California. If a hearing is deemed necessary, applicant requests it be held at Dallas or Houston, Tex.

No. MC 13569 (Sub-No. 30), filed January 25, 1974. Applicant: THE LAKE SHORE MOTOR FREIGHT COMPANY, a Corporation, 1200 South State Street, Girard, Ohio 44420. Applicant's representative: A. David Millner, 744 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the plantsites of United States Steel Corporation located at or near Joliet and Chicago, Ill., to points in Ohio, points in Pennsylvania on and west of U.S. Highway 219 and points in West Virginia on and north of U.S. Highway 50.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority in the base certificate at those specified points in Ohio and Pennsylvania to serve additional points in Ohio and Pennsylvania within the scope of its regular route operations, and in Sub-No. 17 at those specified points in Pennsylvania to serve various counties in New Jersey. HEARING: April 16, 1974 (2 weeks), 9:30 a.m. Local Time, at Pittsburgh, Pa., in a hearing room to be later designated.

No. MC 14702 (Sub-No. 55) (CORRECTION), filed December 26, 1973, published in the FR issue of January 31, 1974, and republished as corrected this issue. Applicant: OHIO FAST FREIGHT, INC., P.O. Box 808, Warren, Ohio 44482. Applicant's representative: Edward R. Kirk, 88 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum and aluminum articles* (except commodities which require the use of special equipment), from the plant site of Napco Products, Inc. at Valencia, Pa., to points in New Jersey, Indiana, and Illinois, restricted to traffic originating at and destined to the named points.

NOTE.—The purpose of this republication is to indicate the origin point of Napco Products, Inc., at Valencia, Pa., which was previously published in error. Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 14702 (Sub-No. 56), filed January 24, 1974. Applicant: OHIO FAST FREIGHT, INC., P.O. Box 808, Warren, Ohio 44482. Applicant's representative: Paul F. Beery, 8 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum and aluminum articles* (except commodities which because of size or weight require the use of special equipment), between the plant site and warehouses of Alcan Aluminum Corporation at or near Indianapolis, Ind., on the one hand, and, on the other, points in Arkansas, Illinois, Iowa, Kentucky, Michigan, Missouri, Ohio, Oklahoma, Texas, Wisconsin, Colorado, Kansas, Louisiana, Minnesota, New Mexico, and Nebraska, restricted to traffic originating at and destined to the above-named origins and destinations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Columbus, Ohio.

No. MC 22179 (Sub-No. 16), filed January 18, 1974. Applicant: FREEDMAN TRUCK LINE, INC., 416 Jackson Avenue, P.O. Box 467, Oxford, Miss. 38655. Applicant's representative: Louis I. Dailey, 2208 Sterick Building, Memphis, Tenn. 38103. 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, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving the Holiday Industrial Park (described as: that part of De Soto County, Miss., on and bounded by a line beginning at the Tennessee-Mississippi State boundary line and extending along Germantown Road to its junction with Goodman Road, thence along Goodman Road to its junction with Center Hill Road, thence along Center Hill Road to the Tennessee-Mississippi State Boundary line to the point of beginning) located just east of Olive Branch (De Soto County), Miss., as an off-route point in connection with carrier's regular route operations between Memphis, Tenn., and Oxford, Miss.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or Jackson, Miss.

No. MC 22229 (Sub-No. 82), filed January 18, 1974. Applicant: TERMINAL TRANSPORT CO., INC., 248 Chester Avenue SE., P.O. Box 1918, Atlanta, Ga. 30316. Applicant's representative: Harold H. Clokey, 414 Equitable Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (except commodities in bulk and those requiring special equipment), from points in Florida on and south of a line beginning at Cedar Keys, Fla., and extending along Florida Highway 24 to Waldo, Fla., thence along U.S. Highway 301 to Baldwin, Fla., thence along U.S. Highway 90 to Jacksonville, Fla. (including points in the Jacksonville Commercial Zone as defined by the Commission, by excluding that part of Florida known as the Florida Keys), to points in Alabama, Mississippi, Georgia, Tennessee, Kentucky, Indiana, Illinois, Michigan, Missouri, and Wisconsin.

NOTE.—Common control may be involved. Applicant states that the requested authority canot be tacked with its existing authority. If a hearing is deemed necessary, the applican requests it be held at either Tampa, or Orlando, Fla.

No. MC 22278 (Sub-No. 45), filed January 25, 1974. Applicant: TAKIN BROS. FREIGHT LINE, INC., 2125 Commercial Street, P.O. Box 5000, Waterloo, Iowa 50702. Applicant's representative: Paul Rhodes (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wooden pallets*, from points in Iowa, Minnesota, Missouri, and Nebraska, to points in Illinois, Indiana, Michigan, and Ohio.

NOTE.—Common control was approved in Docket Nos. MC-F-8722 and MC-F-9750. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 26396 (Sub-No. 114), filed January 23, 1974. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, P.O. Box 990, Livingston, Mont. 59047. Applicant's representative:

Jacob P. Billig, 1126 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, wood products, forest products and lumber products*, from points in Montana, to points in Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, and Virginia.

NOTE.—Applicant holds contract carrier authority in MC–136777 (Sub-No. 3), therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Missoula, Mont.

No. MC 26396 (Sub-No. 115), filed January 24, 1974. Applicant: POPELKA TRUCKING CO., a Corporation, doing business as THE WAGGONERS, P.O. Box 990, Livingston, Mont. 59047. Applicant's representative: Jacob P. Billig, 1126 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, meat by-products, dairy products and articles distributed by meat packinghouses*, from Billings, Mont., to points in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and the District of Columbia; and (2) *such commodities* as are used by meat packers in the conduct of their business when destined to and for use by meat packers, from points in the destination states named in (1) above, to Billings, Mont.

NOTE.—Applicant holds contract carrier authority in MC 136777 (Sub-No. 3) therefore, dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Missoula, Mont.

No. MC 28088 (Sub-No. 7), filed January 25 , 1974. Applicant: NORTH & SOUTH LINES, INCORPORATED, 1610 S. Main Street, Harrisonburg, Va. 22801. Applicant's representative: John R. Sims, Jr., Suite 600, 1707 H Street NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed and feed materials* (other than for human consumption), except in bulk and tank vehicles, from points in Alabama, California, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Michigan, Nebraska, Nevada, North Carolina, Ohio, South Carolina, South Dakota, Texas, Virginia, Wisconsin, and Wyoming, to points in Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, and West Virginia.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Harrisonburg, Va.

No. MC 28088 (Sub-No. 8), filed January 25, 1974. Applicant: NORTH & SOUTH LINES, INC., 1610 S. Main Street, Harrisonburg, Va. 22801. Applicant's representative: John R. Sims, Jr., Suite 600, 1707 H Street NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Rendered chicken fat* and (2) *rendered chicken fat* in mixed loads with *frozen poultry*, from Bedford, Va., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 29934 (Sub-No. 16) (AMENDMENT), filed January 11, 1974, published in the FR issue of February 14, 1974, and republished as amended this issue. Applicant: LO BIONDO BROTHERS MOTOR EXPRESS, INC., RD #6, Bridgeton-Vineland Pike, W. of Morton Ave., P.O. Box 160, Bridgeton, N.J. 08302. Applicant's representative: Martin Werner, 2 West 45th Street, New York, N.Y. 10036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insecticides and fungicides* (except in bulk), from Malaga, N.J., to Middleport, and Sodus, N.Y., restricted to traffic originating at the origin point and destined to the named destination points.

NOTE.—The purpose of this republication is to correctly indicate applicant's name and to correct the territorial restriction. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 32882 (Sub-No. 74), filed January 28, 1974. Applicant: MITCHELL BROS. TRUCK LINES, a Corporation, 3841 N. Columbia Boulevard, Portland, Oreg. 97217. Applicant's representative: Norman E. Sutherland, 1200 Jackson Tower, Portland, Oreg. 97205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Engineered kiln stickers*, from Portland, Oreg., to points in Oregon, Washington, Idaho, Montana, Utah, Wyoming, Colorado, Nevada, Arizona, California, and New Mexico.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg., or Seattle, Wash.

No. MC 35045 (Sub-No. 15) (AMENDMENT), filed January 8, 1974, published in the FR issue of February 14, 1974, and republished as amended this issue. Applicant: HORNE HEAVY HAULING, INC., 1124 DeKalb Avenue NE., Atlanta, Ga. 30307. Applicant's representative: Monty Schumacher, Suite 310, 2045 Peachtree Road NE., Atlanta, Ga. 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery and equipment*, from the plant sites of the Card Co. and Southern Machine Co., divisions of Tuftco International, Inc., Chattanooga, Tenn., and Gowin-Card, Inc., a division of Tuftco International, Inc., Dalton, Ga., to points in the United States (except Alaska and Hawaii) and on return, *damaged and refused shipments*.

NOTE.—The purpose of this republication is to indicate applicant's additional service points. Dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 35045 (Sub-No. 16), filed January 25, 1974. Applicant: HORNE HEAVY HAULING, INC., 1124 DeKalb Avenue, NE., Atlanta, Ga. 30307. Applicant's representative: Monty Schumacher, Suite 310, 2045 Peachtree Road NE., Atlanta, Ga. 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Buildings*, complete, knocked down, or in sections; (2) *building sections and building panels;* (3) *parts and accessories* used in the installation thereof; and (4) *metal prefabricated structural components and panels*, from the plant site of Kirby Building Systems, at or near Portland, Tenn., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant holds contract carrier authority in MC–134797, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 35320 (Sub-No. 140), filed January 25, 1974. Applicant: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, Tex. 79408. Applicant's representative: Lawrence A. Winkle, 4645 N. Central Expressway, Dallas, Tex. 75205. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), serving the Holiday Industrial Park located within De Soto County, Miss., as an off-route point in connection with applicant's regular route authority to and from Memphis, Tenn.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or Dallas, Tex.

No. MC 44735 (Sub-No. 13), filed January 23, 1974. Applicant: KISSICK TRUCK LINES, INC., 7101 East 12th St., P.O. Box 6237, Kansas City, Mo.

64126. Applicant's representative: Lowell L. Knipmeyer, 2704 Power & Light Building, Kansas City, Mo. 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel*, and (2) *iron and steel articles*, between St. Louis, Missouri-East St. Louis, Illinois, Commercial Zone on the one hand, and, on the other, points in Kansas and Nebraska; and points in Missouri on and west of Interstate Highway 63.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at either St. Louis, or Kansas City, Mo.

No. MC 51146 (Sub-No. 332) (AMENDMENT), filed July 13, 1973, published in the FR issue of October 11, 1973, and republished as amended this issue. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, Wis. 54304. Applicant's representative: Charles Singer, Suite 100, 327 South La Salle Street, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular 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 because of size and weight), between the plantsites and/or warehouse facilities of Minnesota Mining and Manufacturing Company located at or near Decatur and Guin, Ala., Little Rock, Ark., Atlanta and Chamblee, Ga., Bedford Park, Chicago, Cordova, Elk Grove Village, and Freeport, Ill., Hartford City, Ind., Knoxville, Iowa, Cynthiana, Ky., Needham Heights, Mass., Farmington, Southfield, and Wayne, Mich., Columbia, Nevada, St. Louis, and Springfield, Mo., Belle Mead, Cherry Hill, Freehold, Newark, and West Caldwell, N.J., Buffalo, Honeoye, and Rochester, N.Y., High Point, N.C., Cincinnati, Cleveland, Copley, and Grove City, Ohio, Weatherford, Okla., Bristol and Philadelphia, Pa., Laurens, S.C., Chattanooga, Tenn., Brownwood and Dallas, Tex., Rutland, Vt., and Middleway, W. Va., on the one hand, and, on the other, points in Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Lower Peninsula of Michigan, Mississippi, Missouri, New Mexico, New Hampshre, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and West Virginia, restricted (a) to traffic originating at the named locations of the plantsites and/or warehouse facilities of Minnesota Mining and Manufacturing Company and destined to points in named States and the District of Columbia, or (b) to traffic originating at points in the named States and the District of Columbia and destined to the named locations of the plantsites and/or warehouse facilities of Minnesota Mining and Manufacturing Company.

NOTE.— The purposes of this republication are to indicate applicant's amended commodity description, to substitute radial movements for the previously requested nonradial movements, and to indicate the amended restriction as described above. Common control was approved in MC-F-10280 and MC-F-11307. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 52460 (Sub-No. 137), filed January 22, 1974. Applicant: ELLEX TRANSPORTATION, INC., 1420 West 35th Street, Tulsa, Okla. 74107. Applicant's representative: Steve B. McCommas (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid feed and liquid feed ingredients*, in bulk, in tank vehicles, between Chelsea, Okla., and Osage City, Kans., on the one hand, and, on the other, points in Arkansas, Kansas, Missouri, and Oklahoma.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Oklahoma City, Okla.

No. MC 59583 (Sub-No. 141), filed January 15, 1974. Applicant: THE MASON AND DIXON LINES, INCORPORATED, Eastman Road, P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: A. Alvis Layne, 915 Pennsylvania Building, Washington, D.C. 20004. 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, households goods as defined by the Commission, commodities in bulk, and those which because size or weight require the use of special equipment, serving alternate routes for operating convenience only, in connection with carrier's authorized regular route operation via Nashville, Tenn., (1) between Memphis, Tenn., and Chicago, Ill.: (a) From Memphis over Interstate Highway 55 to junction with Interstate Highway 57 near Sikeston, Mo., thence over Interstate Highway 57 to Chicago, serving no intermediate points, and return. (b) From Memphis over U.S. Highway 51 to junction with Interstate Highway 57 near Cairo, Ill., thence over Interstate Highway 57 to Chicago, serving no intermediate points, and return. (2) Between Memphis, Tenn., and Indianapolis, Ind.: (a) From Memphis over Interstate Highway 55 to junction with Interstate Highway 57 near Sikeston, Mo., thence over Interstate Highway 57 to junction with Interstate Highway 70 near Effingham, Ill., thence over Interstate Highway 70 to Indianapolis, serving no intermediate points, and return. (b) From Memphis over U.S. Highway 51 to junction with Interstate Highway 57 near Cairo, Ill., thence over Interstate Highway 57 to junction with Interstate Highway 70 near Effingham, Ill., thence over Interstate Highway 70 to Indianapolis, serving no intermediate points, and return.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 59680 (Sub-No. 212), filed January 28, 1974. Applicant: STRICKLAND TRANSPORTATION CO., INC., 3011 Gulden Avenue, P.O. Box 5689, Dallas, Tex. 75222. Applicant's representative: Leroy Hallman, 4555 First National Bank Building, Dallas, Tex. 75202. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except Classes A and B explosives, commodities in bulk and those requiring special equipment), (1) between Little Rock, Ark., and Kinder, La.: From Little Rock over U.S. Highway 167 to Alexandria, La., thence over U.S. Highway 165 to Kinder, La., and return; (2) between Little Rock, Ark., and junction of U.S. Highways 71 and 190 near Krotz Springs, La.: From Little Rock over U.S. Highway 167 to Meeker, La., thence over U.S. Highway 71 to junction of U.S. Highway 71 and U.S. Highway 190 near Krotz Springs, La., and return; and (3) between Shreveport, La., and junction of U.S. Highways 71 and 190 near Krotz Springs, La.: (a) From Shreveport, La., over U.S. Highway 71 to junction of U.S. Highways 71 and 190 near Krotz Springs, and return; and (b) from Shreveport, La., over Louisiana Highway 1 to Alexandria, La., thence over U.S. Highway 71 to junction U.S. Highways 71 and 190 near Krotz Springs, La., and return, (1), (2), and (3) (a) and (b) as alternate routes for operating convenience only in connection with the carrier's regular-route operations, serving no intermediate points.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Washington, D.C.

No. MC 61396 (Sub-No. 266), filed January 21, 1974. Applicant: HERMAN BROS., INC., 2565 St. Marys Avenue, P.O. Box 189, Omaha, Nebr. 68101. Applicant's representative: J. R. Chesney (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer, fertilizer ingredients, and fertilizer materials*, in bulk, in tank vehicles, from Burlington, Iowa, to points in Illinois, Missouri, and Wisconsin.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Chicago, Ill.

No. MC 61440 (Sub-No. 137), filed January 23, 1974. Applicant: LEE WAY MOTOR FREIGHT, INC., 3000 West Reno, Oklahoma City, Okla. 73108. Applicant's representative: Richard H. Champlin, P.O. Box 82488, Oklahoma City, Okla. 73108. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except commodities of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving

the plantsite and storage facilities of Monsanto Co., at or near Sand Mountain (Marshall County), Ala., as an off-route point in connection with applicant's regular route operations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either St. Louis, Mo., or Washington, D.C.

No. MC 64932 (Sub-No. 523), filed January 16, 1974. Applicant: ROGERS CARTAGE CO., a Corporation, 10735 South Cicero Avenue, Oaklawn, Ill. 60453. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Products of corn and products of soybeans and blends thereof*, in bulk, in tank vehicles, from the plant sites and warehouse facilities of Archer Daniels Midland Company at or near Decatur, Ill., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 68860 (Sub-No. 17), filed January 29, 1974. Applicant: RUSSELL TRANSFER INCORPORATED, 444 Glenmore Drive, Salem, Va. 24153. Applicant's representative: Liniel G. Gregory, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, chain grocery and food business houses, and *equipment and supplies* used in the conduct of such business, between the plant site of Service Warehouse Corp. located at Huntingdon, W. Va., on the one hand, and, on the other, those points in Kentucky on and east of U.S. Highway 127, points in Virginia, North Carolina, and South Carolina and Bristol, Johnson City, Kingsport, and Elizabethton, Tenn., Allentown, Shiremanstown, and Harrisburg, Pa., and Savannah, Augusta, Statesboro and Atlanta, Ga.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority at points in Virginia to serve the District of Columbia; Baltimore, Md.; Wilmington, Del.; and additional points in Pennsylvania, New Jersey, and West Virginia. If a hearing is deemed necessary, applicant requests it be held at either Washington, D.C., Charleston, W. Va., Chicago, Ill., or Huntington, W. Va.

No. MC 71459 (Sub-No. 40) (Correction), filed December 27, 1973, published in the FEDERAL REGISTER issue of February 7, 1974, and republished, in part, as corrected this issue. Applicant: O.N.C. FREIGHT SYSTEMS, a Corporation, 2800 West Bayshore Road, Palo Alto, Calif. 94303. Applicant's representative: Roland Rice, 1111 E St. NW., Suite 618, Perpetual Bldg., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over alternate 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), (D) between Phoenix, Ariz., and Reno, Nev., in connection with carrier's authorized regular route operations, serving no intermediate points: From Phoenix over U.S. Highway 89 to junction U.S. Highway 93, thence over U.S. Highway 93 to junction U.S. Highway 95, thence over U.S. Highway 95 to junction Alternate U.S. Highway 95, thence over Alternate U.S. Highway 95 to junction Interstate Highway 80, thence over Interstate Highway 80 to Reno, and return over the same route.

NOTE.—The purpose of this republication is to redescribe the route in part (D) above. The rest of the notice remains as previously published. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif.

No. MC 73165 (Sub-No. 340), filed November 16, 1973. Applicant: EAGLE MOTOR LINES, INC., P.O. Box 11086, 830 North 33d Street, Birmingham, Ala. 35202. Applicant's representative: R. Connor Wiggins, Jr., 909 100 North Main Building, Memphis, Tenn. 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Valves, hydrants, fittings, indicator posts, floor stands, service and valve boxes*, and *parts, attachments, and accessories* therefor, between Anniston, Ala., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

NOTE.—Applicant indicates that the requested authority can be tacked with its existing authority at Anniston, Ala.: In Sub-No. 187 to provide a through service from Coshocton, Ohio, to points in the United States and in Sub-No. 299 to provide a through service from the plant site and storage facilities of Clow Corporation at Oskaloosa, Iowa, to Chicago, Ill., points in Minnesota and Nebraska and points west of North Dakota, South Dakota, Kansas, Oklahoma, and Texas. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 85788 (Sub-No. 8), filed January 25, 1974. Applicant: JACOBSEN TRANSFER, INC., P.O. Box 47, Fairmont, Nebr. 68354. Applicant's representative: Patrick E. Quinn, 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite of Sunflower Beef Packers, Inc., located at or near York, Nebr., to points in Illinois, Wisconsin, Minnesota, Kansas, Missouri, Michigan, and Iowa.

NOTE.—Common control may be involved. Applicant holds contract carrier authority in MC-129720 and Sub-No. 3, but indicates dual operations are not involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at Omaha, Nebr.

No. MC 95876 (Sub-No. 145), filed November 26, 1973. Applicant: ANDERSON TRUCKING SERVICE INC., 203 Cooper Avenue North, St. Cloud, Minn. 56301. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum and gypsum products, and materials and supplies*, used in the installation and distribution thereof, from Fort Dodge, Iowa, to points in North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Michigan, Iowa, Missouri, Illinois, Wisconsin, and Indiana.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 96498 (Sub-No. 35), filed January 28, 1974. Applicant: BONIFIELD BROS. TRUCK LINES, INC., P.O. Box 40, West Frankfort, Ill. 62896. Applicant's representative: F. Neil Aschemeyer, 314 North Broadway, St. Louis, Mo. 63102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Paducah and Calvert City, Ky.: From Paducah over U.S. Highway 62 to junction Kentucky State Highway 95, thence over Kentucky State Highway 95 to Calvert City, and return over the same route, serving no intermediate points.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Paducah, Ky.

No. MC 102616 (Sub-No. 892), filed January 21, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Road, Akron, Ohio 44319. Applicant's representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carbon black oil*, in bulk, in tank vehicles, from Toledo, Ohio, to the plant site of Cabot Corporation located at or near Waverly, W. Va.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Cleveland, Ohio.

No. MC 102616 (Sub-No. 893), filed January 21, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Road, Akron, Ohio 44319. Applicant's representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *#2 fuel oil*, in bulk, in tank vehicles, from points in Marion County, Ind., to the plant-sites of Gold

Bond Building Products, Division of National Gypsum Company, Loraine, Ohio.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Cleveland, Ohio.

No. MC 107012 (Sub-No. 196) (CLARIFICATION), filed January 7, 1974, published in the FR issue of February 7, 1974, and republished as clarified this issue. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Lincoln Highway and Meyer Road, Fort Wayne, Ind. 46801. Applicant's representative: Terry G. Fewell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Lakeland, Fla., and points in Lee County, Miss., to points in the United States (except Washington, Oregon, Idaho, Nevada, California, Arizona, Wisconsin, Illinois, Missouri, Indiana, Michigan, Ohio, Alaska, and Hawaii).

NOTE.—The purpose of this republication is to indicate that applicant states that the authority requested herein cannot be tacked with its existing authority. Common control and dual operations may be involved. The purpose of this application is to eliminate an Arkansas gateway. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 107403 (Sub-No. 879), filed January 14, 1974. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Petroleum lubricating oil*, in bulk, in tank vehicles, from Gretna, La., to Clinton, Iowa, (2) *creosote oil*, in bulk, in tank vehicles, from Harvey, La., to Gulfport, Pascagoula, and Wiggins, Miss., and Huxford, Bay Minette, and Mobile, Ala., (3) *hydrofluosilic acid*, in bulk, in tank vehicles, from Uncle Sam, La., to points in Texas and Oklahoma, and (4) *toilet preparations*, in bulk, from Cincinnati, Ohio, to Franklin, Ky.

NOTE.—Common control was approved in MC-F-10612. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 107445 (Sub-No. 6), filed January 25, 1974. Applicant: UNDERWOOD MACHINERY TRANSPORT, INC., 940 W. Troy Avenue, Indianapolis, Ind. 46225. Applicant's representative: K. Clay Smith, P.O. Box 33051, Indianapolis, Ind. 46203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe, plastic tubing, plastic conduit, valves, fittings, compound, joint sealer, bonding cement, and all accessories and tools used in the installation of such products*, from Terre Haute, Ind., to points in Ohio, Michigan, Illinois, Missouri, Kentucky, and Tennessee.

NOTE.—Applicant states that the requested authority can be tacked with its pending application MC 107445 (Sub-No. 4), in Licking County, Ohio, to serve points in New York, Pennsylvania, and West Virginia. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or New Orleans, La.

No. MC 107496 (Sub-No. 934), filed January 23, 1974. Applicant: RUAN TRANSPORT CORPORATION, P.O. Box 855, Third at 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: (1) *Fertilizer*, in bulk, from Elkhorn, Wis., to points in Michigan, (2) *Petroleum products*, in bulk, from Mason City, Iowa, to points in New York, Ohio, Pennsylvania, and Illinois, and (3) *chemicals*, in bulk, in tank vehicles, from Milton, Wis., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. Applicant states that the requested authority can be tacked (a), with (2) above, in Sub-No. 110, at Mason City, Iowa, to provide a through service from points in Iowa to points in New York, Ohio, Pennsylvania, and Illinois, and (b), with (3) above, at Milton, Wis., to provide a through service from E. Dubuque, Ill., in Sub-No. 361, Niota, Ill. in Sub-No. 471, Joliet, Ill., in Sub-No. 469, Mapleton, Ill., in Sub-No. 234, Clinton, Iowa, in Sub-Nos. 267 and 536, and Hammond, Ind., in Sub-No. 522 to points in the United States (except Alaska and Hawaii). If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa, or Chicago, Ill.

No. MC 107515 (Sub-No. 887), filed December 6, 1973. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, Ga. 30050. Applicant's representative: Alan E. Serby, P.O. Box 872, Atlanta, Ga. 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, foodstuffs, meats, meat products and meat by-products* (except in bulk), in vehicles equipped with mechanical refrigeration, from points in Florida, to points in Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia.

NOTE.—Common control may be involved. Dual operations may also be involved. Applicant states that the requested authority cannot be tacked with its existing authority. Applicant presently holds authority within the scope of this application through various gateways; the purpose of this application is to eliminate the existing gateways. If a hearing is deemed necessary, applicant requests it be held at Tampa, Miami, Orlando, Fla., or Atlanta, Ga.

No. MC 108117 (Sub-No. 7), filed January 22, 1974. Applicant: WILLIAM H. PATTERSON, JR. AND RALPH PATTERSON, doing business as PATTERSON TRUCKING, a partnership, 46 Waln Avenue, Yardville, N.J. 08620. Applicant's representative: James Francis Lawler, 37 South 20th Street, Philadelphia, Pa. 19103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer*, in bulk, from Wilmington, Del., to Bridgeton, Elmer, Salem, and Woodstown, N.J., under a continuing contract or contracts with Agway, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Philadelphia, Pa.

No. MC 108676 (Sub-No. 59) (Amendment), filed January 11, 1974, published in the FEDERAL REGISTER issue of February 14, 1974, and republished as amended this issue. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue NE., Knoxville, Tenn. 37917. Applicant's representative: Carl U. Hurst, P.O. Box E, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Refuse containers and cargo containers*, (2) *refuse container systems and cargo container systems*, and (3) *parts, attachments, and accessories* for the commodities described in (1) and (2) above, from Cleburne, Tex., and Sunbury, Pa., to points in the United States (except Alaska and Hawaii).

NOTE.—The purpose of this republication is to indicate a change in territorial description. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Knoxville or Nashville, Tenn.

No. MC 109397 (Sub-No. 291), filed January 28, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., a Corporation, P.O. Box 113, Business I-44, Joplin, Mo. 64801. Applicant's representative: Max G. Morgan, 600 Leininger Building, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from the plantside of Skyland Foods at Delta, Colo., to points in Kansas, Oklahoma, Texas, Missouri, Arkansas, Iowa, Illinois, and Nebraska.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.; Oklahoma City, Okla.; or Washington, D.C.

No. MC 110420 (Sub-No. 700), filed January 23, 1974. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: E. Stephen Heisley, 666 Eleventh Street NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wax and petroleum products*, in bulk, in tank vehicles, from Bradford and Petrolia, Pa., to points in Indiana.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 110420 (Sub-No. 701), filed January 25, 1974. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: E. Stephen Heisley, 666 11th St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, from Waukegan, Ill., to points in Alabama and Pennsylvania.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 111068 (Sub-No. 6), filed January 28, 1974. Applicant: KENNETH GROTH, an individual, Locust Road, Route 2, Decorah, Iowa 52101. Applicant's representative: Jack H. Blanshan, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by-products and articles distributed by meat packinghouses* (except hides and commodities in bulk) as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (1) from the plantsite and storage facilities of Wilson & Co. located at or near Albert Lea, Minn., to points in Indiana, Illinois, Michigan, and Ohio; and (2) from the plantsite and storage facilities of Wilson & Co. located at or near Cedar Rapids, Iowa, to points in Indiana, Michigan, and Ohio, restricted to the transportation of traffic originating at the named origins and destined to the named destinations.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 111812 (Sub-No. 502), filed January 28, 1974. Applicant: MIDWEST COAST TRANSPORT, INC., 900 West Delaware, P.O. Box 1233, Sioux Falls, S. Dak. 57104. Applicant's representative: Ralph H. Jinks (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery*, from Freehold and New Brunswick, N.J., to points in Iowa, Minnesota, Washington, Oregon, Idaho, Utah, California, Arizona, and Nevada, restricted to the transportation of traffic originating at Freehold and New Brunswick, N.J.

NOTE.—Common control was approved in MC-F-11285. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 112595 (Sub-No. 56), filed January 23, 1974. Applicant: FORD BROTHERS, INC., P.O. Box 727, Ironton, Ohio 45638. Applicant's representative: James W. Muldoon, 50 West Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer, fertilizer material, and urea*, in bulk, from the plantsite of C. F. Industries, Inc., at or near Cincinnati, Ohio, to points in Illinois, Indiana, Michigan, Ohio, and Pennsylvania.

NOTE.—Applicant states that the requested authority can be tacked in Sub-No. 26, transporting petroleum products, at the plantsite of C. F. Industries, Inc., at or near Cincinnati, Ohio, to provide a through service from points in West Virginia and Kentucky to those destination points named above. If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill., Columbus, Ohio, or Washington, D.C.

No. MC 112713 (Sub-No. 161), filed January 28, 1974. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, 10990 Roe Avenue, Shawnee Mission, Kans. 66207. Applicant's representative: John M. Records (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those of unusual value and those requiring special equipment), serving the plantsite of Colt Industries, Inc., at or near Sallisaw, Okla., as an off-route point in connection with carrier's presently authorized regular route operations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., or Washington, D.C.

No. MC 112796 (Sub-No. 9), filed January 24, 1974. Applicant: ELMER G. BRAKE, INC., 220 Wholesale Street, Clarksburg, W. Va. 26301. Applicant's representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, W. Va. 25526. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass*, between the facilities of Fourco Glass Company Float Plant located at or near Jenny Run (Taylor County), W. Va., on the one hand, and, on the other, points in Michigan and Illinois; and (2) *glassware, glass containers* and *accessory articles* for glassware sets, between the facilities of Brockway Glass Co. Distribution Center located at or near Hepzibah (Harrison County), W. Va., on the one hand, and, on the other, points in Michigan and Illinois.

NOTE.—Applicant holds contract carrier authority in MC 136984, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Charleston, W. Va., Pittsburgh, Pa., or Columbus, Ohio.

No. MC 114273 (Sub-No. 159), filed January 21, 1974. Applicant: CEDAR RAPIDS STEEL TRANSPORTATION, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Robert E. Konchar, Suite 315, Commerce Exchange Building, 2720 First Avenue NE., P.O. Box 1943, Cedar Rapids, Iowa 52406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail department and grocery stores from Savannah, Ga., to points in Iowa, and points in that part of Minnesota on and south of U.S. Highway 14 and Rock Island and Moline, Ill.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 114273 (Sub-No. 160), filed January 21, 1974. Applicant: CEDAR RAPIDS STEEL TRANSPORTATION, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Robert E. Konchar, P.O. Box 1943, Suite 315, Commerce Exchange Building, 2720 First Avenue NE., Cedar Rapids, Iowa 52406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Cedar Rapids, Iowa, to points in Indiana, Ohio, Michigan, Pennsylvania, New York, West Virginia, Virginia, Maryland, Delaware, New Jersey, Connecticut, Massachusetts, Rhode Island, Vermont, New Hampshire, and Maine.

NOTE.—Common control may be involved. Applicant states that the requested authority can be tacked at Cedar Rapids, Iowa, to provide a through service from points in Nebraska and Iowa west of Cedar Rapids, Iowa, on U.S. Highways 6 and 30, to those destination points named above. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 114725 (Sub-No. 57), filed January 27, 1974. Applicant: WYNNE TRANSPORT SERVICE, INC., 2606 North 11th Street, Omaha, Nebr. 68110. Applicant's representative: J. Max Harding, 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Distillers solubles*, from Atchison, Kans., to Omaha, Nebr.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 115331 (Sub-No. 358), filed February 13, 1974. Applicant: TRUCK TRANSPORT, INC., 29 Clayton Hills Lane, St. Louis, Mo. 63131. Applicant's representative: J. R. Ferris, 230 St. Clair Ave., East St. Louis, Ill. 62201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Acids, chemicals, plastics and plastic materials*, in bulk, from the plant site of General Electric Co., located at or near Mt. Vernon, Ind., to points in Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Maine, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

NOTE.—Applicant states that the requested authority can be tacked with the lead certificate, at St. Louis, Mo., to serve points in Kentucky and Tennessee with exceptions. If

a hearing is deemed necessary, applicant does not specify a location.

No. MC 116282 (Sub-No. 29), filed January 25, 1974. Applicant: NEIL'S BAKERY PRODUCTS TRANSPORTATION CO., 246 Broad Street, Auburn, Maine 04210. Applicant's representative: Mary E. Kelley, 11 Riverside Avenue, Medford, Mass. 02155. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bakery products*, (1) from Auburn, Maine, to points in New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Nassau, Suffolk, and Westchester Counties, N.Y., Hudson, Bergen, Rockland, Passaic, Essex, Union, and Middlesex Counties, N.J.; (2) from the port of entry on the International Boundary line between the United States and Canada at or near Houlton, Maine, to points in New York, Nassau, Suffolk, and Westchester Counties, N.Y., Sussex, Hudson, Bergen, Rockland, Passaic, Essex, Union, and Middlesex Counties, N.J.; and (3) from Totowa, N.J., to points in Maine, New Hampshire, and Vermont, under continuing contracts with F. R. Lepage Bakery, Inc., Karnes Kitchen, Ltd., and S. B. Thomas, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Portland, Maine, or Boston, Mass.

No. MC 116544 (Sub-No. 148), filed January 25, 1974. Applicant: WILSON BROTHERS TRUCK LINE, INC., 700 East Fairview Road, P.O. Box 636, Carthage, Mo. 64836. Applicant's representative: Robert Wilson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat byproducts, and articles distributed by meat packinghouses* (except hides and commodities in bulk), from the plantsite and warehouse facilities utilized by Geo. A. Hormel & Co. at or near Carthage and Springfield, Mo., and Miami, Okla, to points in Georgia, North Carolina, South Carolina, and Florida and Tennessee, restricted to traffic originating at named origins and destined to named destinations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Minneapolis, Minn.

No. MC 118130 (Sub-No. 67), filed January 17, 1974. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Fort Worth, Tex. 76115. Applicant's representative: Billy R. Reid, 6108 Sharon Road, Fort Worth, Tex. 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from the plantsite and warehouse facilities of Western Potato Service, Inc., located at or near Grand Forks, N. Dak., to points in Oklahoma, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, Arizona, California, Colorado, Idaho, Kentucky, Maryland, Minnesota, Montana, Nevada, New Mexico, North Carolina, Oregon, South Carolina, South Dakota, Utah, Virginia, Washington, West Virginia, Wyoming, Arkansas, and Tennessee, restricted to the transportation of traffic originating at the named origin points and destined to the named destination points.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 118859 (Sub-No. 9), filed January 24, 1974. Applicant: BULLOCK TRUCKING COMPANY, INC., P.O. Box 129, U.S. Highway 41 South, Valdosta, Ga. 31601. Applicant's representative: Virgil H. Smith, 1587 Phoenix Boulevard, Suite 12, Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips*, from the plant site of Balfour Lumber Company, Inc., located at or near Thomasville, Ga., to Foley, Fla.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at Jacksonville, Fla., or Atlanta, Ga.

No. MC 119547 (Sub-No. 39), filed January 21, 1974. Applicant: EDGAR W. LONG, INC., Route 4, Zanesville, Ohio 43701. Applicant's representative: Richard H. Brandon, 79 East State Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay and clay products* (except in bulk), from Oran, Mo., to points in the United States (except Missouri, Alaska, and Hawaii).

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 119654 (Sub-No. 28), filed January 21, 1974. Applicant: HI-WAY DISPATCH, INC., 1401 W. 26th Street, Marion, Ind. 46952. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass containers, caps, covers and tops therefor, and paper cartons*, from Lapel, Ind., to points in Illinois, Kentucky, and Wisconsin and (2) *rejected shipments of glass containers, caps, covers and tops therefor, paper cartons and pallets*, from points in Illinois, Kentucky, and Wisconsin, to Lapel, Ind.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Chicago, Ill.

No. MC 119767 (Sub-No. 308), filed January 25, 1974. Applicant: BEAVER TRANSPORT CO., a Corporation, I-94 and County Highway C, Bristol, Wis. 53104. Applicant's representative: David A. Petersen, P.O. Box 186, Pleasant Prairie, Wis. 53158. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Prepared animal food* (except in bulk); and (2) *materials and supplies* (except in bulk) (1) from Delavan, Wis., to points in Illinois, Iowa, Michigan, Missouri, and Ohio; and (2) from points in Illinois, Iowa, Michigan, Missouri, and Ohio to Delavan, Wis.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119789 (Sub-No. 194), filed January 28, 1974. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, Tex. 75222. Applicant's representative: Hugh T. Matthews, 630 Fidelity Union Tower, Dallas, Tex. 75201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glassware*, from the plantsite and storage facilities of Federal Glass Co., Inc., at Columbus, Ohio, to points in Arizona, California, Nevada, New Mexico, Oregon, and Washington.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 120646 (Sub-No. 15), filed January 23, 1974. Applicant: BRADLEY FREIGHT LINES, INC., P.O. Box 5785, Asheville, N.C. 38803. Applicant's representative: Walter Harwood, P.O. Box 15214, Nashville, Tenn. 37215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products and commodities distributed by wholesalers of paper and paper products*, from points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, to the warehouse and storage facilities of Piedmont Paper Company, Inc., at Asheville, N.C.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at either Asheville, or Charlotte, N.C., or Nashville, Tenn.

No. MC 121060 (Sub-No. 31), filed January 28, 1974. Applicant: ARROW TRUCK LINES, INC., P.O. Box 5568, Birmingham, Ala. 35207. Applicant's representative: William P. Jackson, Jr., 919 Eighteenth Street NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Construction materials*, from the facilities of The Celotex Corporation at or near Elizabethtown, Ky., to points in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Massachusetts, Maryland, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin, Alabama, and Tennessee, restricted to the transportation of shipments originating at the facilities of The Celotex Corporation.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla., or Washington, D.C.

No. MC 123048 (Sub-No. 292), filed September 28, 1973. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, Wis.

53401. Applicant's representative: Paul L. Martinson, P.O. Box A, Racine, Wis. 53401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural, industrial, and construction machinery and equipment*; (2) *recreational vehicles*; (3) *attachments and accessories* for (1) and (2) above; and (4) *parts* for (1), (2) and (3) above, from Bruce, Wis., to points in the United States, including Alaska but excluding Hawaii.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority at Bruce, Wis. to provide a through service from points in Minnesota and Iowa to points in the United States, including Alaska, but excluding Hawaii. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Minneapolis, Minn.

No. MC 124117 (Sub-No. 7), filed January 28, 1974. Applicant: EARL FREEMAN, doing business as MID-TENN EXPRESS, P.O. Box 101, Eagleville, Tenn. 37060. Applicant's representative: Robert L. Baker, 500 Court Square Building, Nashville, Tenn. 37201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising material:* (1) from Belleville, Ill., Columbus, Ohio, Fort Wayne, Ind., Baltimore, Md., New Orleans, La., and St. Paul, Minn., to points in that part of Tennessee, on and west of U.S. Highway 27 and east of the Tennessee River; (2) from Belleville, Ill., and St. Paul, Minn. to points in Georgia; and (3) from New Orleans, La., St. Louis, Mo., Fort Wayne, Ind., and St. Paul, Minn., to points in Alabama.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C., or Nashville, Tenn.

No. MC 124692 (Sub-No. 131), filed January 18, 1974. Applicant: SAMMONS TRUCKING, P.O. Box 1447, Missoula, Mont. 59801. Applicant's representative: Donald W. Smith, Suite 2465—One Indiana Square, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pre-engineered buildings, parts thereof, and building materials*, from the plant site of Stran-Steel Corporation at Terre Haute, Ind., to points in California, Colorado, Idaho, Kansas, Iowa, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, restricted to traffic originating at the plant site of Stran-Steel Corporation at Terre Haute, Ind.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 124854 (Sub-No. 14), filed January 21, 1974. Applicant: GRIM BROS. TRUCKING CO., a Corporation, 997 Loucks Mill Road, York, Pa. 17402. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Firebrick*, from West Manchester (York County), Pa., to points in New Jersey, New York, Ohio, West Virginia, Maryland, Virginia, and the District of Columbia.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 125035 (Sub-No. 31), filed January 7, 1974. Applicant: RAY E. BROWN TRUCKING, INC., P.O. Box 501, Massillon, Ohio 44646. Applicant's representative: James E. Davis, 611 West Market Street, Akron, Ohio 44303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream, ice cream confections, frozen desserts, ice confections, and ice water confections*, in vehicles equipped with mechanical refrigeration, *and other items* incidental to the manufacture; *wooden sticks* used therein, *and empty shipping containers*, between Toledo, Ohio, on the one hand, and, on the other, points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, District of Columbia, West Virginia, Wisconsin, and points on the International Boundary line between the United States and Canada, located in Michigan, New York, Vermont, Maine, and New Hampshire, under a continuing contract or contracts with Vroman Foods, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Toledo, Ohio.

No. MC 125518 (Sub-No. 5), filed January 24, 1974. Applicant: CLETUS RUHLMAN, doing business as C. RUHLMAN TRUCKING CO., 265 South Riverside Drive, New Miami, Ohio 45012. Applicant's representative: Norbert B. Flick, Executive Building, 35 East Seventh Street, Cincinnati, Ohio 45202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Slag*, in bulk, in dump vehicles, from Hamilton and Middletown, Ohio, to Dunkirk, Gas City, Marion, and Winchester, Ind., under a continuing contract or contracts with the Calumite Co.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Cincinnati or Columbus, Ohio.

No. MC 125701 (Sub-No. 5), filed January 28, 1974. Applicant: CAYUGA BULK SERVICE, INC., Chappell Road, Cayuga, N.Y. 13034. Applicant's representative: Murray J. S. Kirshtein, 118 Bleeker Street, Utica, N.Y. 13501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feeds* and *animal and poultry feed ingredients*, in bag and in bulk: (1) from Cayuga, Alexander, and Sangerfield, N.Y., to points in Richmond, Vt., and points in Addison, Bennington, Orange, Rutland, Washington, Windham and Windsor Counties, Vt.; (2) from Cayuga, N.Y., to York, Pa.; (3) from Waverly, N.Y., to points in Berks, Lycoming, Montour, and Northumberland Counties, Pa.; and (4) from Alexander and Sangerfield, N.Y., to points in Bradford, Erie, Lackawanna, McKean, Potter, Susquehanna, Tioga, Warren, and Wayne Counties, Pa.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Syracuse or Utica, N.Y.

No. MC 126276 (Sub-No. 85) (AMENDMENT), filed August 27, 1973, published in the FR issues of October 31, 1973 and February 28, 1974, and republished as amended this issue. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Road, Brookfield, Ill. 60513. Applicant's representative: Albert A. Andrin, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Containers, container closures, container components, materials, and supplies* used in the selling, manufacture or distribution of containers, (1) from the plant sites and/or warehouse sites of American Can Company located at Atlanta, Ga.; Baltimore, Md.; Chambersburg, Pa.; Darlington, S.C.; Easton, Pa.; Edison, N.J.; LeMoyne, Pa.; Morrisville (Bucks County), Pa.; Needham, Mass.; New Castle, Del.; Philadelphia, Pa., and Washington, N.J., to points in Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, Tennessee, and Wisconsin and (2) between the plant sites and/or warehouse sites of American Can Company, located at Fort Smith, Ark.; Lexington, Ky.; and Darlington, S.C., under contract in (1) and (2) above with American Can Company.

NOTE.—The purpose of this republication is to indicate applicant's request to delete the destination points of Fairport, N.Y.; Fork Township, Pa.; and Hillside, N.J., from (1) above as indicated in the corrected notice of February 28, 1974; and to indicate applicant's request to also transport containers, which was omitted in the previous publication. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 126276 (Sub. No. 88), filed January 21, 1974. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Road, Brookfield, Ill. 60513. Applicant's representative: James C. Hardman, 127 North Dearborn Street, Chicago, Ill. 60602. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products, plastic products and products produced or distributed by manufacturers and converters of paper and paper products* (except commodities in bulk), (a) from Shelbyville, Ill., to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Iowa, Illinois, Indiana, Georgia, Kansas, Kentucky, Louisiana, Maryland, Maine, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania,

Rhode Island, South Carolina, Tennessee, Texas, Virginia, Vermont, West Virginia, Wisconsin, Michigan, Minnesota, Mississippi, and the District of Columba; (b) from Fort Worth, Tex., to points in Oklahoma, Louisiana, Arkansas, Missouri, and Kansas, and (2) *plastic pellets* (except in bulk), from Fort Worth, Tex., to Shelbyville, Ill., under a continuing contract or contracts with Continental Can Company, Inc.

NOTE.—Applicant holds common carrier authority in MC 134612 (Sub-No. 1), therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 126542 (Sub-No. 3) (AMENDMENT), filed August 21, 1973, published in the FR issue of October 26, 1973, and republished as amended this issue. Applicant: B. R. WILLIAMS TRUCKING INC., P.O. Box 3310, Oxford, Ala. 36201. Applicant's representative: John W. Cooper, 1314 City Federal Building, Birmingham, Ala. 35203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal castings, tubing,* and *wrought metal shapes*, between the plant site and/or warehouse facilities of Phelps Dodge Brass Company, a division of Phelps Dodge Industries, Inc., located at or near Dayton, N.J.; Los Angeles, Calif.; Long Island City, N.Y.; Atlanta, Ga.; Cleveland, Ohio; Cincinnati, Ohio; Rochester, N.Y.; East Farmingdale, N.Y.; Boston, Mass.; King of Prussia, Pa.; Dallas, Tex.; Houston, Tex.; Seattle, Wash.; Oakland, Calif.; Metarie, La.; Tampa, Fla.; Fort Lauderdale, Fla.; Moline, Ill.; Kansas City, Mo.; Chicago, Ill.; Elkhart, Ind.; and Buffalo, N.Y.; and (2) *equipment, materials* and *supplies* used in the manufacture and distribution of the commodities listed in (1) above (except in bulk), from points in the United States (except Alaska and Hawaii), to the plant sites of Phelps Dodge Brass Company, a division of Phelps Dodge Industries, Inc., located at or near Dayton, N.J.; Los Angeles, Calif.; and Long Island City, N.Y., under a continuing contract, or contracts, in (1) and (2) above with Phelps Dodge Brass Company, a division of Phelps Dodge Industries, Inc.

NOTE.—The purpose of this republication is to indicate the amended request for authority as described above. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Atlanta, Ga.

No. MC 126844 (Sub-No. 27), filed January 28, 1974. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Vineland, N.J. 08360. Applicant's representative: Jacob P. Billig, 1126 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bread crumbs in bags*, from the plantsite and facilities of Acme Bread Crumbs Company at Chicago, Ill., to the plantsite and facilities of Progresso Foods at Vineland, N.J., and the plantsite and facilities of Venice Maid Co., Inc., at Vineland, N.J.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 127623 (Sub-No. 6), filed January 3, 1974. Applicant: R & R FREIGHT TRUCKING, INC., 2 Richard Way, La Vale, Md. 21502. Applicant's representative: Earl E. Manges, 120 South Liberty Street, P.O. Box 833, Cumberland, Md. 21502. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, from Frostburg, Md., to points in Morgan and Hardy Counties, W. Va.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 128273 (Sub-No. 151), filed January 18, 1974. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, Kans. 66701. Applicant's representative: Harry Ross (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Rubber, rubber products, and such other commodities* as are manufactured, processed, and/or dealt in by rubber manufacturers, from East Danville, Va., to points in Louisiana, Wisconsin, Minnesota, and points in the United States on and west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, Minn., thence northward along the western boundaries of Itasca and Koochiching Counties, Minn., to the International Boundary line between the United States and Canada (except Alaska and Hawaii); and (2) *tires and equipment, material, and supplies*, used in the manufacture and distribution of rubber and rubber products, and such other commodities as are manufactured and processed and/or dealt in by rubber manufacturers, from points in Louisiana, Wisconsin, Minnesota, and points in the United States on and west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, Minn., thence northward along the western boundaries of Itasca and Koochiching Counties, Minn., to the International Boundary line between the United States and Canada (except Alaska and Hawaii) to East Danville, Va., restricted against the movement of commodities in bulk.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Akron, Ohio.

No. MC 128273 (Sub-No. 152), filed January 22, 1974. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, Kans. 66701. Applicant's representative: Harry Ross (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Charcoal briquets, lighter fluid, grill lighters, hickory chips, and fireplace logs,* (1) from Branson, Mo., to points in Minnesota, Iowa, Missouri, Kansas, Arkansas, Louisiana, and points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, Minn., thence northward along the western boundaries of Itasca and Koochiching Counties, Minn., to the International Boundary line between the United States and Canada; and (2) from Dickinson, N. Dak., to points in Minnesota, Iowa, Missouri, Kansas, Colorado, Nebraska, Wisconsin, Oklahoma, New Mexico, and Texas.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 128383 (Sub-No. 50), filed January 25, 1974. Applicant: PINTO TRUCKING SERVICE, INC., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, Classes A and B explosives, and motor vehciles requiring the use of special equipment), having a prior or subsequent movement by air or moving in a substitute for air service, between Logan International Airport, Boston, Mass., and John F. Kennedy International Airport, New York, N.Y., restricted against tacking with any authority held by applicant.

NOTE.—Applicant is presently performing the requested operations via Tweed-New Haven Airport. The purpose of this application is the elimination of the Tweed-New Haven Airport gateway. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 129455 (Sub-No. 5), filed January 25, 1974. Applicant: CARRETTA TRUCKING, INC., P.O. Box 887, Maywood, N.J. 07607. Applicant's representative: Charles J. Williams, 47 Lincoln Park, Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel* used in the manufacture of garden sheds, (a) from Youngstown, Ohio, to points in Saddle Brook, N.J.; and (b) from Wheeling, W. Va., to points in Lyndhurst and Saddle Brook, N.J., under a continuing contract with Quaker City Industries, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 133095 (Sub-No. 51), filed January 28, 1974. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, Tex. 76039. Applicant's representative: Rocky Moore (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages* (except in bulk), when moving in mechanically refrigerated vehicles, from points in New York

and New Jersey to points in Tennessee, Mississippi, Alabama, and Georgia.

NOTE.—Applicant holds contract carrier authority in MC–136032, threfore dual operations may be involved Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 133095 (Sub–No. 52), filed January 24, 1974. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, Tex. 76039. Applicant's representative: Rocky Moore (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise*, as is ordinarily dealt in by retail discount stores (except foodstuffs), restricted against the transportation of drugs, toilet preparations, paper, paper products, new furniture, plumbing fixtures, materials, equipment and supplies and/or entertainment products, (except in mixed loads with other merchandise dealt in by retail discount stores), from points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Delaware, and New Jersey to retail discount stores of and storage facilities utilized by Howard Discount Stores located in points in Arkansas (except Little Rock and its Commercial Zone), Oklahoma (except Oklahoma City and Tulsa and their respective Commercial Zones) and Texas (except Dallas, Fort Worth, San Antonio, and Houston and their respective Commercial Zones).

NOTE.—Applicant holds contract carrier authority in MC–136032, but indicates dual operations are not involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at Dallas, Tex.

No. MC 134142 (Sub-No. 5), filed January 2, 1974. Applicant: BROWN REFRIGERATED EXPRESS, INC., P.O. Box 603, 21st and Sidney Streets, Fort Scott, Kans. 66701. Applicant's representative: Daniel B. Johnson, 716 Perpetual Building, 1111 E Street, NW., Washington, D.C. 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration, from the plant sites and warehouse facilities utilized by Lamb-Weston, Inc., located in Oregon, Washington, and Idaho, to points in Arizona, Kansas, Louisiana, Mississippi, Missouri, New Mexico, and Texas, under contract with Lamb-Weston, Inc., Portland, Oreg.

NOTE.—Common control may be involved. Applicant holds motor common carrier authority in No. MC–136121 and Subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg.

No. MC 134182 (Sub-No. 18), filed January 24, 1974. Applicant: MILK PRODUCERS MARKETING COMPANY, doing business as ALL-STAR TRANSPORTATION, a Corporation, Second and West Turnpike Road, Lawrence, Kans. 66044. Applicant's representative: Lucy Kennard Bell, 101 West Eleventh St., Suite 901, Fairfax Bldg., Kansas City, Mo. 64105. Authority sought rence, Kans. 66044. Applicant's reprevehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Dodge City, Kans., to points in Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, and Pennsylvania.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 134182 (Sub-No. 19), filed January 24, 1974. Applicant: MILK PRODUCERS MARKETING COMPANY, doing business as ALL-STAR TRANSPORTATION, a Corporation, Second and West Turnpike Road, Lawrence, Kans. 66044. Applicant's representative: Lucy Kennard Bell, 101 West Eleventh St., Suite 910 Fairfax Bldg., Kansas City, Mo. 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products*, and *articles* distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the packinghouse facilities of Seitz Foods, Incorporated, located at or near St. Joseph, Mo., to East Hartford, Conn.; Sommerville, Mass.; Rumson and South Kearny, N.J.; Brooklyn, Central Islip, Garden City, Staten Island, and Williston Park, N.Y., and Newport News and Norfolk, Va.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 134187 (Sub-No. 1), filed December 21, 1973. Applicant: DALE BUBLITZ, 64 Lenox Street, Winona, Minn. 55987. Applicant's representative: Duane M. Peterson, Box 204—177 Main Street, Winona, Minn. 55987. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mobile homes, mobile modulars and modular homes*, (1) from points in Goodhue, Dodge, Mower, Wabasha, Olmsted, Winona, Fillmore, and Houston Counties, Minn., to points in Vernon, Pierce, Dunn, Pepin, Buffalo, Trempealeau, Jackson, LaCrosse, and Monroe Counties, Wis.; and (2) from points in the destination area named above, to points in the origin territory named above.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states that the requested authority duplicates in part its existing authority. By the instant application, applicant seeks to extend its existing commodity and territorial description. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. 134254 (Sub-No. 4), filed January 11, 1974. Applicant: NANC CORPORATION, 2610 N. Dort Highway, Flint, Mich. 48506. Applicant's representative: Robert D. Schuler, 100 West Long Lake Road, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Guard rail, guard rail posts and accessories, and support structures* (except in bulk), between Lima, Ohio, and points in the United States (except Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Ohio, Oregon, Utah, Washington, and Wyoming); and (2) *materials, supplies and equipment* used in the manufacture of guard rail, guard rail posts, and accessories and support structures (except in bulk), from points in the United States (except Alaska, Arizona, California Hawaii, Idaho, Montana, Nevada, Ohio, Oregon, Utah, Washington, and Wyoming), to Lima, Ohio, under a continuing contract, or contracts, with Anderson "Safeway" Guard Corporation of Flint, Mich.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Lansing or Detroit, Mich.

No. MC 134477 (Sub-No. 51), filed January 10, 1974. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mandota Road, West St. Paul, Minn. 55118. Applicant's representative: Thomas Fischbach (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from the plantsite and warehouse facilities of Western Potato Service, Inc., at Grand Forks, N. Dak., to points in Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Fargo, N. Dak., or Minneapolis, Minn.

No. MC 135292 (Sub-No. 1), filed January 16, 1974. Applicant: GUY MORRAL, 39 West Avenue, Wellsboro, Pa. 16901. Applicant's representative: Kenneth R. Davis, 999 Union Street, Taylor, Pa. 18517. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from points in Tioga and Lycoming Counties, Pa., to points in New York (except points in Allegany, Broome, Cayuga, Chemung, Chenango, Genesee, Livingston, Madison, Monroe, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, and Yates Counties, N.Y.).

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Williamsport, Pa.

No. MC 135991 (Sub-No. 1), filed January 21, 1974. Applicant: COLETTA'S DOWNTOWN AUTO SERVICE, INC., 425 Richmond Street, Providence, R.I. 02903. Applicant's representative: Frederick T. O'Sullivan, 622 Lowell Street, Peabody, Mass. 01960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked, disabled, repossessed, and replacement motor vehicles and trailers* (except trailers designed to be drawn by passenger automobiles in initial movements), by use of wrecker equipment, only, between points in Rhode Island, on the one hand, and, on the other, points in Massachusetts, Connecticut, Maine, New Hampshire, Vermont, New York, New Jersey, and Pennsylvania.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Providence, R.I., or Boston, Mass.

No. MC 136069 (Sub-No. 7), filed January 21, 1974. Applicant: COIN DEVICES CORP., 64 Broad Street, Elizabeth, N.J. 07201. Applicant's representative: Charles J. Williams, 47 Lincoln Park, Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coins, currency, checks, negotiable and non-negotiable instruments, and valuable documents*, between Elizabeth, N.J., and New York, N.Y., under a continuing contract or contracts with The National State Bank, Elizabeth, N.J.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 136318 (Sub-No. 18) (AMENDMENT), filed January 2, 1974, published in the FEDERAL REGISTER issue of February 22, 1974, and republished as amended this issue. Applicant: COYOTE TRUCK LINE, INC., 395 West Fleming Drive, Morganton, N.C. 28655. Applicant's representative: David R. Parker, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *New furniture*, from Santa Ana, Calif., to points in the United States (except Alaska and Hawaii); (2) *mirrors and component parts* used in the manufacture and distribution of the commodities in (1) above, from Newton, N.C., to Santa Ana, Calif.; (3) *corner caps*, from Jacksonville, Tex., to Santa Ana, Calif.; and (4) *returned, rejected, and damaged commodities* as described in (1) above, from points in the United States (except Alaska and Hawaii), to Santa Ana, Calif., restricted in (1) through (4) above (a) against the transportation of commodities in bulk, and (b) to traffic originating at or destined to the facilities utilized by Consolidated Foods Corporation, B. P. John Furniture Company Division, at Santa Ana, Calif., under a continuing contract with Consolidated Foods Corporation.

NOTE.—The purposes of this republication are to indicate applicant's new representative and the amended request for authority as described above. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif., or Washington, D.C.

No. MC 136531 (Sub-No. 2), filed January 28, 1974. Applicant: LUISI TRUCK LINES, INC., P.O. Box 606, New Walla Walla Highway #11, Milton-Freewater, Oreg. 97862. Applicant's representative: George R. LaBissoniere, 130 Andover Park East, Seattle, Wash. 98188. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Canned goods, frozen food, wine and malt beverages and agricultural commodities* otherwise exempt when moving with said commodities, from points in Los Angeles, Orange, Riverside, Kern, Fresno, Madera, Merced, Stanislaus, San Joaquin, Santa Clara, Sacramento, San Benito, San Francisco, and Napa Counties, Calif., Nyssa, Pendleton, and La Grande, Oreg., and Walla Walla, Wash., under continuing contract with La Grande Fruit Co.; and (2) *canned goods*, from Milton-Freewater, Oreg., and Walla Walla, Wash., to points in Bakersfield, Fresno, Modesto, Los Angeles, San Diego, San Jose, Stockton, Sacramento, San Francisco, Oakland, Alameda, Calif.; Las Vegas and Reno, Nev.; and Phoenix, Ariz., under continuing contract with Rogers Walla Walla, Inc.

NOTE.—Applicant holds common carrier authority in MC–136228 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg.

No. MC 136640 (Sub-No. 7), filed December 14, 1973. Applicant: ROBERT L. ALLEN, doing business as R. ALLEN TRANSPORT, P.O. Box 321, Pocomoke City, Md. 21851. Applicant's representative: S. Michael Richards, 44 North Avenue, Webster, N.Y. 14850. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Candy and confectionery* (other than hollow mold) moving in mechanically refrigerated vehicles; (2) *frozen foodstuffs (sweet potatoes, eggplant sticks, corn and apple fritters, and onion rings)* when moving in mixed shipments with agricultural commodities otherwise exempt from economic regulations under Section 203(B)(6); and (3) *frozen onion rings* made from diced fresh onions, when moving in mixed shipments with agricultural commodities otherwise exempt from economic regulations under Section 203(B)(6), (1) from Philadelphia, Pa., to points in Alabama, California, Florida, Georgia, Illinois, Louisiana, Minnesota, Nevada, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and Arkansas; (2) from Philadelphia, Pa. to points in Alabama, Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Tennessee, Texas, and Wisconsin; and (3) from Boston, Mass., to points in California, Idaho, Minnesota, Montana, Oregon, Utah, and Washington, under continuing contract with Boston Bonnie, Inc., Falcon Candy Company, and Mrs. Paul's Kitchens, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa.

No. MC 136777 (Sub-No. 8), filed January 22, 1974. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, a Corporation, Box 990, Livingston, Mont. 59047. Applicant's representative: Jacob P. Billig, 1126 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Flattened vehicles and scrap metal for recycling*, (1) from points in Montana and Wyoming to points in Washington, Oregon, Utah, and points in Montana located on the International Boundary line between the United States and Canada, under a continuing contract with Krushette Klean.

NOTE.—Applicant holds common carrier authority in MC–26396 and Subs thereunder, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Missoula, Mont.

No. MC 138304 (Sub-No. 7), filed January 11, 1974. Applicant: NATIONAL PACKERS EXPRESS, INC., 29 South LaSalle Street, Suite 330, Chicago, Ill. 60603. Applicant's representative: William J. Boyd (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plant sites and facilities utilized by Wilson & Co. at Albert Lea, Minn., and Cedar Rapids, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, restricted to the transportation of traffic originating at the plant sites and facilities utilized by Wilson & Co. at Albert Lea, Minn., and Cedar Rapids, Iowa, and destined to the above named points.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 138387 (Sub-No. 1), filed January 24, 1974. Applicant: FOOSE TRANSPORT, INC., 286 Glen Avenue, Dumont, N.J. 07628. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities*, as are dealt in by a manufacturer of toilet preparations, and *ma-*

terials and supplies and equipment, used in the conduct of such business (except in bulk), between Northvale, N.J., and at or near Columbia, S.C., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under a continuing contract with Mem, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 138510 (Sub-No. 4), filed December 13, 1973. Applicant: RICCI TRANSPORTATION CO., INC., Odessa Avenue & Aloe Street, Pomona, N.J. 08240. Applicant's representative: Kenneth R. Davis, 999 Union Street, Taylor, Pa. 18517. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Laminated furniture and laminated furniture parts*, uncrated, from Pleasantville, N.J., to points in New York, Pennsylvania, Texas, Florida, Georgia, and the District of Columbia; and (2) *materials and supplies* used in the manufacture of laminated furniture and laminated furniture parts, from points in New York, Pennsylvania, Texas, Florida, Georgia, and the District of Columbia, Auburn, Maine, and Baltimore and Odenton, Md., to Pleasantville, N.J., under a continuing contract or contracts with International Wood Products, Inc.

NOTE.—Applicant holds common carrier authority in MC 127955; however, applicant indicates dual operations are not involved. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa.

No. MC 138650 (Sub-No. 1) (AMENDMENT), filed September 4, 1973, published in the FR issue of November 8, 1973, and republished as amended this issue. Applicant: GEORGE'S TRUCKING CORPORATION, 22 Lake Avenue, Trenton, N.J. 08610. Applicant's representative: James S. Kline, 1819 South Broad Street, Trenton, N.J. 08610. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bakery products*, in containers, from Philadelphia, Pa., to points in Mercer and Monmouth Counties, N.J., under a continuing contract, or contracts, with Tasty Baking Co. at Philadelphia, Pa.

NOTE.—The purposes of this republication are: (1) To indicate applicant seeks irregular route authority; (2) to clarify the commodity description by deleting commodities in bulk and in tank vehicles, and substituting a container restriction therefor; (3) to delete specific route limitations; and (4) to broaden the destination territory as described above. If a hearing is deemed necessary, applicant requests it be held at Trenton or Newark, N.J., or Philadelphia, Pa.

No. MC 138736 (Sub-No. 5), filed January 14, 1974. Applicant: F B M TRUCKING, INC., 310 East Lanier Avenue, Fayetteville, Ga. 30214. Applicant's representative: Virgil H. Smith, 1587 Phoenix Boulevard, Suite 12, Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Furniture and furniture parts*, from the plantsite of Jansko, Inc., at Fort Lauderdale, Fla., to points in Carson, Calif.; Northbrook, Ill.; Philadelphia, Pa.; and New York, N.Y.; (2) *furniture and furniture parts* from Jackson (Madison County), Tenn., to the plant site of Jansko, Inc., at Carson, Calif.; (3) *steel tubing parts* (chrome plated and unplated) from Piqua, Ohio, and Chicago, Ill., to the plant site of Jansko, Inc., at Fort Lauderdale, Fla.; and (4) *laminated plywood* from Memphis, Tenn.; Rowland and Hudson, N.C., to the plant site of Jansko, Inc., at Fort Lauderdale, Fla.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 139162 (Sub-No. 1), filed January 24, 1974. Applicant: RHODES TRUCKING CORPORATION, 5317 Kentucky Avenue, South Charleston, W. Va. 25309. Applicant's representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, W. Va. 25526. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick, and related clay products*, from the plant and warehouse sites of the Cline Brick Company at or near Ashland and Princess, Ky., to points in Adams, Gallia, Scioto, and Lawrence Counties, Ohio, and Boone, Cabell, Jackson, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, and Wayne Counties, W. Va., under a continuing contract with Cline Brick Company.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Charleston, W. Va., Columbus, Ohio, or Lexington, Ky.

No. MC 139252 (Sub-No. 1), filed January 28, 1974. Applicant: C & W HOUSE MOVERS, INC., P.O. Box 5544, Lubbock, Tex. 79417. Applicant's representative: John C. Sims, 1607 Broadway, Lubbock, Tex. 79401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Assembled buildings and houses*, ready built, new and used, intact or in sections which, by reason of size or weight, require the use of special equipment for loading and unloading and in the transportation thereof, from points in Lubbock, Tex., to points in Colorado, New Mexico, Oklahoma, Kansas, and Arizona.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Lubbock, Tex.

No. MC 139277 (AMENDMENT), filed November 8, 1973, published in the FR issue of December 13, 1973, and republished as amended this issue. Applicant: AL E. HALL, doing business as AL E. HALL TRUCKING, P.O. Box 25, Gridley, Ill. 61744. Applicant's representative: Patrick H. Smyth, 327 South La Salle Street, Suite 1000, Chicago, Ill. 60604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal roofing and siding, fabricated metal products, and parts, attachments, and accessories*, from the plantsite of Fabral Corporation located at or near Gridley, Ill., to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, West Virginia, and Wisconsin; and (2) *materials, supplies, and equipment* for the commodities described in (1) above, from points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, West Virginia, and Wisconsin, to the plantsite of Fabral Corporation located at or near Gridley, Ill., restricted in (1) and (2) above against the transportation of commodities in bulk, under contract in (1) and (2) with Fabral Corporation.

NOTE.—The purposes of this republication are to clarify the location of the Fabral Corporation and to indicate the restriction against bulk commodities. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 139309 (Sub-No. 1), filed January 25, 1974. Applicant: DIRECT SERVICE, INC., P.O. Box 786, Plainview, Tex. 79072. Applicant's representative: Charles J. Kimball, 2310 Colorado State Bank Bldg., 1600 Broadway, Denver, Colo. 80202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tires and tubes and materials, equipment, and supplies* used in connection therewith, except commodities in bulk, from Memphis, Tenn.; Des Moines, Iowa; and Denver, Colo., to points in Iowa, Oklahoma, Texas, New Mexico, Colorado, Kansas, Wyoming, Montana, Nebraska, Arizona, Louisiana, Arkansas, South Dakota, and Missouri, restricted to service under a continuing contract with Montgomery Ward and Co.

NOTE.—Applicant holds common carrier authority in MC-134783 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 139328, filed December 7, 1973. Applicant: RELIABLE VAN AND STORAGE COMPANY, INC., 195 Bay 19 Street, Brooklyn, N.Y. 11214. Applicant's representative: Robert J. Gallagher, 1776 Broadway, New York City, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Nassau, Suffolk, Sullivan, Dutchess, Orange, Putnam, Rockland, Ulster, Westchester, New York, Kings, Queens, Bronx, and Richmond Counties, N.Y., Philadelphia, Pa., and points in Delaware, Bucks, Montgomery, and Chester Counties, Pa., points in New Jersey and Connecticut, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and also restricted to the performance of Pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant does not specify a location.

No. MC 139335 (Sub-No. 2) (CORRECTION), filed December 26, 1973, published in the FR issue of January 31, 1974 as No. MC–139335 (Sub-No. 1), and republished as corrected this issue. Applicant: JACKSON TRANSFER, INC., 1803 W. Washington Street, Bloomington, Ill. 61701. Applicant's representative: Donald S. Mullins, 4704 W. Irving Park Road, Chicago, Ill. 60641. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from the plantsite of warehouse facilities of La Salle Steel Company, at Hammond, Ind., to points in Illinois; and (2) *coal tar pitch products, other than liquid* (except in bulk), from the plantsite of Reilly Tar & Chemical Corp., located at or near Granite City, Ill., to points in Alabama, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, South Carolina, Tennessee, and Wisconsin.

NOTE.—The purpose of this republication is to indicate applicant's correct Docket Number in MC–139335 (Sub-No. 2). Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at either Chicago, or Springfield, Ill.

No. MC 139352 (Sub-No. 2) (CORRECTION), filed January 11, 1974, published in the FR issue of February 22, 1974, as MC–13952 (Sub-No. 2), and republished as corrected this issue. Applicant: VICTOR D. GOERING AND TOM N. WEEMS, doing business as WEGO, 701 East 2nd, Hutchinson, Kans. 67201. Applicant's representative: Clyde N. Christey, 641 Harrison Street, Topeka, Kans. 66603. Authority sought operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Component parts* for mobile homes and recreational vehicles, between Hutchinson, Kans., on the one hand, and, on the other, points in Adams, Antelope, Burt, Dodge, Fillmore, Hall, Hamilton, Merrick, Richardson, Scotts Bluff and York Counties, Nebr., under a continuing contract with Merchandise Warehouse Division of City Transfer and Storage Co., Inc.

NOTE.—The purpose of this republication is to indicate the correct Docket Number assigned to this proceeding in No. MC–139352 (Sub-No. 2). If a hearing is deemed necessary, the applicant requests it be held at Kansas City, Mo.

No. MC 139364 (Sub-No. 2), filed January 24, 1974. Applicant: STANLEY E. DAVIDSON AND STANLEY E. DAVIDSON, JR., a partnership, doing business as DAVIDSON PROP & TIMBER, Route No. 1, Freeport (Harrison County), Ohio 43973. Applicant's representative: T. Carroll McCarthy, Jr., 307 Board of Trade Building, Wheeling, W. Va. 26003. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Rock dust*, or *safety dust*, in bags (or anything made therefrom), by flat bed trailer, from Benwood (Marshall County), W. Va., to The Youghiogheny & Ohio Coal Co., Nelms No. 1 Mine at or near Cadiz, Ohio, and Nelms No. 2 Mine at or near Hopedale, Ohio, under contract with the Youghiogheny & Ohio Coal Co., at Martins Ferry, Ohio.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., Charleston, W. Va., or Columbus, Ohio.

No. MC 139415 (Sub-No. 2), filed January 28, 1974. Applicant: DISTRIBUTING SERVICES, INC., 3500 Cody Road, P.O. Box 6754, Columbus, Ga. 31907. Applicant's representative: C. E. Walker, Suite 307 First National Bank Bldg., P.O. Box 1085, Columbus, Ga. 31902. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Food products, and goods*, generally and customarily sold in retail grocery markets, between Columbus, Ga., and storehouses and commissaries of Military Posts of the United States Government, located in Georgia and Alabama, under a continuing contract or contracts with Anderson Brokerage Co.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Columbus, or Atlanta, Ga.

No. MC 139495, filed January 18, 1974. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, Kans. 67901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such materials and supplies* as are used in the manufacture, construction, and repair of trailers, from points in Alabama, Arkansas, California, Colorado, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin, to points in Great Bend, Wichita, and Liberal, Kans., and Grand Island, Nebr.

NOTE.—Applicant holds contract carrier authority in MC–133106 and subs thereto, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr., or Kansas City, Mo.

No. MC 139498, filed January 21, 1974. Applicant: FRANCIS D. BROWN & SON, INC., 3121 Crosby Street, Klamath Falls, Oreg. 97601. Applicant's representative: Robert R. Hollis, 400 Pacific Bldg., 520 SW. Yamhill, Portland, Oreg. 97204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood waste products*, from points in Siskiyou, Modoc, Lassen, and Shasta Counties, Calif., to points in Klamath County, Oreg.

NOTE.—Applicant holds contract carrier authority in MC–135632, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Klamath Falls, Medford, or Portland, Oreg.

No. MC 139503, filed January 21, 1974. Applicant: LEE EBERLY, doing business as WHITLEY TRAILER COURT AND SALES, 702 South State Street, South Whitley, Ind. 46787. Applicant's representative: Donald W. Smith, Suite 2465—One Indiana Square, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mobile homes*, in secondary movements, between points in Indiana, on the one hand, and on the other, points in the United States, on and east of U.S. Highway 85.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 139504, filed January 28, 1974. Applicant SHEA/RUSTIN TRANSPORT COMPANY, a Corporation, 1961 South Cobb Industrial Blvd., Smyrna, Ga. 30080. Applicant's representative: Guy H. Postell, Suite 713, 3384 Peachtree Rd., NE., Atlanta, Ga. 30326. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and printed matter*, between points in the United States (except Alaska and Hawaii), under contract or contracts with Shea/Rustin, Inc., of Smyrna, Ga.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 139505, filed January 28, 1974. Applicant: NORMAN J. SOUCY, SR., BARBARA J. SOUCY, AND NORMAN J. SOUCY, JR., doing business as, SUPERIOR MOVING AND STORAGE CO., 616 West Spruce Street, Sault Ste. Marie, Mich. 49783. Applicant's representative: Robert D. Schuler, 100 West Long Lake Road, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Alger, Chippewa, Delta, Luce, Mackinac, and Schoolcraft Counties, Mich., restricted to the transportation of shipments having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with the packing, crating, and containerization or unpacking, uncrating, and decontainerization of such shipments.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Lansing, Mich.

No. MC 139506, filed January 25, 1974. Applicant: SMITTY'S VAN AND STORAGE CO., a Corporation, 1417 North 18th Street, Omaha, Nebr. 68102. Applicant's representative: Paul F. Sullivan, 711 Washington Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, as defined by the Commission, between points in Nebraska on

and east of U.S. Highway 81, and in Iowa on an west of U.S. Highway 71, and on and south of U.S. Highway 20, restricted to traffic having a prior or subsequent movement in containers, and further restricted to pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif., or Omaha, Nebr.

PASSENGER APPLICATIONS

No. MC 1515 (Sub-No. 191), filed January 14, 1974. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, Ariz. 85077. Applicant's representative: R. M. Hannon, 371 Market Street, San Francisco, Calif. 94106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special operations, in round-trip sightseeing or pleasure tours, beginning and ending at points in Clallam, Cowlitz, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, and Whatcom Counties, Wash., and extending to points in the United States (including Alaska but excluding Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 28457 (Sub-No. 7), filed November 20, 1973. Applicant: DELAWARE VALLEY TRANSPORTATION, CO., doing business as POCONO MOUNTAIN TRAILS, 213 North 9th Street, Stroudsburg, Pa. 18360. Applicant's representative: Brian S. Stern, 1400 North Uhle Street, Court Square West Building, Suite 100, Arlington, Va. 22201. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage and express, newspapers and mail*, in the same vehicle with passengers, (1) Between Hemlock Farms, Lords Valley, Blooming Grove Township (Pike County), Pa., and New York, N.Y.: From Hemlock Farms, Lords Valley, Blooming Grove Township (Pike County), Pa., in a northerly direction over Pennsylvania Highway 739 to junction Pennsylvania Highway 739 and Interstate Highway 84, thence in an easterly direction over Interstate Highway 84 to junction Interstate Highway 84 and New York Highway 17M, at or near Middletown, N.Y., thence in an easterly direction over New York Highway 17M to junction New York Highway 17M and dual-designated New York Highway 17/U.S. Highway 6, at or near Goshen, N.Y., thence in an easterly direction over dual-designated New York Highway 17/U.S. Highway 6 to junction of dual-designated New York Highway 17/U.S. Highway 6 and Interstate Highway 87, thence in a southerly direction over Interstate Highway 87 to junction Interstate Highway 87 and New Jersey Highway 17, thence in a southerly direction over New Jersey Highway 17 to junction New Jersey Highway 17 and Interstate Highway 80, thence in an easterly direction over Interstate Highway 80 to junction Interstate Highway 80 and Interstate Highway 95, thence in a southerly direction over Interstate Highway 95 to junction Interstate Highway 95 and Interstate Highway 495, thence in an easterly direction over Interstate Highway 495 to New York, N.Y., and return over the same route; and

(2) Between points in Palmyra Township (Pike County), Pa., and New York, N.Y., serving all intermediate points between Palmyra Township and Delaware Township (Pike County), Pa., inclusive, and serving no intermediate points between Delaware Township (excluding Delaware Township), Pa., and New York, N.Y.: From junction Legislative Route 51019, Legislative Route 51028, Legislative Route 51020, and Pennsylvania Highway 390, located in Palmyra Township (Pike County), Pa., over Legislative Route 51019 to junction Legislative Route 51019 and Pennsylvania Highway 402, thence in a southerly direction over Pennsylvania Highway 402 to junction Pennsylvania Highway 402 and Interstate Highway 84, thence in an easterly direction over Interstate Highway 84 to junction Interstate Highway 84 and Pennsylvania Highway 739, thence in a southeasterly direction over Pennsylvania Highway 739 to the junction of Pennsylvania Highway 739 and New Jersey Highway 521 at or near the Pennsylvania-New Jersey State Boundary Line, thence in an easterly direction over New Jersey Highway 521 to junction New Jersey Highway 521 and U.S. Highway 206, thence southeasterly over U.S. Highway 206 to junction U.S. Highway 206 and New Jersey Highway 15, thence southeasterly over New Jersey Highway 15 to junction New Jersey Highway 15 and Interstate Highway 80, thence easterly over Interstate Highway 80 to junction Interstate Highway 80 and Interstate Highway 95, thence southerly over Interstate Highway 95 to junction Interstate Highway 95 and Interstate Highway 495 thence easterly over Interstate Highway 495 to New York, N.Y., and return over the same route.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Stroudsburg, Pa.

No. MC 100327 (Sub-No. 6), filed January 23, 1974. Applicant: LONGUEIL TRANSPORTATION, INC., 144 Shaker Road, East Longmeadow, Mass. 01028. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, Mass. 01103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special operations, beginning and ending at Enfield and Somers, Conn., and extending to points in the United States including Alaska, but excluding Hawaii.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Hartford, Conn., or Boston, Mass.

No. MC 138141 (Sub-No. 2), filed January 23, 1974. Applicant: LOUIS SANTORA, JR., doing business as AAA UNITED LIMOUSINE SERVICE, P.O. Box 114, Raritan, N.J. 08869. Applicant's representative: Paul J. Keeler, P.O. Box 253, South Plainfield, N.J. 07080. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers, and their baggage*, in special operations in nonscheduled door-to-door service of not more than seven (7) passengers in any one vehicle, not including the driver, between points in Somerset and Hunterdon Counties, N.J., on the one hand, and, on the other, La Guardia Airport and John F. Kennedy International Airport, New York, N.Y.

NOTE.—If a hearing is deemend necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 139417, filed December 26, 1973. Applicant: ROGERS W. NICKS, doing business as BAKER BUS SERVICE, 4 South Main, Baker, Mont. 59313. Applicant's representative: Russell L. Culver, 101 S. Main, Baker, Mont. 59313. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers, and their baggage*, in round trip charter operations, beginning and ending at points in Fallon and Carter Counties, Mont., and extending to points in the United States including Alaska but excluding Hawaii.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Baker, Miles City, or Glendive, Mont.

No. MC 130228, filed January 16, 1974. Applicant: MORENO TOURS, INC., 80-27 37th Avenue, Jackson Heights, N.Y. 11372. Applicant's representative: William Q. Keenan, 277 Park Avenue, New York, N.Y. 10017. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Jackson Heights, N.Y., to sell or offer to sell the transportation of *passengers and their baggage*, by motor common carrier, in special and charter operations, and by railroad group passenger service, including arrangements for meals, lodging, entertainment, and the service of tour escorts and guides conversant in the Spanish language, from New York, N.Y., and points in Nassau County, N.Y., to points in Pennsylvania, Florida, and the District of Columbia, and points on the International Boundary line between the United States and Canada, and return.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 139508, filed December 7, 1973. Applicant: AIR BROOK LIMOUSINE, INC., 400 Market Street, Saddle Brook, N.J. 07662. Applicant's representative: George H. Rosen, 265 Broadway, P.O. Box 348, Monticello, N.Y. 12701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage and express* in the same

vehicle with passengers, in special and charter operations, in nonscheduled door-to-door service transporting not more than 11 passengers in any one vehicle not including the driver thereof and not including children under 10 years of age who do not occupy a seat or seats, between points in Bergen, Passaic, Hudson, Sussex, Essex (except Newark Airport, Newark, N.J.), Warren, and Morris Counties, N.J., on the one hand, and, on the other, New York, N.Y., John F. Kennedy International Airport and La-Guardia Airport, N.Y.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

BROKER APPLICATIONS

No. MC 130230, filed January 25, 1974. Applicant: MY TRAVELS, INC., 6817 Cochise Dr., Knoxille, Tenn. 37918. Applicant's representative: John T. Baugh, Bank of Knoxville Bldg., 12th Floor, Knoxville, Tenn. 37902. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Knoxville, Tenn., to sell or offer to sell the transportation of *individual passengers and groups of passengers, and their baggage*, by motor, water, rail, and air carrier, beginning and ending at points in Tennessee, and extending to points in the United States (including Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Knoxville, Tenn.

No. MC 130231, filed January 16, 1974. Applicant: SAFARI TOURS, INC., 998 Arthur Kill Road, Staten Island, N.Y. 10312. Applicant's representative: Mitchell Bialostozky (same address as applicant). Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Staten Island, N.Y., to sell or offer to sell to common and contract, motor, rail, water, and air carriers, the transportation of *passengers and groups of passengers, together with their* baggage, in special and charter tour operations, between points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

By the Commission.

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

[FR Doc.74-5179 Filed 3-6-74;8:45 am]

[Notice 459]

ASSIGNMENT OF HEARINGS

MARCH 4, 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 March 7, 1974.

MC 119789 Sub-173, Caravan Refrigerated Cargo, Inc., now assigned March 7, 1974, at Columbus, Ohio is cancelled and application dismissed.

No. 35906, Hilton Head Island Chamber of Commerce v. Overnite Transportation Company et al., now being assigned hearing May 6, 1974, at Atlanta, Ga., in a hearing room to be later designated.

No. 35900, Inland Steel Company v. Illinois Central Gulf Railroad Company et al., now being assigned hearing May 6, 1974, at Chicago, Ill., in a hearing room to be later designated.

No. 35912, Milmine Grain Company v. Norfolk and Western Railway Company, now being assigned hearing May 20, 1974, at Chicago, Ill., in a hearing room to be later designated.

No. 35955, Louis Dreyfus Corporation, et al., V., Chicago and North Western Transportation Company, et al., now being assigned hearing May 13, 1974, at Kansas City, Mo., in a hearing room to be later designated.

No. 38531, Container Interchange Contracts-Petition for Investigation No. 35835, American Export Lines, Inc., et al., V. The Alabama Great Southern Railroad Company, et al., No. 35843, The Maritime Administration, United States Department of Commerce V. Seaboard Company, et al., now being assigned hearing March 18, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-124211 Sub-121, Hilt Truck Line, Inc., now assigned March 27, 1974, at Omaha, Nebr., is postponed indefinitely.

MC-C-8216, All Points, Inc., Angelo J. Piccolo, and Tempo Drivers, Inc.—Investigation of Operations, now assigned March 19, 1974 will be held in the Albany Bldg., 2nd Floor Conference Room Koger Executive Center, 8400 N.W., 52nd Street, Miami, Fla.

MC-116763 Sub 261, Carl Subler Trucking, Inc., now assigned March 25, 1974, will be held in the Kahler Plaza Inn, 151 E. Washington Street, Orlando, Fla.

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

[FR Doc.74-5341 Filed 3-6-74;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 4, 1974.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before March 22, 1974. FSA No. 42810—*Iron or Steel Articles from or to Pearland, Texas also to or from Points in IFA, Southern, Southwestern and WTL Territories.* Filed by Southwestern Freight Bureau, Agent (No. B-459), for interested rail carriers. Rates on iron or steel articles, in carloads, as described in the application, from or to Pearland, Texas; to or from points in Illinois Freight Association, southern, southwestern, and western trunk-line territories.

Grounds for relief—Rate relationship.

Tariff—Supplement 42 to Southwestern Freight Bureau, Agent, tariff 301-F, I.C.C. No. 5098. Rates are published to become effective on April 9, 1974.

FSA No. 42811—*Iron or Steel Articles to Cheek, Texas.* Filed by Southwestern Freight Bureau, Agent (No. B-463), for interested rail carriers. Rates on iron or steel articles, in carloads, as described in the application, from points in Illinois Freight Association, southern, and Western trunk-line territories, to Cheek, Texas.

Grounds for relief—Rate relationship.

Tariff—Supplement 42 to Southwestern Freight Bureau, Agent, tariff 301-F, I.C.C. No. 5098. Rates are published to become effective on April 9, 1974.

By the Commission.

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

[FR Doc.74-5343 Filed 3-6-74;8:45 am]

[Notice 39]

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 27, 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-74918. By order of March 1, 1974, the Motor Carrier Board approved the transfer to Midwest Feed Transport, Inc., Omaha, Nebr., of the operating rights in Permits No. MC-138358 and MC-133737 (Sub-No. 7) issued November 13, 1973 and March 6, 1973 respectively to Roger Kumpf, doing business as Feed Transport, Omaha, Nebr., and Crawford Trucking Co., Inc., Omaha, Nebr., authorizing the transportation of various commodities from and to specified points in Nebraska, Iowa, Missouri and Kansas. Donald L. Stern, 530 Univac Bldg., 7100 W. Center Rd., Omaha, Nebr. 68106, attorney for applicants.

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

[FR Doc.74-5342 Filed 3-6-74;8:45 am]

[No. AB–75]

RICHMOND TERMINAL RAILWAY CO.

Abandonment of Station [1]

Upon consideration of the record in the above-entitled proceeding and of a staff-prepared 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 Policy Act of 1969, 42 U.S.C. 4321, et seq.; and good cause appearing therefor:

It is ordered, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Richmond, Va., 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 15th day of February, 1974.

By the Commission, Commissioner Tuggle.

[SEAL] ROBERT L. OSWALD,
Secretary.

[No. AB–75]

RICHMOND TERMINAL RAILWAY CO.

ABANDONMENT OF BROAD STREET STATION, RICHMOND, VA.

The Interstate Commerce Commission hereby gives notice that by order dated February 15, 1974, it has determined that the proposed abandonment in the above-entitled proceeding by the Richmond Terminal Railway Company of a line of railroad in the City of Richmond, Va., 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. 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 the proposed abandonment, if approved, would facilitate the conveyance of a portion of 75 acres of property owned by the applicant to the State of Virginia Department of Motor Vehicles for expansion of their facilities. The general area could thus maintain its present character and use consistent with local development plans and zoning classifications. The determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available for public inspection upon request to 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 22, 1974.

[FR Doc.74–5344 Filed 3–6–74;8:45 am]

[1] This order is being reissued because the notice was incorrect.

FEDERAL ENERGY OFFICE

PROPOSED RECONSIDERATION OF PRICE CONTROLS ON PETROLEUM PRODUCTS LEASED OR SOLD BY STATE OR LOCAL GOVERNMENTS

Notice of Public Hearing

Notice is hereby given that the Federal Energy Office will hold a public hearing beginning at 10:00 a.m., on Wednesday, March 13, 1974 at the New Post Office Building, 12th and Pennsylvania Avenue NW., Washington, D.C. in the Administrator's press conference room, third floor, to receive comments from interested persons on whether or not the Federal Energy Office should reconsider the amendment to 10 CFR § 212.52(b) issued on February 21, 1974. The amendment withdrew an exemption from price controls and prices charged for any sale, lease or lease-sale of a covered product by a State or local government which had been carried forward from the Phase IV Cost of Living Council regulations. Withdrawal of the exemption was accomplished pursuant to a notice of proposed rulemaking, proposing the exemption, issued on October 25, 1973, by the Cost of Living Council which then had price stabilization authority over the petroleum industry. The record of this rulemaking is available for public inspection between the hours of 8:30 a.m. and 5:30 p.m. in Room 3130 at the New Post Office Building during regular business hours.

This public hearing will be conducted under the authority of § 5 of the Emergency Petroleum Allocation Act and § 207(c) of the Economic Stabilization Act of 1970, as amended.

The Federal Energy Office is inviting public participation in the form of written submissions as well as oral presentations. Such written submissions must be received by the Federal Energy Office not later than 5:00 p.m., e.d.s.t., March 15, 1974.

All written submissions should be sent to State Royalty Crude Hearings, Box AB, Executive Secretariat, Federal Energy Office, Washington, D.C. 20461. All written submissions received before 5:00 p.m., e.d.s.t., March 15, 1974, will be made part of the official record of the hearing.

Any information or data considered by the person furnishing it to be confidential must be so indicated and submitted in writing, one copy only, before the person's scheduled appearance, or by March 15, 1974, as applicable. The Federal Energy Office reserves the right to determine the confidential status of the information or data and to treat it accordingly.

Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may request the opportunity to make an oral presentation by telephoning the Executive Secretariat of Federal Energy Office at (202) 961–6061 before noon, e.d.s.t., Monday, March 11, 1974. The person making the request should be prepared to describe the interest concerned; if appropriate to state why he is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he may be contacted through March 12, 1974. Oral presentations may be supplemented by written submissions filed with the Federal Energy Office not later than March 15, 1974.

The Federal Energy Office reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation may be limited, based on the number of persons requesting to be heard.

Each person selected to be heard will be so notified by the Federal Energy Office before 5:00 p.m., e.d.s.t., March 11, 1974, and must send 100 copies of his statement to the Executive Secretariat, Room 3315, New Post Office Building, Washington, D.C. 20461, before 5:00 p.m., e.d.s.t., March 12, 1974.

A Federal Energy Office official will be designated to preside at the hearing. It will not be a judicial- or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by the Federal Energy Office with respect to the subject matter of the hearing will be based on all information available to the Federal Energy Office, from whatever source received. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity if he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and may not exceed 10 minutes each.

Any interested person may submit questions, to be asked of any person making a statement at the hearing to the Executive Secretariat before 5:00 p.m., e.d.s.t., March 12, 1974. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The Federal Energy Office, or the presiding officer if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed

for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the Federal Energy Office and made available for inspection at the Public Reference Facility of the Federal Energy Office, Room 3130, New Post Office Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8:30 a.m. and 5:30 p.m. Monday through Friday. Anyone may buy a copy of the transcript from the reporter.

Issued at Washington, D.C. on March 5, 1974.

WILLIAM N. WALKER,
General Counsel.

[FR Doc.74-5508 Filed 3-6-74;12:18 pm]

CUMULATIVE LIST OF PARTS AFFECTED—MARCH

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during March.

3 CFR Page

PROCLAMATIONS:
4273 7921
4274 8315

EXECUTIVE ORDERS:
July 2, 1910 (revoked by PLO 5416) 8326

4 CFR

PROPOSED RULES:
408 8171

5 CFR

213 8607, 8903

6 CFR

150 8162, 8163, 8328, 8608, 8884, 8921, 8922
152 8328, 8329, 8331, 8921, 8922
Rulings 7940

7 CFR

52 8903
250 8608
354 7923
907 7924
910 8153
929 8317
980 8911
1013 8609

PROPOSED RULES:
728 8334
729 8165
795 7943
966 8937
1007 8451, 8938
1030 8202, 8938
1032 8202, 8938
1046 8202
1049 8202
1050 8202, 8938
1060 8938, 9012
1061 8938, 9012
1062 8202
1063 8938, 9012
1064 8938, 9012
1065 8938, 9012
1068 8938, 9012
1069 9012
1070 9012
1071 8451
1073 8451
1076 8938, 9012
1078 8938, 9012
1079 8165, 8938, 9012
1090 8451, 8938
1094 8451
1096 8451
1097 8451, 8938
1098 8451, 8938
1099 8202
1102 8451
1104 8712, 8938
1106 8712, 8938
1108 8451, 8938
1120 8712
1126 8712
1127 8712
1128 8712
1129 8712
1130 8712

7 CFR—Continued Page

PROPOSED RULES—Continued
1131 8712
1132 8712
1138 8712
1475 8334

8 CFR

PROPOSED RULES:
235 8924
299 8924

9 CFR

78 8153
82 8154
94 8617
201 8913
381 8154

PROPOSED RULES:
94 8619
160 8938
161 8938

10 CFR

9 8162
211 7925

PROPOSED RULES:
210 8354
211 8354, 8633
212 8354

12 CFR

225 8318
308 8913
309 8913
546 9142
563 9142
563b 9142
563c 9142

13 CFR

309 7926

14 CFR

39 7926, 7927
71 7927, 7928, 8318
73 8609
97 8609
221 8319

PROPOSED RULES:
71 8176, 8350, 8630–8632
73 7949, 8176, 8631
105 8632
250 8171

15 CFR

PROPOSED RULES:
921 8924

16 CFR

13 7928

17 CFR

230 8914
270 8320, 8915
271 8916

PROPOSED RULES:
231 8353
241 8353
270 8935, 8936

18 CFR Page

2 7928, 8332
101 8332
104 8332
141 8332, 8916
154 7928
157 8332
201 7928, 8332, 8917
204 8332
260 8332, 8917

20 CFR

416 8155

PROPOSED RULES:
405 8166

21 CFR

1 8610
26 8157
27 8322
167 8610

PROPOSED RULES:
1 8620, 8621

22 CFR

PROPOSED RULES:
51 8165

23 CFR

72 8611
713 8611
720 8611

24 CFR

1914 7932
1915 7933

PROPOSED RULES:
390 8629

26 CFR

601 8917

29 CFR

1952 8611, 8613

PROPOSED RULES:
601 7946
613 7946
657 7946
673 7946
675 7946
678 7946
690 7946
699 7946
720 7946
727 7946
728 7946
729 7946
1928 8633

30 CFR

PROPOSED RULES:
75 8618
77 8618

31 CFR

51 8323

33 CFR

3 8613
40 8614

33 CFR—Continued Page

PROPOSED RULES:

117 7948
159 8038
160 7948
209 7942

34 CFR

281 8615

36 CFR

PROPOSED RULES:

7 7942

38 CFR Page

1 7929

39 CFR

132 8616

40 CFR

52 8617
104 8325
180 7929
203 7930

PROPOSED RULES:

52 8175, 8351
79 8929
120 8353
408 7968
423 8294
431 7968

41 CFR Page

1–9 7925
5A–76 8918
6–1 8158
6–60 8158
7–1 8160
7–4 8160

43 CFR

4 7931

PUBLIC LAND ORDERS:

5416 8326

45 CFR

201 8326
234 8918
249 8918
250 7930, 8918
401 7931
1062 8856

PROPOSED RULES:

132 8334
133 8927
149 7946
158 8341
176 8624

46 CFR Page

26 8918

47 CFR

1 8617
2 8617

PROPOSED RULES:

2 8932
21 8932
73 8935
81 8932

49 CFR

254 8919
1000 8326
1033 8161, 8327, 8920
1341 7925
1060 8327
1085 8921

PROPOSED RULES:

172 7950
173 7950
177 7950
178 7950
179 7950
215 8176
571 7959–7966, 8176, 8928

50 CFR

33 8327

LIST OF FEDERAL REGISTER PAGES AND DATES—MARCH:

Pages	*Date*
7915–8146	Mar. 1
8147–8307	4
8309–8598	5
8599–8896	6
8897–9166	7

federal register

THURSDAY, MARCH 7, 1974
WASHINGTON, D.C.

Volume 39 ■ Number 46

PART II



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN THE MINNESOTA-NORTH DAKOTA AND CERTAIN OTHER MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and Orders

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1060, 1061, 1063, 1064, 1065, 1068, 1069, 1070, 1076, 1078, 1079]

MILK IN THE MINNESOTA-NORTH DAKOTA AND CERTAIN OTHER MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and Orders

GROUP III

7 CFR part	Marketing area	Docket No.
1060	Minnesota-North Dakota	AO-360-A6.
1061	Southeastern Minnesota-Northern Iowa.	AO-367-A5.
1063	Quad Cities-Dubuque	AO-105-A35.
1064	Greater Kansas City	AO-23-A42.
1065	Nebraska-Western Iowa	AO-86-A25.
1068	Minneapolis-St. Paul, Minn.	AO-178-A28.
1069	Duluth-Superior	AO-153-A19.
1070	Cedar Rapids-Iowa City	AO-229-A26.
1076	Eastern South Dakota	AO-260-A17.
1078	North Central Iowa	AO-272-A20.
1079	Des Moines, Iowa	AO-295-A24.

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in 33 marketing areas. In addition to those listed above, such marketing areas include the following:

GROUP I

Georgia	North Louisiana
Neosho Valley	Memphis, Tenn.
Wichita, Kans.	Nashville, Tenn.
Chattanooga, Tenn.	Fort Smith, Ark.
New Orleans, La.	Central Arkansas

GROUP II

Red River Valley	Central West Texas
Oklahoma Metropolitan	Austin-Waco, Texas
	Corpus Christi, Texas
Lubbock-Plainview, North Texas	Central Arizona
	Texas Panhandle
San Antonio, Texas	Rio Grande Valley

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 order—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 plans.*", a new paragraph is added after paragraph 8.

7. Under the subheading "4(e) *Classification of shrinkage milk dumped and milk disposed of for animal feed.*", paragraph 5 is deleted and two new paragraphs are substituted therefor, and paragraph 9 is changed.

8. Under the subheading "4.(f) *Allocation of receipts to utilization.*", a new paragraph is added at the end thereof.

9. Under the heading "5. *Changing the butterfat differentials.*", paragraph 6 is changed and paragraphs 16–18 are deleted and five new paragraphs are substituted therefor.

10. Under the heading "6. *Advance announcement of prices for surplus milk.*", paragraphs 3 and 4 are changed and a new paragraph is added after paragraph 3.

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

1. Application of a uniform milk classification plan in the 32 markets;

2. Revision of the present Class I classification;

3. Classification and pricing of milk not needed for Class I use;

4. Miscellaneous classification and accounting changes:

(a) Other source milk definition;

(b) Accounting for nonfat milk solids added to milk and milk products;

(c) Classification of milk transferred or diverted to other plants;

(d) Classification of end-of-month inventory;

(e) Classification of shrinkage, milk dumped and milk disposed of for animal feed;

(f) Allocation of receipts to utilization;

(g) Obligations relative to other source milk; and

(h) Reports;

5. Changing the butterfat differentials;

6. Advance announcement of prices for surplus milk;

7. Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders; and

8. A uniform "equivalent price" provision.

General setting of the hearing. This hearing is the second of two regional hearings on the proposed use of a uniform plan for classifying milk for pricing purposes under Federal milk orders. The first hearing, which was held at Clayton, Mo., on July 14–22, 1970, was for seven Midwestern markets. A recommended decision based on the seven-market hearing was issued on June 4, 1971, and a revised recommended decision for the seven markets was issued on August 27, 1973. A final decision for the seven markets is being issued concurrently with this decision.

Prior to the first hearing, the National Milk Producers Federation, an organization of cooperative associations of dairy farmers and federations of such cooperative associations, undertook the development of a uniform milk classification plan for use under milk orders. Guide-

lines were formulated for use by member organizations in the drafting of specific classification proposals for consideration at public hearings.

Using these guidelines as a basis for their proposals, several cooperative associations petitioned the Department for a hearing on proposals relating to the classification and pricing of milk in seven Midwestern markets. After the hearing and issuance of a recommended decision, these cooperatives, along with other producer groups, requested a similar hearing for an additional 33 markets. The order for one of these markets (Mississippi) has since been terminated, and further reference to this group of markets will be in terms of the remaining 32 markets. The two hearings together involve a group of 39 markets located throughout the central part of the United States.

As in the case of the seven markets, the main thrust of the cooperatives' proposals for the 32 markets was the proposed use of an identical classification plan under each of the orders. As proposed, the new plan would have three classes of utilization rather than the two classes now provided in most of these orders. The present Class II classification would be redesignated as Class III and a new Class II classification, which would include various milk products now in Class I and Class II, would be established.

Corollary pricing proposals by the cooperatives would provide that the new Class II price under all but the Central Arizona order be the Minnesota-Wisconsin price plus an amount ranging from 10 to 20 cents, depending on the order involved. Prices would increase generally from north to south. For the Central Arizona order, which now has three classes, local producers proposed retention of the Class II price now in effect (a butter-nonfat dry milk formula price plus 25 cents).

Producers took diverse positions concerning the appropriate Class III price for the 32 markets. A number of cooperatives operating largely in the Upper Midwest proposed that the Class III price for markets in that area be based on a formula reflecting market prices for butter, nonfat dry milk and cheddar cheese. A regional cooperative operating in the Southeastern United States proposed that the Class III price in four of its local markets be based on the Minnesota-Wisconsin price, with reductions of 5 to 15 cents to be applicable in three of the markets. Another regional cooperative proposed for 15 southwestern markets that the Class III price under each order for the principal surplus products be the lower of the present surplus price now in effect or the Minnesota-Wisconsin price. In the case of still three other markets, local producer groups asked that their present surplus prices (all based solely or in part on butter-nonfat dry milk formulas) be retained.

Cooperatives also proposed that a single butterfat differential apply to all prices under each order. This differential, which would be identical among the 32 orders, would be based on the Chicago butter price times a factor of 0.115.

A uniform classification plan for the 32 orders was advocated also by the Milk Industry Foundation and the International Association of Ice Cream Manufacturers, national trade associations of fluid milk and ice cream processors whose members operate in each of the 32 subject markets. Without taking a position on whether there should be two or three use classes, these groups offered alternative proposals on the classification of various milk products under either type of classification plan. Individual handlers also made proposals concerning specific aspects of the classification and pricing scheme.

A more detailed description of the proposals by producers and handlers is set forth in the discussion of the material issues.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Application of a uniform milk classification plan in the 32 markets.* Each of the 32 orders under consideration should provide for the same basic classification plan. As adopted herein, each order would provide for three classes of utilization, with the milk uses included in each class being the same for each order. Likewise, the same basic procedure would be used under each order for classifying milk transferred or diverted from pool plants to other plants, and for allocating a handler's receipts to his utilization to determine the classification of his producer milk. Each order would use the same Class II and Class III price formulas. Also, a single butterfat differential would be used under all orders.

The statutory authority for Federal milk orders specifies that an order shall classify milk purchased by handlers from producers or associations of producers in accordance with the form in which or the purpose for which the milk is used. When each of the 32 subject orders was promulgated, the classification plan adopted reflected the marketing conditions and practices prevailing at the time in the local area concerned. Because local conditions and practices were seldom alike from market to market, the classification plans often varied from one order to another. As long as the markets remained relatively isolated from each other, marketing problems resulting from the differences in the various classification plans were minimal.

In recent years the "local" character of these markets has been disappearing. Intermarket movements of milk have become commonplace as handlers and producers alike seek to find additional outlets for milk. Such milk movements have been encouraged or facilitated by such developments as inspection reciprocity between health jurisdictions, improved highway networks and transportation equipment, conversion from can handling to farm bulk tanks, emergence of regional cooperatives, new processing and packaging techniques, and concentration of processing and packaging operations in large, specialized facilities.

Numerous cases were cited by handlers of products being distributed throughout multi-State regions from centralized processing facilities. Products frequently mentioned include frozen desserts, yogurt, various cream products and cottage cheese. Widespread distribution patterns prevail particularly for the processors of specialty products such as yogurt and sterilized cream items. Although the volume of these specialty products is relatively limited, it is probably the distribution of these products more than any others that has precipitated such general interest within the industry for uniform classification provisions among Federal orders.

Although the 32 orders have been revised from time to time to reflect the closer intermarket relationships, the classification plans of these orders continue to differ. The differences relate not only to the products included in each respective class, but also to the attendant class prices and butterfat differentials, the rules for classifying milk moved from one plant to another, the procedure for allocating a handler's receipts to his utilization, the method of classifying end-of-month inventories, and the manner of classifying shrinkage.

Such differences in the classification and pricing of milk are often disruptive to the competitive relationships of handlers and to the marketing of producer milk. Many of these differences, though, have little, if any, foundation under today's marketing conditions. It is thus concluded that a generally uniform classification and pricing plan should be incorporated in each of the 32 orders under consideration.

In conjunction with the development of uniform provisions pertaining to the classification and pricing of milk, it is desirable to also develop a single format of order provisions for use in each of these orders. All orders contain essentially the same categories of provisions, such as those relating to the definition of a pool plant or other source milk, those setting forth the class price formulas, or those describing how the uniform price shall be computed. At present, however, many of the orders are structured in such a way that provisions serving essentially the same purpose under all orders do not appear in each order in the same place or under the same section title.

Coordination of the orders in this respect will be helpful to those in the industry who must work with several orders, a situation that is becoming increasingly common as individual cooperatives and handlers continue to expand their marketing activities into more and more regulated markets. Moreover, the opportunity to effect changes in a relatively large number of orders at the same time makes the adoption of a uniform order format a particularly desirable step at this juncture of the order program.

Each of the orders included in this document is set forth in its entirety at the end of the document. Each order reflects the revised order format as well as the classification and pricing amendments adopted herein. In adapting each

order to the new format, no substantitive changes have been made in those provisions not under consideration at the hearing. Since the classification and pricing amendments may be less discernable to the reader with the reprinting of the complete order, the sections in each order that encompass the basic changes in classification and pricing are listed below:

Sections 12–16, 30, 40–44, 50, 52–54, 60, 62, 74–76, and 85.

Some of the amendments adopted herein would change certain procedures under the orders that are carried out after the end of the month to which they apply. These include the submission of reports, the classification of milk, and the computation and announcement of certain class prices, butterfat differentials, and producer prices. It is intended, however, that the amendments apply only to that milk handled after the effective date of the changes. Such amendments are not intended to affect the completion of previously existing procedures with respect to milk handled prior to the effectuation of the amendments.

2. *Revision of the present Class I classification.* With certain exceptions noted below, Class I milk under each of the 32 subject orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and 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 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

[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.

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 form 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 I price in 31 markets would be the Minnesota-Wisconsin price plus 10 to 20 cents (increasing generally from north to south). Eleven markets in the States of Minnesota, Iowa, North Dakota, South Dakota, and Tennessee would have a price differential of plus 10 cents. The remainder of the 31 markets would have plus 15 cents, except for a plus 20 cents in the Corpus Christi and Rio Grande Valley markets. A cooperative in the Central Arizona market proposed that the present Class II price, which is 25 cents over the Class III price, be retained in that market.

The Class III uses proposed by the cooperatives would include dried products, cheese (except cottage cheese), butter, condensed whey and buttermilk for animal feed, dumpage, ending inventory, shrinkage, and the non-Class I portion of modified fluid milk products.

The cooperatives' Class III pricing proposals varied by regions. A number of cooperatives operating primarily in the Upper Midwest proposed the adoption of a weighted butter-nonfat dry milk (55 percent) and cheese (45 percent) formula using "the product yield factors and make allowances used by the Department

[2] Official notice is taken of the Assistant Secretary's decision issued on Oct. 13, 1969 (34 F.R. 16881), with respect to the Memphis, Tenn., and certain other marketing areas.

in its CCC Price Support Program." While suggesting that such a pricing formula would be appropriate for all 32 markets, they particularly urged its adoption for 11 upper midwestern markets. For four southern markets, the principal cooperative in such markets proposed the use of the Minnesota-Wisconsin price, but with minus adjustments of 5 cents for Chattanooga, 10 cents for New Orleans, and 15 cents for Georgia. For 15 markets in the Southwest, the principal cooperative there proposed that the Class III price be the higher of the Minnesota-Wisconsin price or the current price for the lowest utilization in the respective order. Under its proposal, milk used in butter, nonfat dry milk, and cheddar cheese would be priced, however, at the lower of the Minnesota-Wisconsin price or the current price for the lowest utilization in the respective order. The principal cooperative in the Central Arizona market proposed retention of the Class III price now applicable in that market which is based on a butter-nonfat dry milk formula.

In support of their proposed Class II and Class III use categories, the several cooperatives contended that there are significant differences in the competitive position of, and demand for, milk so used. They stated that handlers demand quality milk on a regular basis for the proposed Class II products, and that in the various markets alternative supplies of milk for such uses generally cannot be obtained for less than the Class II prices they propose for producer milk. Moreover, they claimed that products in such Class II uses should bear, along with fluid milk products, part of the cost necessary to attract an adequate market supply. With respect to the Class III classification, proponents stated that their proposed Class III products are the residual uses of milk associated with fluid markets. Consequently, the local production of such products is related to the amount of reserve or excess milk in the market. Such products, they claimed, can be stored for long periods and do not need to be made on a regular basis.

Proponent cooperatives pointed out that the present Class I classification of cream and cream mixtures has placed these products in a poor competitive position in the marketplace relative to nondairy substitutes. By shifting these products to a lower-priced class, proponents hope the industry will be better able to maintain its present small share of the cream and dessert topping market and perhaps recapture some of the market that it has lost.

In support of their various Class III pricing proposals, the cooperatives urged basically that such prices reflect the net value that can be obtained by cooperatives handling reserve supplies. They claimed that such value should take into consideration (1) product values of butter, nonfat dry milk, and cheese; (2) the cost of moving milk to available outlets; and (3) the burden of "balancing" the fluid milk supply in each market.

With respect to certain southern markets, it was contended that the net value that can be obtained for reserve milk supplies tends to differ from market to market depending upon surplus disposal conditions that prevail in each market. The principal variable factor mentioned was the cost incurred in transporting reserve supplies to available processing plants. For example, there are no plants processing hard cheese, butter, or nonfat dry milk, in Georgia. Consequently, the principal cooperative in the area transports much of the reserve milk supply associated with the Georgia market to manufacturing plants located in Tennessee. The amounts so transported have ranged from 1 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 five 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 dif-

ference 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 II 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 43 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 II 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 plant 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 within a highly coordinated marketing system that is national in scope.

Class II. Certain uses of producer milk not needed for Class I purposes should be priced at a somewhat higher level than that applicable to milk in the adopted Class III uses. These higher-valued uses, to be included in the Class II classification, were set forth at the beginning of this discussion on pricing surplus milk. The Class II price, which should be the same under each order, should be the Minnesota-Wisconsin price plus 10 cents.

Of the products adopted herein for inclusion in Class II, one of principal importance is cottage cheese. In 1970 about 840 million pounds of the skim milk and butterfat utilized by pool handlers under the 32 orders was used to produce cottage cheese. For this discussion the term "cottage cheese" encompasses cottage cheese (i.e., creamed cottage cheese), lowfat cottage cheese, and dry curd cottage cheese.

Five of the 32 orders under consideration now provide a higher price for milk used in cottage cheese than the price provided for milk used in butter, nonfat dry milk or cheddar cheese. There are several distinguishing characteristics of cottage cheese production that support a higher price for milk in this use than for milk channeled into the residual surplus uses. There is little, if any, relationship between the quantity of cottage cheese made and the amount of reserve milk in a market, as is the case with respect to butter and nonfat dry milk, for instance. Unlike such other manufactured products, cottage cheese has a more limited storage life and must be processed on a regular basis. Thus, as in the case of fluid milk products, handlers normally want adequate supplies of fresh, high-quality producer milk to be made available at their plants at all times for cottage cheese use.

Although some cottage cheese is made in specialized country plants, as the economics of location would suggest, cottage cheese production is commonly an integral part of the processing operations of fluid milk distributing plants. Such plants are usually located in or near the populated centers of the market. This entails a greater hauling expense for producers than when the reserve milk is processed in the production area, as is generally the case with respect to butter, nonfat dry milk and hard cheese manufacture.

The adopted Class II price (the Minnesota-Wisconsin price plus 10 cents) is a reflection of some of the additional value which producer milk used in cottage cheese has to regulated handlers. Although local producers represent the regular source of milk for cottage cheese production, a handler may choose to use milk from some other source for this purpose. Such milk could not be obtained on a regular basis, however, at less than the cost of producer milk under the adopted pricing scheme.

Rather than produce his own cottage cheese, a handler might choose to purchase the finished product from some other Federal order market where a lower price applies to milk for cottage cheese. There is no indication, however, that under the adopted pricing such a handler could materially enhance his competitive position relative to handlers using producer milk. The cost of transporting cottage cheese, a somewhat bulky and perishable item, from distant areas to outlets in the 32 markets would generally negate any seeming price advantage attributable to differences in applicable order prices.

In the New Orleans market, certain handlers process a type of cheese described locally as "Creole cheese". This product, which apparently is limited to this market, was described at the hearing as being similar to cottage cheese. Accordingly, Creole cheese should be included in the same class as cottage cheese under the New Orleans order.

Milk used in yogurt should be priced at the Class II price level. Yogurt is a soft, nonfluid, "spoonable" product. It is not a beverage as are other products defined herein as fluid milk products.

Yogurt has some of the marketing characteristics of cottage cheese, although, unlike cottage cheese, very limited quantities of yogurt are made from milk priced under the 32 orders. In 1970, about 13 million pounds of skim milk and butterfat were utilized in yogurt production in the 32 markets. To the extent of this limited production, however, processors generally use regular supplies of inspected milk. Although yogurt can be made from cream and nonfat dry milk, processors prefer milk. Since yogurt has a relatively limited shelf life, it is made on a continuing basis, thus requiring a regular supply of milk at all times. As in the case of cottage cheese, these conditions warrant that producer milk in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk.

Class II also should include frozen desserts (including commercial milkshake and ice milk mixes), custards, puddings, pancake mixes, dietary and infant formulas, and sales of bulk milk and cream to commercial food processors for use in food products. In the initial recommended decision, such uses of skim milk and butterfat were proposed to be included in Class III. Upon consideration of exceptions filed to that decision by cooperatives, it was concluded in a revised recommended decision, and it is so concluded in this decision, that market conditions support a higher price for producer milk in such uses than was initially recommended.

As producers pointed out in their exceptions, the rationale set forth in the initial recommended decision for including cottage cheese in an intermediate class is in several respects applicable to these other products just listed. The demand for producer milk used in these products is related closely to the current consumer demand for such products. Thus, handlers normally want adequate supplies of producer milk made available at their plants in the quantities and at the times needed for these uses. This is in contrast to the more storable residual "hard" products. Also, the processing of such products often takes place at the market center, which entails a greater hauling expense for producers than when reserve milk is processed in the production area. Moreover, it is doubtful that handlers in general would be able to obtain alternative supplies of milk or product ingredients at less than the cost of producer milk under the adopted pricing provisions.

Cooperatives proposed that the Class II price in most of these markets range from 10 to 20 cents over the Minnesota-Wisconsin price. The lower 10-cent differential (to apply to both cottage cheese and frozen desserts) was proposed for those markets where local ungraded milk supplies represent a significant competitive factor for regulated processors of ice cream and other frozen desserts. The national associations of fluid milk and ice cream processors contended that any price differential over the Class III price for milk in an intermediate class should not be more than 10 cents per hundred-

weight. 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 similiar 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 the "intermediate" condensed product was in a Class III product the lowest classification should apply to the producer milk used in the condensed product.

A Class II classification should not apply to evaporated or condensed milk or skim milk in consumer-type containers as the cooperatives proposed. Such storable products should remain in the lowest price class. A Class III classification for producer milk in these products will permit such uses to remain as a competitive outlet for milk surplus to the needs of the Class I market. Such products made from milk regulated under these orders must compete over wide areas with the same products processed from ungraded milk or other graded milk that is often priced at no more than the Minnesota-Wisconsin price. Comparable pricing should prevail under these 32 orders.

Although cooperatives proposed Class II price differentials of 10, 15, 20, and 25 cents, the Class II differential for each market should be the same. The distribution of the adopted Class II products from a single plant often extends over a broad region encompassing several Federal order marketing areas. Numerous examples were cited on the record concerning the widespread sales of yogurt, cream items, frozen desserts and cottage cheese in particular. Because of this intermarket competition, a uniform Class II price differential should be provided in these orders to complement the uniform classification provisions. A price differential of 10 cents reasonably reflects the added value which handlers are able to pay for producer milk in such uses as compared to procuring milk supplies or finished products from other sources.

In proposing a generally uniform classification plan for the 32 markets, cooperatives emphasized that any new plan adopted should not result in lower total returns to producers. Handlers, on the other hand, stressed that their total cost of milk should not be increased.

Providing for classification and pricing provisions that are generally uniform among the various markets cannot necessarily encompass at the same time the maintenance of precisely the same value of producer milk in each market. With the many classification and pricing differences that now exist among the 32 orders, resolution of these differences through a uniform classification and pricing plan would be expected to have some effect on the value of producer milk in individual markets. While the provisions adopted in this decision are not designed to change the value of producer milk in the aggregate, their effect on producer returns or handlers' costs in an individual market cannot be controlling in deciding on the matter of classification and pricing here under consideration.

4. *Miscellaneous classification and accounting changes.* The following findings and conclusions relate to certain miscellaneous classification proposals by handlers and producers and to some of the order changes that are necessary to implement the revised classification plan adopted herein for each of the 32 subject orders.

(a) *Other source milk definition.* A common other source milk definition should be adopted for each order.

Because of the revised classification plan, certain changes in the present other source milk definition of each order are necessary. This definition would continue to serve, however, the present function of implementing the identification of various categories of receipts at a regulated plant.

At present, fluid milk products from any source other than producers, cooperatives acting as a handler for farm bulk tank milk, pool plants, and plant inventory at the beginning of the month are considered as other source milk.[3] Under the revised classification plan, however, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of each order, it is desirable, nevertheless, that fluid cream products, when in bulk form, continue to be treated in the same manner as fluid milk products for purposes of applying the other source milk definition.

Other source milk should include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the revised classification plan.

Producers and handlers proposed that Class II products received at a pool plant in packaged form and then disposed of from the plant without further processing be treated as "pass-through" products. Under this treatment such "pass-through" products would not be considered as other source milk and would not be subject to the allocation and pricing provisions of the order.

Although no handler obligation would apply under the provisions adopted herein to these receipts of packaged Class II products, it is desirable for accounting purposes that such receipts be defined as other source milk. This accounting procedure will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest utilization as is provided in some cases for other types of other source milk.

The orders now provide that manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant shall be considered as other source milk. For accounting purposes under the order, such manufactured products should include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or 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 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

[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.

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 alocation 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 an unwarranted pyramiding of allowable Class III shrinkage on any transfers between pool plants in the form of skim milk. The orders now provide that in the case of such transfers the 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 considered on the basis of a thorough exploration of the issue at another hearing.

A handler proposal for a single "loss" classification including shrinkage, animal feed, and dumped products is not adopted. The proposal was not explored by interested parties on the record as to how it would affect handler and producer equities. These 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 refused to supply him with milk when, in fact, this was not the case.

Such administrative difficulties could be overcome, of course, through the adoption of provisions that do not down-allocate receipts of outside milk from selected sources, or from any source, for Class I use. This would be a major departure, however, from the allocation procedure now used under the present orders. This procedure, which was based on comprehensive hearings for all Federal order markets, resulted from the "compensatory payment" decisions concerning the integration of other source milk into the regulatory plan of an order.[4] Such a change would be much broader in scope than was contemplated under the handler's proposal described above and should not be adopted.

In keeping with the goal of classifying milk uniformly under the 32 orders, certain changes should be made in the orders to effect a uniform application of the allocation provisions to multiple-plant handlers. Presently, the 32 orders

[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.

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 a Federal order marketing area, recognition should be given to any receipt of milk at such plant from another unregulated plant if an equivalent amount of milk received at the latter plant already has been priced as Class I milk under an order.

Each order now imposes a handler assessment for administering the order on all other source Class I milk except that received in fluid form from an other order plant. This may include milk that already has been priced as Class I milk under some Federal order as described above. With the removal of a "double"

Class I charge on such milk, each order should be changed to likewise remove any assessment on such milk for administrative expenses. It is presumed that such milk was subject to a similar charge under the order that initially priced the milk.

The marketwide pool orders should be changed also with respect to the application of location adjustments to other source Class I milk. As just described, each of the orders provides that a pool plant operator's obligation to the producer-settlement fund shall include a payment for fluid milk products received from an unregulated supply plant if they are allocated to Class I. The handler's payment is determined by charging him at the Class I price for the Class I other source milk and giving him a credit on the milk at the weighted average price (or uniform price in the case of those orders that do not provide for any type of seasonal production incentive plan). Both the Class I and weighted average prices are adjusted for the location of the unregulated supply plant. The adjustment of the weighted average price, though, is so limited as to be not less than the lowest class price. No such limitation is applied currently under most of the 32 orders to the Class I price adjustment.

Providing that any adjusted Class I price applicable to other source milk be not less than the Class III price is appropriate under each order. Otherwise, under certain conditions a handler could receive payment from the producer-settlement fund on Class I milk obtained from an unregulated supply plant. Such payment could result when the location differential for the distant plant is greater than the difference between the Class I and Class III prices. In this circumstance, producers under the order, in effect, would be providing the handler with a credit that reduces his cost for the distant milk below its value for manufacturing use at the point of purchase. From the standpoint of marketing efficiency, the handler should not be provided an incentive, which would be at the expense of local producers, to import such distant milk into the local market.

A similar situation now exists with respect to the obligation of the operator of a partially regulated distributing plant or an other order plant. In certain cases, the handler's obligation includes a payment to the producer-settlement fund at the difference between the Class I price applicable at his plant and either the weighted average price or the Class III price. For the same reasons, each order should provide, in computing the obligation of such a handler also, that the Class I price, as adjusted for location, shall not be less than the Class III price.

(h) *Reports.* The proposed changes in the classification of milk are not expected to require any major change in the amount of information to be submitted by handlers in their monthly reports of receipts and utilization. The reporting provisions of each order must be changed, however, to reflect the new categories of information that each market administrator will need in administering an order. These changes stem largely from the proposed reclassification of cream and the revised accounting methods necessary for implementing a three-class classification scheme.

In revising the reporting provisions of each order, such provisions should be made uniform to the extent possible. Essentially the same information is now required to be reported under each order, basically for the purposes of determining the classification of the milk and its classified value. There is considerable variation among these orders, however, in the manner in which the provisions on reports are expressed.

As proposed herein, the reporting provisions would be stated in some orders in slightly less detail than is now the case. The market administrator would have, nevertheless, no less authority than at present to obtain through handler reports, in the detail and on forms prescribed by the market administrator, any information the latter believes is necessary for administration of the order.

5. *Changing the butterfat differentials.* A single butterfat differential should apply under each order for adjusting prices to the actual butterfat content of the milk being priced. This differential should be the Chicago butter price multiplied by 0.115, rounded to the nearest one-tenth cent.

All 32 orders provide butterfat differentials for adjusting class prices and uniform prices for butterfat content. With two exceptions, each order bases the class butterfat differentials on the Chicago butter price, which would be continued under the revised orders. The Chicago butter price is the simple average of the wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk butter at Chicago as reported for the month by the U.S. Department of Agriculture. Under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, the Class II butterfat differential is based on the price of Grade AA (93-score) butter at New York City.

The handler butterfat differentials for each class are now computed by multiplying the butter price by a specified factor. In the case of the Class I butterfat differential, the factor is 0.120 under 19 orders and 0.125 under 11 orders. One order uses a factor of 0.130 and another a factor of 0.135.

The factor most commonly used in computing the butterfat differentials applicable to the surplus prices is 0.115, as prescribed by 18 orders. Eight orders use 0.110, while the factors 0.120 and 0.108 are used under two other orders. Four orders use a factor of 0.110 during the heavy production months and 0.115 during the remainder of the year.

The butterfat differential used in adjusting the uniform price to producers under 22 of the orders is the average of the butterfat differentials for each class, weighted by the proportion of producer milk in each class. Under six other orders, the butterfat differential to producers is determined by multiplying the Chicago butter price by 0.120. Two other orders use a factor of 0.110 under a similar computation, while another provides that this differential be computed by adding 4 cents to the Chicago butter price and multiplying the sum by 0.1. Under the Memphis order, the producer butterfat differential is determined from a fixed schedule of rates in the order which are related to the Chicago butter price, i.e., for each 5-cent change in the butter price, the butterfat differential changes one-half cent per point of butterfat.

Cooperative associations proposed that all class prices and uniform prices be subject to adjustment by a butterfat differential based on the Chicago butter price times a factor of 0.115. One handler proposed that the Class II and Class III butterfat differentials be based on the Chicago butter price times 0.110. Handlers in general opposed any change in the present factor used in computing Class I butterfat differentials.

Lowering the Class I butterfat differential factor to 0.115 will accommodate producers' request for a readjustment of the values of skim milk and butterfat in Class I milk at a time of declining use of butterfat in fluid milk products. In 1960, the average butterfat test of fluid milk products (including cream items) in 63 Federal order markets was 3.76 percent. In 1970, the average butterfat test for such products in 58 markets was 3.26 percent.

Comparable data for the 32 subject markets as they are presently constituted are not available. On the basis of information available for much of the area now regulated by these orders, however, there is every indication that the use of butterfat in Class I in these markets is following the national trend.[5]

The impact of this change on a handler's average cost of producer butterfat for Class I use is dependent, of course, upon the average butterfat test of his Class I products and the butterfat differential now applicable to him. Thus, handlers in the 32 markets will be affected differently from lowering the Class I butterfat differential. An analysis of 1970 data for 30 of the 32 markets will serve to illustrate the general change in handlers' costs under the revised classification plan. Data for the Fort Smith and Austin-Waco markets are not available.

It is estimated that in 18 of the 19 markets now using a Class I butterfat differential factor of 0.120 the average butterfat test of Class I products distributed by handlers (excluding cream and lowfat items) would have ranged in 1970 from 3.55 percent to 2.53 percent. Using the average test for these markets of 2.98 percent, the Class I price at test would have been increased 1.8 cents per hundredweight. For 10 of the 11 markets now using a Class I butterfat differential factor of 0.125, the average test of Class I milk would have ranged from 3.25 percent to 2.81 percent. Based on an average

[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.

test of 3.01 percent, using a factor of 0.115 in these markets would have increased the Class I price at test by 3.4 cents. The price increases would have been slightly greater in the Duluth-Superior and central Arizona markets, where factors of 0.130 and 0.135, respectively, are used. Based on estimated Class I butterfat tests of 2.73 percent and 3.10 percent, the Class I price at test would have been increased 8.0 cents per hundredweight in the Duluth-Superior market and 5.6 cents in the central Arizona market.

Handlers opposed any change in the Class I butterfat differentials on the basis that the relationship of skim milk and butterfat values had already been altered by a change on April 1, 1971, in the purchase prices for dairy products under the Department's price support program. They pointed out that this change, as reflected in order prices, increased handlers' cost of skim milk about 10 cents per hundredweight. Handlers argued that in view of this any further increase in the value of skim milk should be delayed until there has been an opportunity to observe the market response to the effects of the price support change.

There is no evidence to suggest that Class I sales of skim milk and lowfat products were affected adversely by the price support action. Data for 58 Federal order markets indicate that average daily sales of these products in 1971 increased 2.1 million pounds over such sales in 1970. Monthly data show no drop in sales following the support price change in the early part of 1971. Adopting a lower Class I butterfat differential at this time gives recognition to the lower market value now associated with butterfat in Class I products.

Using a single factor of 0.115 for computing Class II and Class III butterfat differentials will result in a uniform adjustment of class prices for butterfat content among the markets under consideration. Continuation of the several butterfat differential factors now in use would offset to some extent the benefits to be gained through the adoption of a uniform classification plan.

A handler proposed that the butterfat differential factor for adjusting surplus prices be 0.110 rather than 0.115 as proposed by cooperatives. Proponent indicated that in disposing of surplus cream handlers usually are not able to recover their cost of such cream under the order. A Class II-Class III butterfat differential factor of 0.110, it was argued, would provide handlers with some price relief in this circumstance.

The record does not indicate that the adoption of 0.115 as the butterfat differential factor for pricing surplus milk will hinder the removal of surplus butterfat from the fluid market. Of the 32 orders, 22 now use a factor of 0.115, and one uses a factor of 0.120, for pricing surplus milk. The handler proposing the 0.110 factor was the only opponent of the 0.115 factor proposed by cooperatives. The great majority of residual butterfat is disposed of by the cooperatives rather than handlers. It must be concluded that the adoption of the handler's proposal under present marketing conditions would return to producers in most cases less than the obtainable market value for butterfat not needed for Class I purposes.

With the use of the same factor in computing the butterfat differential for each class, there appears to be no need for announcing more than one butterfat differential under each order, or for doing so before the end of the month in which it applies. Accordingly, under the new pricing arrangement, the single butterfat differential for the current month should be based on butter prices for such month and should be announced by the fifth day of the following month.

In the case of the butterfat differentials for each class, this announcement procedure represents a change only in the pricing of Class I milk. The Class I butterfat differentials under these orders are now based on butter prices prevailng during the preceding month and are announced by the fifth day of the current month. Such advance announcement of the Class I butterfat differential does not appear necessary, however. The average monthly butter price normally changes very little from month to month, and changes that do occur usually result in relatively limited changes in the butterfat differentials. Each change in the price of butter may be readily noted by handlers by following the daily butter quotations. In the absence of regulation, such information would be the best available for determining trends in butter prices and should be adequate for this purpose under regulation.

As indicated, cooperatives proposed that the butterfat differential used in adjusting pay prices to producers be computed in the same manner as adopted herein for computing handler butterfat differentials. Producer butterfat differentials under 22 of the 32 orders now reflect the weighted value of butterfat in the class uses. Inasmuch as producers favor this method of reflecting skim milk and butterfat values in their pay prices, this pricing arrangement should be extended to the other 10 orders. Since the same butterfat differential would be used in adjusting each of the class prices, there is no actual need, of course, for any provision in these orders for weighting the values of butterfat in the three classes in determining the producer butterfat differential.

Under the concept that all class prices should be adjusted by the same butterfat differential, it is necessary that each order provide only for a producer butterfat differential. No handler butterfat differentials for adjusting class prices need be set forth as such in the orders, nor is there any need for pooling the value of butterfat in each class. All producer "differential" butterfat received by handlers would be priced the same to all handlers regardless of the class in which the butterfat is used.

There is no reason for handlers to be less aware under this procedure of what their cost of milk is in each class than under the present order provisions, as was suggested in exceptions to the revised recommended decision. Any adjustment of class prices that a handler may wish to make to reflect a certain butterfat content can be done merely by using the butterfat differential used to adjust pay prices to producers. The procedure adopted herein for not pooling butterfat values is not unique to the Federal order program. The procedure has been in use for some time in a number of other Federal orders, apparently with general acceptance by affected parties in those markets.

It is recognized that the basic formula price of these orders is determined by adjusting the average Minnesota-Wisconsin price at test to a 3.5-percent butterfat basis by using a factor of 0.120 times the average Chicago butter price. The appropriateness of such factor for this purpose was not considered at the hearing and no consideration is given in this decision to changing this factor for such purpose. Moreover, since this method of determining the basic formula price is now used under all Federal milk orders throughout the country, it would appear that any change in this butterfat differential factor should be considered simultaneously for all orders.

6. *Advance announcement of prices for surplus milk.* The proposal by handlers to announce order prices for surplus milk at the beginning of the month rather than at the end of the month during which the prices apply should not be adopted.

Under the present orders, the prices for surplus milk are announced by the fifth day of each month. Such prices apply to producer milk delivered to handlers during the preceding month.

The national associations of fluid milk and ice cream processors proposed at the hearing that the class prices to be applicable in a particular month to surplus milk be announced by the fifth day of such month. Handlers stated that under the present announcement procedure they are often disadvantaged by not knowing the costs of producer milk for manufacturing use until after the end of the month in which the milk is processed. They claimed that when there is a significant increase in the order price, the delayed notice of the increase prevents them from making corresponding adjustments in their resale prices on a timely basis. Proponents' interest in advance pricing related essentially to the prices that would be applicable to cottage cheese, cream products, yogurt and frozen desserts, the principal Class II products processed by such handlers.

In exceptions filed to the revised recommended decision, there was a general concensus among both handler and producer groups that the present method of announcing surplus prices should continue with respect to the Class III price. These groups generally urged, however, that the Class II price for the month be announced by the fifth day of the month and be based on the Minnesota-Wisconsin price for the preceding month.

For the regulated handler processing producer milk into butter, nonfat dry

milk and cheddar cheese, advance announcement of the applicable class price could place him at a competitive disadvantage on his sales of these manufactured products. As indicated earlier, the surplus prices under the revised classification plan would be based on the prices paid for manufacturing grade milk in Minnesota and Wisconsin. These prices are closely related to the market values of cheddar cheese, nonfat dry milk, and butter, the principal uses for such milk in the month of delivery of the raw milk. These product prices are established on a regular basis in a market that is national in scope. The manufacturers of ungraded milk are fully aware of the movements of these product prices, which are published weekly, and can adjust their pay prices for milk in response to changes in the prices for the finished products. Regulated handlers who are processing these particular products must compete in the same national market in which the processors of manufacturing grade milk are competing and the same product price information is available to them.

In most of the markets under consideration, substantial quantities of milk are disposed of by regulated handlers in the form of butter, nonfat dry milk, or cheese. In 1970 over 1 billion pounds of milk, or 88 percent of the market's total Class II use, were so disposed of by handlers in the Minneapolis-St. Paul market. In the Minnesota-North Dakota, Southeastern Minnesota-Northern Iowa, Duluth-Superior, Cedar Rapids-Iowa City, Eastern South Dakota, Oklahoma Metropolitan and North Central Iowa markets, over 80 percent of each market's total Class II milk was used that year in manufacturing these products. Although lesser quantities of milk were used in such products in the other markets, only in four markets (Memphis, Fort Smith, Central West Texas and Rio Grande Valley) did such uses represent less than 20 percent of the total Class II use for each market. Thus, handlers in most of the 32 markets have a very definite interest in the relationship of the applicable class price with prices being paid currently for manufacturing grade milk. Accordingly, the prices paid by regulated handlers for Class III milk should correspond very closely with the pay prices during the month of delivery for manufacturing grade milk if these handlers are to be competitive in the sale of the principal surplus products.

The same considerations are involved in the case of an advance announcement of prices for milk used in the proposed Class II products. The influence of the manufacturing milk price level on the competitive relationship of producer milk for Class II uses is similar to that for producer milk used in the proposed Class III products. Therefore, the prices for Class II milk should be announced on the same basis as the price for Class III milk.

In connection with the announcement of surplus prices, a comment should be made concerning the transition from the present pricing provisions to the new ones adopted herein. It is intended that the present surplus prices apply to producer milk delivered to handlers during the last month under the present classification and pricing scheme. Clarification of this point is pertinent since such prices would be announced following the effective date of the new pricing provisions.

7. *Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders.* The Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders should be changed to provide that the skim milk ingredient of "filled milk" shall be classified and priced as Class I milk.

The provisions provided herein are substantially those which were proposed for consideration at the hearing by a cooperative association operating in these markets.

In 1968, proposals to classify and price the skim milk component of filled milk were considered for most orders at a hearing held in Memphis, Tenn. The decision resulting from the hearing classified the skim milk component of filled milk in the same way as the skim milk component of natural milk. It provided a means of equating the cost of skim milk in filled milk if it originates from sources other than producer milk with the cost if derived from producer milk.

At the time of the 1968 hearing, the Southeastern Minnesota-Northern Iowa order had not been issued, and the Minneapolis-St. Paul order could not be amended in this respect because of a marketing area expansion to which the filled milk hearing did not apply. As a result, these orders do not contain the uniform provisions dealing with filled milk provided in all other Federal milk orders.

Filled milk is a combination of skim milk and vegetable fat or oil in about the same proportions as the skim milk and milk fat in whole milk. Well over 90 percent of the product is skim milk. In most filled milk, the skim milk portion is fresh fluid skim milk separated from whole milk. Some filled milk contains reconstituted fluid skim milk prepared from a concentrated product such as nonfat dry milk. Whether made from vegetable fat and fresh or reconstituted skim milk or any combination of the two, filled milk resembles whole milk in appearance.

Regulated handlers disposing of filled milk make a substantial savings in cost by substituting vegetable fat or oil for butterfat. This is the main incentive for the marketing of filled milk. While the difference in cost between vegetable fat and butterfat is not an issue at this hearing, it is relevant to the extent that it explains the profit motivation for marketing the product relative to the marketing of natural milk.

At the present time, no filled milk is distributed in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas. In those regulated markets where filled milk is distributed, it moves in the same channels as whole milk. It is distributed by the same handlers in the course of their regular business through the same outlets for natural milk and in the same types of containers.

Filled milk, if disposed of in either the Minneapolis-St. Paul or the Southeastern Minnesota-Northern Iowa marketing area, would directly burden, obstruct, or affect interstate commerce in milk and milk products. It previously has been determined (at the time of the promulgation of each of these orders) that all milk marketed in each marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and milk products.

Filled milk is in content substantially a product of milk and competes for the same sales outlets as milk. It follows, therefore, that the marketing of the milk ingredients in filled milk in either of the two markets would burden, obstruct, or affect interstate commerce in milk and milk products. This would be equally true whether the marketing of filled milk were by a fully regulated plant or by a plant not fully regulated because both would compete for similar outlets in the market.

Also, manufactured milk products are sometimes used in the production of filled milk. Manufactured milk products move in interstate commerce and compete in the national market, regardless of where the milk is produced. Therefore, manufactured milk products, if used in the production of filled milk for disposition in either the Minneapolis-St. Paul or Southeastern Minnesota-Northern Iowa market, likewise would burden, obstruct, or affect interstate commerce in milk and its products.

The classification of the dairy ingredients of filled milk is a proper consideration derived from the Agricultural Marketing Agreement Act. As stated in the decision resulting from the filled milk hearing in Memphis, Tenn., the "specific language of the Act with respect to classification is that each order shall contain terms '* * * classifying milk in accordance with the form in which or the purpose for which it is used * * *'. In applying the language of the Act we here consider the form and purpose of use for both filled milk and the milk ingredient content of the filled milk.

"The form of filled milk and the purpose for which it is used are the same as the form and purpose of use of whole milk. Filled milk, just as whole milk, is disposed of in fluid form. It is marketed by handlers in the same types of packages and in the same trade channels as the whole milk they market, and is mainly intended as a beverage substitute for milk.

"Similarly, the fluid skim milk content of the filled milk is in the same form as skim milk in whole milk and serves the same purpose, providing in each case the main body of the product thereby making it a milk beverage. The addition of the nonmilk ingredients, principally vegetable fat or oil and stabilizers, does not alter the basis for Class I classification. The addition of nonmilk ingredients in fluid milk products is not a new development. The addition of vegetable

fat does not involve an essentially different consideration from that for other Class I fluid milk products to which a flavoring ingredient, such as chocolate (which also contains nonmilk fat) has been added.

"For purpose of illustration, a product within the 'fluid milk product' category containing a nonmilk additive is chocolate milk. The additive is not considered as changing the form of this product so that it is no longer a fluid milk product. For the purposes of classification, the flavoring material has never been regarded as significant in determining the form of the product or as a basis for altering its classification.

"The same reasoning applies in the case of filled milk—that the additives do not change significantly the form or the purpose of use and therefore do not constitute a basis for classification other than in Class I.

"The product 'filled milk' therefore should be classified, for the purpose of pricing under the orders, in the same manner as whole milk. As in the case of other fluid milk products containing some nonmilk ingredients, the classification would apply only to the milk ingredients in the product."

No opposition to the filled milk proposal was expressed at the hearing or in briefs submitted by interested parties.

Based on the testimony of proponent, which related specifically to the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, it is found that the above findings from the Memphis decision are equally applicable to this proceeding. Accordingly, they serve as the basis for concluding that the milk ingredients of filled milk should be classified and priced under the two orders as Class I milk.

Proponent testified also that filled milk may be made by combining reconstituted skim milk with vegetable fat and other minor ingredients. Reconstituted skim milk commonly is made from nonfat dry milk to which water is added to return it essentially to a form and consistency similar to fresh skim milk. Its potential as a disruptive influence on the market for producer milk is substantial, however, since the disposition of any Class I product that has been priced at the surplus price level undermines the classified pricing system.

As was found in the filled milk decision referred to earlier, filled milk made from reconstituted skim milk is, from a marketing standpoint, essentially similar to filled milk made from fresh skim milk. It is a competitor of whole milk at the consumer level. Therefore, reconstituted skim milk in filled milk, as in other fluid milk products, should be classified and priced on the same basis as all other fluid milk products to achieve uniformity in the pricing of milk for similar uses.

Federal milk orders, including the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, have contained for some time specific provisions dealing with the disposition by a regulated handler of other fluid milk products reconstituted from nonfluid milk products. The issue of proper classification and charge for such use of nonfluid milk products to produce products for Class I disposition was dealt with for most orders in the compensatory payment decisions referred to earlier in this decision. The findings and conclusions that relate to the reconstitution of milk appeared at 29 F.R. 9010. The regulatory treatment of reconstituted products that is described in the compensatory payment decisions and reiterated in the later filled milk decision is appropriately applicable to any reconstituted skim milk used in filled milk that may be disposed of in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas.

It should be noted that these two orders now provide that a producer-handler would lose his status as such and become a fully regulated handler if he disposes of fluid milk products made from reconstituted skim milk. Since the fluid milk product definition would include filled milk under the amendments adopted herein, loss of producer-handler status would result also from the sale of reconstituted filled milk.

A definition of filled milk should be provided in the two orders to meet the specific needs of order regulation, and for such purpose only. This definition, which would be identical to the filled milk definition in all other orders, should be as follows:

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

The term "filled milk" is not intended to include skim milk marketed in a form or for a purpose specifically excluded from the fluid milk product definition of either order. For example, evaporated milk is a use of skim milk and butterfat not treated as a fluid milk product in either order. If a product containing skim milk and any amount of vegetable fat were marketed in the same form and manner as evaporated milk, it would be excluded from the term "filled milk".

The regulatory treatment of filled milk adopted herein requires numerous conforming changes throughout the order. Accordingly, all the conforming changes found necessary on the basis of the Memphis hearing to implement the filled milk amendments are incorporated herein wherever applicable.

8. *A uniform "equivalent price" provision.* Each of the 32 orders included in this proceeding should be amended to the extent necessary to provide identical language for determining an equivalent price, or price constituent, when a price or price constituent is not available as prescribed by the order.

At present, all of the 32 orders except the Minnesota-North Dakota order provide for computing an equivalent price as needed. Such provisions are not identical, however, among the orders. A Dairy Division proposal for a uniform equivalent price provision under each order was supported by a witness for the National Milk Producers Federation.

An equivalent price provision is necessary in each of the orders to provide a price, or price constituent, in cases where published prices, indexes, quotations, or other pricing constituents as prescribed by the order are not available. It insures that basic formula prices, class prices and butterfat differentials can be computed, as prescribed, in emergency situations without interruption.

All the orders now rely on butter price quotations for computing butterfat differentials. All rely on the Minnesota-Wisconsin price series for computing the basic formula price and Class I prices. As proposed herein, this price series would be used also in establishing Class II and Class III prices under each order.

Under unusual circumstances, these published prices and price constituents might not be available for use in computing order prices. If there were insufficient trading during the month in butter, for example, or if the specific butter price quotations were discontinued, the prescribed butterfat differentials could not be computed without an equivalent price provision. By providing for the determination of an equivalent price as needed, the Department is in a position to draw on comprehensive resource data to assure that the computation of the basic formula price, the class prices, or the butterfat differentials is not interrupted by the contingencies cited.

For these reasons, it is concluded that the Minnesota-North Dakota order should provide for the determination of an equivalent price in the same manner as the other orders included in this proceeding.

In providing for a determination of equivalent price, the same objective is sought for each order. It is appropriate, therefore, to provide for identical provisions in each order. Then, if a determination had to be made for more than one order simultaneously, there would be no question as to the applicability of the determination to each order.

Accordingly, the equivalent price provision in each order should be stated as follows:

"If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required."

A corollary change should be made in the Class I price provisions of the Neosho Valley order. This order provides that the Class I price shall be based in part on the Class I price "under Part 1067 of this chapter regulating the handling of milk in the Ozarks marketing area." At the time the Ozarks order was merged with the St. Louis order, a determination of equivalent price was issued for the Neosho Valley order (33 F.R. 15107) which stated in part that:

For the purpose of computing the Neosho Valley Class I price, the Class I price announced for Zone 1 under the St. Louis-Ozarks milk order (Part 1062) will be equivalent to the price specified in § 1071.51(a) (2) of the Neosho Valley order and should be used in lieu thereof in computation of the Class I price of the Neosho Valley order until such time as the Neosho Valley order may be amended.

This determination of equivalent price, which was issued in October 1968, is still in effect. This proceeding affords an opportunity to amend the Neosho Valley order as prescribed in the determination. Thus, the order language quoted earlier should be revised to read "under Part 1062 of this chapter regulating the handling of milk in the St. Louis-Ozarks marketing area."

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

GENERAL FINDINGS

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

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 the 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 areas is approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the respective marketing areas.

Signed at Washington, D.C., on February 19, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

Order[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 wholesome milk, and be in the public interest; and

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

Order relative to handling. It is therefore ordered that on and after the effec-

[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.

tive 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:

1. 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); and ____.44(a)(8), (11), and (12).

2. Changes are made in the Quad Cities-Dubuque and Nebraska-Western Iowa orders to incorporate amendments, based on separate hearing records, that have been issued since the issuance of the revised recommended decision in this proceeding.

PART 1060—MILK IN MINNESOTA-NORTH DAKOTA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.

Sec.
1060.1 General provisions.

DEFINITIONS

1060.2 Minnesota-North Dakota marketing area.
1060.3 Route disposition.
1060.4 Plant.
1060.5 Distributing plant.
1060.6 Supply plant.
1060.7 Pool plant.
1060.8 Nonpool plant.
1060.9 Handler.
1060.10 Producer-handler.
1060.11 [Reserved]
1060.12 Producer.
1060.13 Producer milk.
1060.14 Other source milk.
1060.15 Fluid milk product.
1060.16 Fluid cream product.
1060.17 Filled milk.
1060.18 Cooperative association.

HANDLER REPORTS

1060.30 Reports of receipts and utilization.
1060.31 Payroll reports.
1060.32 Other reports.

CLASSIFICATION OF MILK

1060.40 Classes of utilization.
1060.41 Shrinkage.
1060.42 Classification of transfers and diversions.
1060.43 General classification rules.
1060.44 Classification of producer milk.
1060.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1060.50 Class prices.
1060.51 Basic formula price.
1060.52 Plant location adjustments for handlers.
1060.53 Announcement of class prices.
1060.54 Equivalent price.

UNIFORM PRICE

Sec.
1060.60 Handler's value of milk for computing uniform price.
1060.61 Computation of uniform price.
1060.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1060.70 Producer-settlement fund.
1060.71 Payments to the producer-settlement fund.
1060.72 Payments from the producer-settlement fund.
1060.73 Payments to producers and to cooperative associations.
1060.74 Butterfat differential.
1060.75 Plant location adjustments for producers and on nonpool milk.
1060.76 Payments by handler operating a partially regulated distributing plant.
1060.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1060.85 Assessment for order administration.
1060.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1060 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1060.1 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

§ 1060.2 Minnesota-North Dakota marketing area.

"Minnesota-North Dakota marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of the counties listed below, including territory wholly or partly within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

MINNESOTA

Becker.	Marshall.
Beltrami.	Norman.
Big Stone.	Otter Tail.
Clay.	Pennington.
Clearwater.	Polk.
Douglas.	Red Lake.
Grant.	Roseau.
Hubbard.	Stevens.
Kittson.	Traverse.
Lake of the Woods.	Wadena.
Mahnomen.	Wilkin.

NORTH DAKOTA

Barnes.	Pembina.
Cass.	Ramsey.
Cavalier.	Ransom.
Dickey.	Richland.
Grand Forks.	Sargent.
Griggs.	Steele.
La Moure.	Traill.
Nelson.	Walsh.

SOUTH DAKOTA

Grant.	Roberts.
Marshall.	

§ 1060.3 Route disposition.

"Route disposition" means a delivery to a wholesale or retail outlet either directly or through a distributing facility such as a distribution point, a plant store, or a vendor of any fluid milk product classified as Class I milk, other than a delivery to a pool plant or a nonpool plant.

§ 1060.4 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 or filled milk from one tank truck to another shall not be a plant under this definition. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

§ 1060.5 Distributing plant.

"Distributing plant" means a plant that is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which there is route disposition during the month.

§ 1060.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product that is acceptable to the appropriate health authority for distribution in the marketing area as Grade A is moved during the month to a distributing plant.

§ 1060.7 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 disposed:

(1) As route disposition, except filled milk, in the marketing area not less than 15 percent of Grade A milk receipts at such plant; and

(2) As route disposition, except filled milk, or by transfer to another plant and classified as Class I pursuant to § 1060.42, not less than the applicable percentage of such plant's receipts of Grade A milk:

(i) March through June, 20 percent;

(ii) July through February, 25 percent: *Provided,* That all distributing plants operated by a handler may be considered as one plant for the purpose of meeting the applicable percentage requirement of this subparagraph if the handler submits a written request to the market administrator prior to the delivery period for which such consideration is requested.

(b) A supply plant from which not less than 25 percent of its producer receipts at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants qualified pursuant to paragraph (a) of this section: *Provided,* That a supply plant which qualified pursuant to this paragraph in

each of the immediately preceding months of August through November shall be a pool plant for the months of March through June unless the plant operator requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

(c) The term "pool plant" shall not apply to the following plants:

(1) A distributing plant from which the Secretary determines a greater portion of the route disposition, except filled milk, is made in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided*, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which 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 by such other order;

(2) A distributing plant which meets the requirements set forth in paragraph (a) of this section which also meets the requirements of another marketing order on the basis of its route disposition in such other marketing area and from which the Secretary determines a greater quantity of route disposition, except filled milk, is made during the month in this marketing area than in such other marketing area but which plant is nevertheless fully regulated under such other marketing order;

(3) A supply plant from which the Secretary determines a greater proportion of its Grade A receipts, except filled milk, is shipped during the month to plants which are regulated by another plants pursuant to the Act if such shipments qualify it as a pool plant under such other order;

(4) A producer-handler plant;

(5) A governmentally owned and operated institution which disposes of Class I milk solely for use on its own premises or to its own facilities. Such an institution shall be exempt from all the provisions of this part; or

(6) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition.

§ 1060.8 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or a governmentally owned and operated institution described in § 1060.7 (c) (5), 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 shipped during the month to a distributing plant, and is not an other order plant, a producer-handler plant, or a governmentally owned and operated institution described in § 1060.7 (c) (5).

§ 1060.9 Handler.

"Handler" means:

(a) Any person (including any cooperative association) in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted for its account pursuant to § 1060.13;

(c) Any cooperative association with respect to the milk of its member producers which is delivered directly from the farm to the pool plant of another handler in a tank truck owned, operated by, under contract to, or under the control of such cooperative association. The milk for which a cooperative association is a handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person who operates a partially regulated distributing plant. This definition shall not apply to a governmentally owned and operated institution as described in § 1060.7(c) (5);

(e) A producer-handler; and

(f) Any person who operates an other order plant as described in § 1060.7(c) (1), (2), or (3).

§ 1060.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no milk during the month from other dairy farmers or fluid milk products from sources other than pool plants and not more than 3,000 pounds of milk and fluid milk products (including the milk equivalent of milk products other than fluid milk products which are reconstituted into fluid milk products) during the month from any source;

(c) Receives no milk products other than fluid milk products from any source for reconstitution into fluid milk products except that received within the limitations set forth in paragraph (b) of this section; and

(d) Such person must provide proof satisfactory to the market administrator that (1) the care and management of all the dairy animals and other resources necessary to produce the milk are the personal enterprise of and at the personal risk of such person, and (2) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 1060.11 [Reserved]

§ 1060.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, which milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1060.13.

(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 § 1060.44(a) (8) (iii) and the corresponding step of § 1060.44(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.

§ 1060.13 Producer milk.

"Producer milk" means all the skim milk and butterfat contained in Grade A milk of a producer that is:

(a) Received during the month at a pool plant directly from such producer or a handler described in § 1060.9(c);

(b) Received by a handler described in § 1060.9(c) from producers in excess of the quantity delivered to pool plants; or

(c) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant or the plant of a governmentally owned and operated institution by the operator of a pool plant or a handler described in § 1060.9(b), if such movement is specifically reported and the conditions of paragraphs (c) (1), (2), and (3) of this section have been met. Such milk shall be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted in applying §§ 1060.52 and 1060.75:

(1) During March through June a cooperative association handler pursuant to § 1060.9(b) may divert for its account without limit the milk of any member producer. During the months of July through February such handler may divert an aggregate quantity not exceeding 50 percent of the milk of all such producers whose milk has been received at a pool plant(s) for at least 3 days during the month.

(2) During March through June a handler in his capacity as the operator of a pool plant may divert for his account without limit the milk of any producer,

other than a member of a cooperative association which has diverted milk pursuant to paragraph (c)(1) of this section. During the months of July through February such handler may divert an aggregate quantity not exceeding 50 percent of the milk of all such producers whose milk has been received at his pool plant(s) for at least 3 days during the month.

(3) In the event milk receipts from dairy farmers are diverted in excess of the applicable percentages pursuant to paragraphs (c) (1) and (2) of this section, the diverting handler shall specify the dairy farmers whose milk was overdiverted. Only the milk of such dairy farmer(s) which is received at a pool plant during the month shall be producer milk for such month.

§ 1060.14 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 § 1060.40 (b)(1) from any source other than producers, handlers described in § 1060.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1060.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1060.40 (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 § 1060.40(b)(1)) for which the handler fails to establish a disposition.

§ 1060.15 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 § 1060.40 (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.

§ 1060.16 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.

§ 1060.17 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).

§ 1060.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act;"

(b) Has full authority in the sale of milk of its members and is 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.

HANDLER REPORTS

§ 1060.30 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 § 1060.9(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 § 1060.40(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 § 1060.9 (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.

§ 1060.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1060.9 (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 § 1060.76(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.

§ 1060.32 Other reports.

In addition to the reports required pursuant to §§ 1060.30 and 1060.31, 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

§ 1060.40 Classes of utilization.

Except as provided in § 1060.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1060.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt,

except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c) (1) (iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b) (1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b) (1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b) (1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1060.15; and

(6) In shrinkage assigned pursuant to § 1060.41(a) to the receipts specified in § 1060.41(a)(2) and in shrinkage specified in §1060.41 (b) and (c).

§ 1060.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1060.30, 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 § 1060.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1060.9(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 paragraphs (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 § 1060.9 (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.

§ 1060.42 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 § 1060.44(a)(12) and the corresponding step of § 1060.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to 1060.44(a)(7) or the corresponding step of § 1060.44(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 § 1060.44(a) (11) or (12) or the corresponding steps of § 1060.44(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 § 1060.40.

(c) *Transfers to producer-handlers and to exempt government institutions.* 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 an exempt government institution defined in § 1060.7(c)(5) 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 its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt government institution defined in § 1060.7(c)(5), 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 paragraphs (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 § 1060.30 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.

§ 1060.43 General classification rules.

In determining the classification of producer milk pursuant to § 1060.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1060.30 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 § 1060.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1060.40, 1060.41, and 1060.42;

(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 § 1060.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1060.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1060.9(a) for each of his pool plants separately and of each handler described in § 1060.9 (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 § 1060.41(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 § 1060.40(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 § 1060.40(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 § 1060.40(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 § 1060.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt government institution defined in § 1060.7(c)(5);

(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, 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 § 1060.40(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 substracted 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 § 1060.45(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 proporation 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 at 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 § 1060.42(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.

§ 1060.45 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 § 1060.44(a)(12) and the corresponding step of § 1060.44(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 another order plant, the class to which such receipts are allocated pursuant to § 1060.44 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 of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler during the immediately preceding month from such cooperative association in its capacity as a handler pursuant to § 1060.9(c) and directly from members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after allocation pursuant to § 1060.44(a)(1) through (13) and the corresponding steps of § 1060.44(b).

Class Prices

§ 1060.50 Class prices.

Subject to the provisions of § 1060.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.30.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1060.51 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.

§ 1060.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant or diverted to a nonpool plant located outside the base zone 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 § 1060.50(a) shall be adjusted 1.2 cents for each 10 road miles or fraction thereof that such plant is located beyond the perimeter of the base zone.

(b) For the purposes of calculating such adjustments:

(1) All distances shall be by shortest hard-surfaced highways and/or all-weather-roads, as determined by the market administrator;

(2) The adjustment pursuant to this section shall be added to the Class I

price if the plant is located in North or South Dakota and shall be subtracted from such price if the plant is located in Minnesota; and

(3) Transfers of fluid milk products between pool plants shall be assigned Class I milk disposition at the receiving plant, in excess of the sum of receipts at such plant from producers (including receipts from a handler described in § 1060.9(c)) and the pounds assigned as Class I milk to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to shipping plants priced at the same price, next to plants having a higher price, and then in sequence to plants having a lower price, beginning with the plant at which the highest price 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.

(d) The "base zone" shall include that portion of the marketing area in the counties of Clay, Marshall, Norman, Pennington, Polk, and Red Lake, all in the State of Minnesota; and the counties of Cass, Grand Forks, and Traill, all in the State of North Dakota.

§ 1060.53 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.

§ 1060.54 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

§ 1060.60 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 § 1060.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1060.44 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 § 1060.44(a)(14) and the corresponding step of § 1060.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1060.74, 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 § 1060.44(a)(9) and the corresponding step of § 1060.44(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 § 1060.44(a)(7)(i) through (iv) and the corresponding step of § 1060.44(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 § 1060.44(a)(7)(v) and (vi) and the corresponding step of § 1060.44(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 § 1060.44(a)(11) and the corresponding step of § 1060.44(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 for the preceding month applicable at the location of the pool plant and the Class III price for the current month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1060.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1060.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1060.60 for all handlers who filed the report prescribed in § 1060.30 for the month and who made the payments pursuant to §§ 1060.71 and 1060.73 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1060.75;

(c) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1060.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1060.60(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.

§ 1060.62 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

§ 1060.70 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 funds received pursuant to paragraph (a) of this section and out of which he shall make all payments required pursuant to paragraph (b) of this section:

(a) Payments made by handlers pursuant to §§ 1060.71, 1060.76, and 1060.77.

(b) Payments due handlers pursuant to §§ 1060.72 and 1060.77: *Provided*, That payments due any handler shall be offset by payments due from such handler pursuant to §§ 1060.71, 1060.76, 1060.77, 1060.85, and 1060.86.

§ 1060.71 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: *Provided*, That payment made by a cooperative association as a handler shall not relieve the transferee-handler of any obligation on any such milk which is due the cooperative association, or otherwise due pursuant to §§ 1060.70 through 1060.75, and §§ 1060.77 through 1060.86:

(1) The sum of:

(i) The total value of milk of the handler for such month as determined pursuant to § 1060.60; and

(ii) In the case of a handler described in § 1060.9(c), the minimum amounts due from other handlers pursuant to § 1060.73(c)(1) before adjustments for butterfat content.

(2) The sum of:

(i) The amount required to be paid producers (including payments to producers through cooperative associations) pursuant to § 1060.73 before adjustment for butterfat content, deductions authorized by the producer or cooperative as-

sociation, or deductions for marketing services pursuant to § 1060.86; and

(ii) The value at the uniform price applicable at the location of the plant(s) from which received of other source milk for which a value is computed pursuant to § 1060.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (a)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1060.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay (subject to the proviso of § 1060.70(b)) to each handler the amount if any by which the amount computed pursuant to § 1060.71(a)(2) exceeds the amount computed pursuant to § 1060.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1060.73 Payments to producers and to cooperative associations.

Each handler shall make payment for milk received from producers or cooperative associations as follows:

(a) To each producer for whom payment is not made pursuant to paragraph (b) or (c) of this section:

(1) A final settlement on or before the 15th day after the end of each month during which producer milk was received, at not less than the uniform price for such milk, adjusted by the butterfat differential computed pursuant to § 1060.74 and subject to the location adjustment to producers pursuant to § 1060.75, and less the following amounts:

(i) The payments made pursuant to paragraph (a)(2) of this section;

(ii) Deductions for marketing services made pursuant to § 1060.86; and

(iii) Any deductions authorized by the producer: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 1060.72, he may reduce his total payment to all producers uniformly by not less 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; and

(2) A partial payment on or before the last day of each month with respect to producer milk received during the first 15 days of the month at not less than the Class III price for the preceding month (without deduction for hauling);

(b)(1) On or before the second day prior to the date payments are due individual producers as specified in this section, pay to a cooperative association which so requests and which the market administrator determines is authorized by its members to collect payments for their milk and which promises in writing to reimburse the handler the amount of any actual loss incurred by him because of any member's claim on the part of the cooperative association of the payments pursuant to paragraph (a) 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) To a cooperative association which is a handler pursuant to § 1060.9(a) or (c) for milk which it caused to be delivered to such handler:

(1) A final settlement on or before the 13th day after the end of the month in which the skim milk or butterfat was received, an amount equal to not less than the applicable class prices, as adjusted by the butterfat differential specified in § 1060.74, at the location of the handler's pool plant for all skim milk and butterfat so delivered, less the amount of payment made pursuant to paragraph (c)(2) of this section; and

(2) A partial payment on or before the 26th day of each month at not less than the Class III price for the preceding month (without deduction for hauling) for all skim milk and butterfat so delivered during the first 15 days of the current month;

(d) In making payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of this section and §§ 1060.74 and 1060.75;

(4) The rate which is used in making payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (c)(2) of this section and § 1060.86, together with a description of the respective deductions; and

(6) The net amount of payment to the producer; and

(e) Each handler who receives milk from producers, payment for which is to be made to a cooperative association pursuant to paragraph (b) of this section, shall report to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) On or before the 20th day of the month, the total pounds of milk received during the first 15 days of the month;

(2) On or before the seventh day after the end of the month:

(i) The pounds per shipment, the total pounds of milk and the average butterfat test of milk received from such producer during the month;

(ii) The amount or rate and nature of any deductions; and

(iii) The amount of any payments to such producer pursuant to § 1060.77.

§ 1060.74 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.

§ 1060.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at a pool plant or diverted to a nonpool plant located outside the base zone, the uni-

form price shall be adjusted at the rate set forth in § 1060.52.

(b) For purposes of computation pursuant to §§ 1060.71(b) (2) and 1060.72 the uniform price shall be adjusted at the rates set forth in § 1060.52 applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted uniform price shall not be than the Class III price.

§ 1060.76 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 §§ 1060.30(b) and 1060.31(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 § 1060.60 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 § 1060.60 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 § 1060.60 for such handler shall include, in lieu of the value of other source milk specified in § 1060.60(f) less the value of such other source milk specified in § 1060.71(a)(2)(ii), a value of milk determined pursuant to § 1060.60 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 § 1060.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1060.30(b) and 1060.31(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 § 1060.60 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 § 1060.74, 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 § 1060.74, 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.

§ 1060.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due the market administrator or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of the amount due and payment therefor shall be made within 5 days if such amount is due the market administrator, or on or before the next date for making payments to producers or a cooperative association, if such amount is due them. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made within 5 days.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1060.85 Assessment for order administration.

As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of each month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to skim milk and butterfat contained in:

(a) Producer milk (including a handler's own farm production);

(b) Other source milk allocated to Class I pursuant to § 1060.44(a) (7) and (11) and the corresponding steps in § 1060.44(b), except such other source milk that is excluded from the computations pursuant to § 1060.60 (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 § 1060.76(a)(2).

§ 1060.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in mak-

ing payments to producers other than to himself pursuant to § 1060.73(a)(1) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the 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 from, and to provide market information to, such producers. 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) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from the payments to be made directly to producers pursuant to § 1060.73(a)(1), as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association (of which such producers are members) rendering such services.

(c) When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and unless otherwise previously provided, the butterfat test.

PART 1061—MILK IN SOUTHEASTERN MINNESOTA-NORTHERN IOWA (DAIRYLAND) MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1061.1 General provisions.

DEFINITIONS

1061.2 Southeastern Minnesota-Northern Iowa (Dairyland) marketing area.
1061.3 Route disposition.
1061.4 [Reserved]
1061.5 Distributing plant.
1061.6 Supply plant.
1061.7 Pool plant.
1061.8 Nonpool plant.
1061.9 Handler.
1061.10 Producer-handler.
1061.11 [Reserved]
1061.12 Producer.
1061.13 Producer milk.
1061.14 Other source milk.
1061.15 Fluid milk product.
1061.16 Fluid cream product.
1061.17 Filled milk.
1061.18 Cooperative association.

HANDLER REPORTS

1061.30 Reports of receipts and utilization.
1061.31 Payroll reports.
1061.32 Other reports.

CLASSIFICATION OF MILK

1061.40 Classes of utilization.
1061.41 Shrinkage.
1061.42 Classification of transfers and diversions.
1061.43 General classification rules.
1061.44 Classification of producer milk.
1061.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1061.50 Class prices.
1061.51 Basic formula price.
1061.52 [Reserved]
1061.53 Announcement of class prices.
1061.54 Equivalent price.

UNIFORM PRICE

1061.60 Handler's value of milk for computing uniform price.
1061.61 Computation of uniform price.
1061.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1061.70 Producer-settlement fund.
1061.71 Payments to the producer-settlement fund.
1061.72 Payments from the producer-settlement fund.
1061.73 Payments to producers and to cooperative associations.
1061.74 Butterfat differential.
1061.75 [Reserved]
1061.76 Payments by handler operating a partially regulated distributing plant.
1061.77 Adjustment of accounts.
1061.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1061.85 Assessment for order administration.
1061.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1061 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1061.1 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

§ 1061.2 Southeastern Minnesota-Northern Iowa (Dairyland) marketing area.

"Southeastern Minnesota - Northern Iowa (Dairyland) marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the counties listed below, including all territory within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

MINNESOTA COUNTIES

Blue Earth.	Mower.
Brown.	Nicollet.
Cottonwood.	Olmsted.
Dodge.	Redwood.
Faribault.	Rice.
Fillmore.	Steele.
Freeborn.	Wabasha.
Goodhue.	Waseca.
Le Sueur.	Watonwan.
Martin.	Winona.

IOWA COUNTIES

Howard.	Winnebago.
Kossuth.	Winneshiek.
Mitchell (except city of Osage).	Worth.

§ 1061.3 Route disposition.

"Route disposition" means a delivery from a plant (including delivery from a retail store at such plant and delivery through vendors or distribution points) of any fluid milk product classified as Class I to a retail or wholesale outlet other than a milk or filled milk plant. A delivery through a vendor or through a distribution point shall be considered a route disposition of the plant at the location of the wholesale or retail outlet to which delivery is made.

§ 1061.4 [Reserved]

§ 1061.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition (either directly or through another plant) in the marketing area during the month of a Grade A fluid milk product that is packaged in such plant.

§ 1061.6 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product is shipped during the month to a distributing plant.

§ 1061.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which there is disposed of during the month not less than the percentages set forth in paragraph (a) (1) and (2) of this section of the total Grade A fluid milk products received during the month at such plant, including producer milk diverted under § 1061.13(d)(2), but excluding receipts of packaged fluid milk products from other pool distributing plants and receipts from unregulated supply plants and other order plants which are assigned pursuant to § 1061.44 (a)(8) (i) and (iii) and the corresponding step of § 1061.44(b):

(1) Not less than 10 percent of such receipts is disposed of from such plant as Class I milk in the marketing area as route disposition. Such disposition is to be exclusive of filled milk and receipts of packaged fluid milk products from other pool distributing plants; and

(2) Not less than 30 percent during the months of February–August and 40 percent during the months of September–January of such receipts is disposed of as Class I milk as route disposition. Such disposition is to be exclusive of filled milk and receipts of packaged fluid milk products from other pool distributing plants.

(b) A supply plant from which not less than 30 percent of its total Grade A milk receipts from dairy farmers during the month is delivered as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section subject to paragraph (b) (1) and (2) of this section:

(1) Any plant which qualified pursuant to this paragraph in each of the immediately preceding months of September through November shall be a pool plant for the months of December through August unless written application is filed

by the plant operator with the market administrator on or before the first day of any such month requesting the plant be designated a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant; and

(2) In determining the pool plant qualifications of a cooperative association's plant, member producer milk of such association which is delivered directly to plants described in paragraph (a) of this section shall be considered for purposes of this paragraph as having been first received at the cooperative's plant subject to the following conditions:

(i) Written request is made to the market administrator by the cooperative association prior to or during the month, designating the plant to be a pool plant pursuant to this subparagraph for the month, and for each month thereafter, until such request is withdrawn or terminated pursuant to paragraph (b)(2)(ii) of this section; and

(ii) Any such plant which in a succeeding month is pooled under the provisions of another order issued pursuant to the Act shall not be pooled under this subparagraph for the ensuing 12 months.

(c) The term "pool plant" shall not apply to the following plants or facilities:

(1) A producer-handler plant or an exempt governmental plant;

(2) A plant qualified as a pool plant pursuant to paragraph (a) or (b) of this section that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act unless a greater volume of fluid milk products is disposed of from such plant as route disposition, except route disposition of filled milk, in this marketing area and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order;

(3) If a portion of a plant is operated separately from the Grade A portion of a plant meeting the conditions of paragraph (a) or (b) of this section and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section; and

(4) Facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a pool plant or part of a pool plant pursuant to this section.

§ 1061.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant or an exempt governmental plant and from which fluid milk products eligible for sale as Grade A in consumer-type packages or dispenser units or filled milk are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not an other order plant, a producer-handler plant or an exempt governmental plant and from which a Grade A fluid milk product or filled milk is shipped during the month to a pool plant.

(e) "Exempt governmental plant" means a distributing or supply plant operated by a governmental agency.

§ 1061.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant(s);

(b) Any cooperative association with respect to producer milk which it causes to be diverted for its account from a pool plant of another handler pursuant to § 1061.13;

(c) Any cooperative association with respect to milk of its producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant from which during the month fluid milk products are either disposed of as route disposition in the marketing area or shipped to a pool plant.

§ 1061.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant from which Class I milk of his own production is disposed of as route disposition in the marketing area, and who receives no milk or fluid milk products from the farms of other dairy farmers nor from any other source, except receipts by plant transfer from pool plants and who receives no nonfluid milk products from any source for use in reconstituted fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk and milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are wholly the personal enterprise and risk of such person.

§ 1061.11 [Reserved]

§ 1061.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority which milk is received as producer milk at a pool plant, or diverted pursuant to § 1061.13.

(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 § 1061.44(a)(8)(iii) and the corresponding step of § 1061.44(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.

§ 1061.13 Producer milk.

"Producer milk" means the skim milk and butterfat in Grade A milk:

(a) Received at a pool plant directly from a producer;

(b) Received at a pool plant from a handler described in § 1061.9(c);

(c) Received by a handler described in § 1061.9(c) from producers in excess of the quantity delivered to pool plants; or

(d) Moved as diverted milk, subject to the conditions in paragraphs (d)(1), (2), and (3) of this section, from a pool plant to a nonpool plant that is not a producer-handler plant. "Diverted milk" means, for any month, milk produced by a dairy farmer which a pool plant handler or a handler described in § 1061.9(b) caused to be moved from the farm to a nonpool plant that is not a producer-handler plant if such milk is claimed as producer milk and the following conditions have been met:

(1) During the months of February through August a cooperative association handler pursuant to § 1061.9(b), may divert for its account, without limit on the remaining days, the milk of any member who was a producer during the previous month or whose milk is delivered to a pool plant on at least 1 day during the current month. During the months of September through January such handler may divert as producer milk the milk of any member producer whose milk is delivered to a pool plant described in § 1061.7(a) on at least 1 day during the month except that the aggregate quantity of producer milk diverted by such handler shall not exceed the quantity of milk delivered during that month by all its member producers to pool plants described in § 1061.7(a);

(2) During February through August a handler in his capacity as the operator of a pool plant may divert for his account, without limit on the remaining days, the milk of any dairy farmer who was a producer during the previous month or whose milk is received at his pool plant on at least 1 day during the

current month. During the months of September through January such handler may divert as producer milk the milk of any producer whose milk is received at his pool plant on at least 1 day during the month except that the aggregate quantity of producer milk diverted by such handler shall not exceed the quantity of milk received during the month at his pool plant from all producers except the member producers of a cooperative which diverted milk during the month pursuant to paragraph (d)(1) of this section; and

(3) If milk receipts from dairy farmers are diverted in excess of the quantities allowed pursuant to paragraphs (d)(1) and (2) of this section, the diverting handler shall specify the dairy farmers whose milk was overdiverted. If the diverting handler does not specify the dairy farmers whose milk was overdiverted, only the milk of dairy farmers which is received at a pool plant during the month shall be producer milk for such month.

§ 1061.14 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 § 1061.40(b)(1) from any source other than producers, handlers described in § 1061.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1061.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1061.40(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 § 1061.40(b)(1)) for which the handler fails to establish a disposition.

§ 1061.15 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 § 1061.40 (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.

§ 1061.16 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.

§ 1061.17 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).

§ 1061.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(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 full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1061.30 Reports of receipts and utilization.

On or before the eighth 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 § 1061.9(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 § 1061.40(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 § 1061.9(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.

§ 1061.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1061.9 (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 § 1061.76(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.

§ 1061.32 Other reports.

In addition to the reports required pursuant to §§ 1061.30 and 1061.31, 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

§ 1061.40 Classes of utilization.

Except as provided in § 1061.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1061.30 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 § 1061.15; and

(6) In shrinkage assigned pursuant to § 1061.41(a) to the receipts specified in § 1061.41(a)(2) and in shrinkage specified in § 1061.41(b) and (c).

§ 1061.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1061.30, 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 § 1061.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1061.9(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 § 1061.9 (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.

§ 1061.42 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 an other 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 § 1061.44(a)(12) and the corresponding step of § 1061.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1061.44(a)(7) or the corresponding step of § 1061.44(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 § 1061.44(a)(11) or (12) or the corresponding steps of § 1061.44(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 § 1061.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt governmental plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt governmental 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 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 an exempt governmental 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 receipt 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 § 1061.30 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.

§ 1061.43 General classification rules.

In determining the classification of producer milk pursuant to § 1061.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1061.30 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 § 1061.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1061.40, 1061.41, and 1061.42;

(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 § 1061.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1061.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1061.9(a) for each of his pool plants separately and of each handler described in § 1061.9 (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 § 1061.41 (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 § 1061.40(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 § 1061.40(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 § 1061.40(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 § 1061.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt governmental 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 paragarph (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 § 1061.40(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 § 1061.45(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 § 1061.42(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.

§ 1061.45 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 § 1061.44(a)(12) and the corresponding step of § 1061.44(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 § 1061.44 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 20th day of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler during the immediately preceding month from such cooperative association in its capacity as a handler pursuant to § 1061.9(c) and directly from members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after allocation pursuant to § 1061.44(a) (1) through (13), and the corresponding steps of § 1061.44(b).

CLASS PRICES

§ 1061.50 Class prices.

The class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.06.

(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.

§ 1061.51 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.

§ 1061.52 [Reserved]

§ 106.53 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.

§ 1061.54 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

§ 1061.60 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 § 1061.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1061.44 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 § 1061.44(a)(14) and the corresponding step of § 1061.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1061.74;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price 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 § 1061.44(a)(9) and the corresponding step of § 1061.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1061.44(a)(7) and the corresponding step of § 1061.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the Class I price by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1061.44(a)(11) and the corresponding step of § 1061.44(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

(f) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price for the preceding month and the Class III price for the current month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1061.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1061.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1061.60 for all handlers who filed reports pursuant to § 1061.30 for the month and who made payments pursuant to § 1061.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) 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 § 1061.60(e); and

(d) 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.

§ 1061.62 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

§ 1061.70 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 §§ 1061.71, 1061.76, and 1061.77 and out of which he shall make all payments due handlers pursuant to §§ 1061.72 and 1061.77: *Provided*, That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1061.71 Payments to the producer-settlement fund.

(a) On or before the 14th 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 § 1061.60.

(2) The sum of:

(i) The value at the uniform price of such handler's receipts of producer milk; and

(ii) The value at the uniform price of other source milk for which a value is computed pursuant to § 1061.60(e).

(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 and the Class III price.

§ 1061.72 Payments from the producer settlement fund.

On or before the 16th day after the end of each month, the market administrator shall pay, subject to the proviso of § 1061.70, to each handler the amount if any, by which the amount computed pursuant to § 1061.71(a)(2) exceeds the amount computed pursuant to § 1061.71 (a)(1).

§ 1061.73 Payments to producers and to cooperative associations.

Each handler shall make payment for milk received from producers or cooperative associations as follows:

(a) To each producer for whom payment is not made pursuant to paragraph (b) and (c) of this section:

(1) On or befoer the 20th day of the following month not less than the uniform price, adjusted by the butterfat differential computed pursuant to § 1061.71 and less the following amounts:

(i) The payments made pursuant to paragraph (a)(2) of this section;

(ii) Deductions for marketing service pursuant to § 1061.86; and

(iii) Any proper deductions authorized by the producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1061.72 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; and

(2) A partial payment on or before the fifth day of the following month to each producer who had not discontinued shipping milk to such handler at not less than the Class III price for the preceding month for producer milk received during the first 15 days of the month (without deduction for hauling);

(b) Payments required in paragraph (a) of this section shall be made on or before the second day prior to the dates set forth in paragraph (a) of this section to a cooperative association (except as specified in paragraph (c) of this section) qualified under § 1061.18, or its duly authorized agent, if the cooperative association so requests and the market administrator determines it is authorized by its members to collect payments for

their milk. Payments to the cooperative association under this paragraph shall be made subject to the condition that the association has provided the handler with a promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) On or before the 11th day after the end of the month, each handler shall pay a cooperative association which is a handler with respect to all skim milk and butterfat received by him from a pool plant operated by such cooperative association not less than the applicable class prices as adjusted by the butterfat differential specified in § 1061.74; and

(d) In making payment to individual producers as required by § 1061.73, each handler shall furnish each producer from whom he received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment to the producer is required pursuant to § 1061.73;

(4) The rate used in making the payment if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1061.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1061.74 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.

§ 1061.75 [Reserved]

§ 1061.76 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 §§ 1061.30(b) and 1061.31(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; 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 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 § 1061.60 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 § 1061.60 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 § 1061.60 for such handler shall include, in lieu of the value of other source milk specified in § 1061.60(e) less the value of such other source milk specified in § 1061.71(a)(2)(ii), a value of milk determined pursuant to § 1061.60 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 § 1061.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1061.30 (b) and 1061.31(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 § 1061.60 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 § 1061.74, 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 § 1061.74, 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.

§ 1061.77 Adjustment of accounts.

When verification by the market administrator of reports or payment of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such han-

dler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1061.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1061.71, 1061.76, and 1061.77 shall be increased three-fourths of 1 percent for each month or portion thereof that such obligation is overdue: *Provided*, That,

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than 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

§ 1061.85 Assessment for order administration.

As his pro rata share of the expense of administration, each handler shall pay to the market administrator on or before the 14th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to milk handled during the month as follows:

(a) Each handler (excluding a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant of another handler) with respect to his receipts of producer milk (including such handler's own-farm production, and milk received in bulk from a pool plant owned and operated by a cooperative association);

(b) Other source milk allocated to Class I pursuant to § 1061.44(a) (7) and (11) and the corresponding steps of § 1061.44(b), except such other source milk that is excluded from the computations pursuant to § 1061.60 (d) and (e); and

(c) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1061.76(a)(2).

§ 1061.86 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 § 1061.73 shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 18th day after the end of the month. Such moneys shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of member producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section such deductions as are authorized by such producers and, on or before the 18th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1063—MILK IN QUAD CITIES-DUBUQUE MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1063.1 General provisions.

DEFINITIONS

1063.2 Quad Cities-Dubuque marketing area.
1063.3 [Reserved]
1063.4 [Reserved]
1063.5 Distributing plant.
1063.6 Supply plant.
1063.7 Pool plant.
1063.8 Nonpool plant.
1063.9 Handler.
1063.10 Producer-handler.
1063.11 [Reserved]
1063.12 Producer.
1063.13 Producer milk.
1063.14 Other source milk.
1063.15 Fluid milk product.
1063.16 Fluid cream product.
1063.17 Filled milk.
1063.18 Cooperative association.

HANDLER REPORTS

1063.30 Reports of receipts and utilization.
1063.31 Payroll reports.
1063.32 Other reports.

CLASSIFICATION OF MILK

1063.40 Classes of utilization.
1063.41 Shrinkage.
1063.42 Classification of transfers and diversions.
1063.43 General classification rules.
1063.44 Classification of producer milk.
1063.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1063.50 Class prices.
1063.51 Basic formula price.
1063.52 Plant location adjustments for handlers.
1063.53 Announcement of class prices.
1063.54 Equivalent price.

UNIFORM PRICE

1063.60 Handler's value of milk for computing uniform price.
1063.61 Computation of uniform price.
1063.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1063.70 Producer-settlement fund.
1063.71 Payments to the producer-settlement fund.
1063.72 Payments from the producer-settlement fund.
1063.73 Payments to producers and to cooperative associations.
1063.74 Butterfat differential.
1063.75 Plant location adjustments for producers and on nonpool milk.
1063.76 Payments by handler operating a partially regulated distributing plant.
1063.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1063.85 Assessment for order administration.
1063.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1063 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1063.1 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

§ 1063.2 Quad Cities-Dubuque marketing area.

"Quad Cities-Dubuque marketing area", hereinafter called the marketing area, means the territory within the boundaries of the counties of Clinton, Dubuque, Jackson, Muscatine, and Scott in the State of Iowa; the counties of Henry, Mercer, and Rock Island, and the city of East Dubuque, in the State of Illinois, including territory within such boundaries that is occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other establishments.

§ 1063.3 [Reserved]

§ 1063.4 [Reserved]

§ 1063.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk from which any fluid milk product is processed or packaged and 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.

§ 1063.6 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 § 1063.7.

§ 1063.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which:

(1) The volume of Class I packaged fluid milk products, except filled milk, disposed of during the month either on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets or moved to other plants, less receipts of packaged fluid milk products, other than filled milk, from

other pool distributing plants, is not less than 45 percent (40 percent during each of the months of February through August) of the total Grade A fluid milk products, except filled milk, received at such plant, exclusive of receipts of packaged fluid milk products from other pool distributing plants and receipts from other order plants which are assigned pursuant to § 1063.44(a)(8)(iii) and the corresponding step of § 1063.44(b); and

(2) Not less than 15 percent of net receipts specified in paragraph (a)(1) of this section is so disposed of during the month in the marketing area on routes, except that a plant that meets such minimum requirement under this subparagraph during each of the months of September through January need dispose of only 10 percent or more of such receipts in the marketing area on routes during each of the following months of February through August.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of December through August, unless written application is filed with the market administrator on or before the 1st day of any of the months of December through August to be designated a nonpool plant for such month and for each subsequent month through August.

(c) A plant operated by a cooperative association from whose members the total pounds of producer milk received at the pool plants of other handlers during the month, or during the 12-month period immediately preceeding such month, are more than the total pounds of Grade A milk received at its plant from dairy farmers during the corresponding period: *Provided*, That if written application is filed with the market administrator on or before the 5th day of any month such plant may be designated a nonpool plant for such month and for any subsequent months.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant otherwise qualified as a pool plant pursuant to paragraph (a), (b), or (c), of this section during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under paragraph (a), (b), or (c), of this section and to retail and wholesale outlets in the Quad Cities-Dubuque marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order except in the following circumstances:

(i) If a distributing plant were qualified pursuant to paragraph (a) of this section during each of the 3 immediately preceding months, it would continue to be subject to all the provisions of this part until after the 3d consecutive month in which it remains so qualified and has a greater proportion of its fluid milk product disposition, except filled milk, made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated under such other order; or

(ii) A distributing plant qualified pursuant to paragraph (a) of this section that is fully regulated under another Federal order but which has greater fluid milk product (except filled milk) disposition during the month on routes in the Quad Cities-Dubuque marketing area and to pool plants qualified on the basis of route distribution in the Quad Cities-Dubuque marketing area than in such other Federal order marketing area; and

(3) 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.

§ 1063.8 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 in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1063.9 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 from producers diverted pursuant to § 1063.13 by the cooperative association for the account of such association;

(c) [Reserved]

(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 § 1063.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1063.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from producers or other source milk.

§ 1063.11 [Reserved]

§ 1063.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1063.13(b).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1063.44(a)(8)(iii) and the corresponding step of § 1063.44(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.

§ 1063.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk from a producer that is:

(a) Received at a pool plant; or

(b) Diverted by the operator of a pool plant or by a cooperative association to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) For pricing purposes under this part such milk shall be accounted for as received by the diverting handler at the location of the plant to which diverted: *Provided*, That milk diverted to a plant located less than 75 miles (by the shortest highway distance as determined by the market administrator) from the pool plant from which diverted or to a plant at which a higher uniform price would be applicable, shall be deemed to be received by the diverting handler at the location of the plant from which diverted; and

(2) In any of the months of September through January, milk diverted from the farm of a producer on days in excess of the number of days that milk was delivered to a pool plant from such farm during the month shall not be producer milk.

§ 1063.14 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 § 1063.40 (b) (1) from any source other than producers or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1063.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1063.40 (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 § 1063.40(b) (1)) for which the handler fails to establish a disposition.

§ 1063.15 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 § 1063.40 (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.

§ 1063.16 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.

§ 1063.17 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).

§ 1063.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

Handler Reports

§ 1063.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1063.40(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 § 1063.9 (b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1063.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1063.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1063.76 (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.

§ 1063.32 Other reports.

In addition to the reports required pursuant to §§ 1063.30 and 1063.31, 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

§ 1063.40 Classes of utilization.

Except as provided in § 1063.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1063.30 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 § 1063.15; and

(6) In shrinkage assigned pursuant to § 1063.41(a) to the receipts specified in § 1063.41(a)(2) and in shrinkage specified in § 1063.41 (b) and (c).

§ 1063.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1063.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant).

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1063.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1063.42 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 § 1063.44(a)(12) and the corresponding step of § 1063.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1063.44(a)(7) or the corresponding step of § 1063.44(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 § 1063.44 (a) (11) or (12) or the corresponding steps of § 1063.44(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 or-

der, classification under this paragraph shall be in accordance with the provisions of § 1063.40.

(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 § 1063.30 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.

§ 1063.43 General classification rules.

In determining the classification of producer milk pursuant to § 1063.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1063.30 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 § 1063.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1063.40, 1063.41, and 1063.42;

(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 § 1063.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1063.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1063.9(a) for each of his pool plants separately and of each handler described in § 1063.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1063.41(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 § 1063.40(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 § 1063.40(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 § 1063.40(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 § 1063.40(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 § 1063.40(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 § 1063.45(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 § 1063.42(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.

§ 1063.45 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 § 1063.44(a)(12) and the corresponding step of § 1063.44(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 § 1063.44 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 milk caused to be delivered by the cooperative association or 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

§ 1063.50 Class prices.

Subject to the provisions of § 1063.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.33.

(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.

§ 1063.51 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.

§ 1063.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1063.50(a) shall be adjusted as follows:

(1) At a plant in Dubuque and Jackson Counties, Iowa, and East Dubuque, Ill., subtract 10 cents;

(2) At a plant located outside the marketing area, north of U.S. Highway No. 80, and, except as provided in paragraph (a)(3) and (4) of this section, 70 miles or more, by the shortest hard-surfaced highway distance as determined by the market administrator, from the nearer of the City Hill, Rock Island, Ill., or the Post Office, West Liberty, Iowa, subtract 10 cents and subtract an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 80 miles;

(3) At a plant located in that Iowa territory beyond 70 miles from the nearer of the City Hall, Rock Island, Ill., or the Post Office, West Liberty, Iowa, and south of U.S. Highway No. 80, or within the Des Moines, Iowa, marketing area as specified in Part 1079, add any amount by which the price specified in § 1063.50(a) is exceeded by the applicable Class I price at the same location pursuant to Part 1079 regulating the handling of milk in the Des Moines, Iowa, marketing area; and

(4) At a plant located within the Central Illinois marketing area as specified in Part 1050, add any amount by which the price specified in § 1063.50(a) is exceeded by the applicable Class I price at the same location pursuant to Part 1050 regulating the handling of milk in the Central Illinois marketing area.

(b) For purposes of calculating such adjustments, transfers between pool plants shall be assigned Class I disposition at the tranferee-plant, in excess of the sum of receipts at such plant from producers, and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants having the same Class I price, next to transferor-plants having a higher Class I price, and then in sequence to the plants having a lower Class I price beginning with the plant

at which the highest Class I price 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.

§ 1063.53 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.

§ 1063.54 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

§ 1063.60 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 § 1063.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1063.44 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 § 1063.44(a)(14) and the corresponding step of § 1063.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1063.74, 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 § 1063.44 (a)(9) and the corresponding step of § 1063.44(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 § 1063.44(a)(7) (i) through (iv) and the corresponding step of § 1063.44 (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 § 1063.44(a)(7) (v) and (vi) and the corresponding step of § 1063.44 (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 § 1063.44 (a)(11) and the corresponding step of § 1063.44(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.

§ 1063.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price for milk of 3.5 percent butterfat content f.o.b. Rock Island, Ill., as follows:

(a) Combine into one total the values computed pursuant to § 1063.60 for all handlers who made the reports prescribed in § 1063.30 for such month, except those in default of payments required pursuant to § 1063.71 for the preceding month;

(b) Add the aggregate of the values of minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1063.75;

(c) Add an amount equal to one-half of the unobligated cash 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 § 1063.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the uniform price for milk received from producers.

§ 1063.62 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

§ 1063.70 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 §§ 1063.71, 1063.76, and 1063.77 and out of which he shall make all payments to handlers pursuant to §§ 1063.72 and 1063.77.

§ 1063.71 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 § 1063.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1063.75, 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 § 1063.60(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.

§ 1063.72 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 § 1063.71(a)(2) exceeds the amount computed pursuant to § 1063.71(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. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1063.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1063.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 17th day after the end of each month during which milk was received, to each producer for milk received from him and for which payment is not made pursuant to paragraph (b) of this section, at not less than the uniform price as adjusted pursuant to §§ 1063.74 and 1063.75.

(b) On or before the 15th day after the end of each month during which the milk was received, to a cooperative association for milk which it caused to be delivered to such handler from producers, if such cooperative association is authorized to collect such payments for its member producers and exercises such authority, an amount equal to the sum of the individual payments otherwise payable to such producers.

(c) On or before the 10th 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 this part at the respective class prices, as adjusted by the butterfat differential specified in § 1063.74, that are applicable at the location of the receiving handler's pool plant.

§ 1063.74 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.

§ 1063.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk pursuant to § 1063.61 received at a pool plant shall be adjusted according to the location of the pool plant, at the rates set forth in § 1063.52; and

(b) For purposes of computations pursuant to §§ 1063.71 and 1063.72 the uniform price shall be adjusted at the rates set forth in § 1063.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1063.76 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 §§ 1063.30(b) and 1063.31(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, 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 § 1063.60 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 § 1063.60 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 § 1063.60 for such handler shall include, in lieu of the value of other source milk specified in § 1063.60(f) less the value of such other source milk specified in § 1063.71(a)(2)(ii), a value of milk determined pursuant to § 1063.60 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 § 1063.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1063.30(b) and 1063.31(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 § 1063.60 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 § 1063.74, 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 § 1063.74, 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.

§ 1063.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1063.85 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 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to: (a) Producer milk, (b) other source milk allocated to Class I pursuant to § 1063.44(a) (7) and (11) and the corresponding steps of § 1063.44(b), except such other source milk that is excluded from the computations pursuant to § 1063.60 (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 § 1063.76(a)(2).

§ 1063.86 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 § 1063.73, shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from 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.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make 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.

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1064.1 General provisions.

DEFINITIONS

1064.2 Greater Kansas City marketing area.
1064.3 Route disposition.
1064.4 [Reserved]
1064.5 Distributing plant.
1064.6 Supply plant.
1064.7 Pool plant.
1064.8 Nonpool plant.
1064.9 Handler.
1064.10 Producer-handler.
1064.11 [Reserved]
1064.12 Producer.
1064.13 Producer milk.
1064.14 Other source milk.
1064.15 Fluid milk product.
1064.16 Fluid cream product.
1064.17 Filled milk.
1064.18 Cooperative association.

HANDLER REPORTS

1064.30 Reports of receipts and utilization.
1064.31 Payroll reports.
1064.32 Other reports.

CLASSIFICATION OF MILK

1064.40 Classes of utilization.
1064.41 Shrinkage.
1064.42 Classification of transfers and diversions.
1064.43 General classification rules.
1064.44 Classification of producer milk.
1064.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1064.50 Class prices.
1064.51 Basic formula price.
1064.52 Plant location adjustments for handlers.
1064.53 Announcement of class prices.
1064.54 Equivalent price.

UNIFORM PRICES

1064.60 Handler's value of milk for computing uniform price.
1064.61 Computation of uniform price (including weighted average price and base and excess prices).
1064.62 Announcement of uniform prices and butterfat differential.

PAYMENTS FOR MILK

1064.70 Producer-settlement fund.
1064.71 Payments to the producer-settlement fund.
1064.72 Payments from the producer-settlement fund.
1064.73 Payments to producers and to cooperative associations.
1064.74 Butterfat differential.
1964.75 Plant location adjustments for producers and on nonpool milk.
1964.76 Payments by handler operating a partially regulated distributing plant.
1964.77 Adjustment of accounts.
1064.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1064.85 Assessment for order administration.
1064.86 Deduction for marketing services.

BASE-EXCESS PLAN

Sec.
1064.90 Base milk and excess milk.
1064.91 Computation of daily base for each producer.
1064.92 Daily base rules.
1064.93 Announcement of bases.

ADVERTISING AND PROMOTION PROGRAM

1064.110 Agency.
1064.111 Composition of Agency.
1064.112 Term of office.
1064.113 Selection of Agency members.
1064.114 Agency operating procedure.
1064.115 Powers of the Agency.
1064.116 Duties of the Agency.
1064.117 Advertising, Research, Education and Promotion Program.
1064.118 Limitation of expenditures by the Agency.
1064.119 Personal liability.
1064.120 Procedure for requesting refunds.
1064.121 Duties of the market administrator.
1064.122 Liquidation.

AUTHORITY: The provisions of this Part 1064 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1064.1 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

§ 1064.2 Greater Kansas City marketing area.

"Greater Kansas City marketing area," hereinafter called "marketing area," means all the territory within the boundaries of the counties listed below, including territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

MISSOURI COUNTIES

Andrew.	Henry.
Atchison.	Holt.
Bates.	Jackson.
Buchanan.	Johnson.
Cass.	Lafayette.
Clay.	Nodaway.
Clinton.	Pettis.
Daviess.	Platte.
De Kalb.	St. Clair.
Gentry.	Worth.

KANSAS COUNTIES

Atchison.	Marshall.
Brown.	Miami.
Clay.	Morris.
Cloud.	Nemaha.
Dickinson.	Ottawa.
Doniphan.	Pottawatomie.
Douglas.	Republic.
Geary.	Riley.
Jackson.	Saline.
Jefferson.	Shawnee.
Johnson.	Wabaunsee.
Leavenworth.	Washington.
Lyon.	Wyandotte.

§ 1064.3 Route disposition.

"Route disposition" means a delivery (either direct or through a distributing facility such as a distribution point, a plant store, a vendor, or vending ma-

chine), other than a delivery to a pool plant or a nonpool plant, of a fluid milk product classified as Class I milk.

§ 1064.4 [Reserved]

§ 1064.5 Distributing plant.

"Distributing plant" means a plant from which during the month there is route disposition in the marketing area of Grade A fluid milk products that are processed or packaged in such plant.

§ 1064.6 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product is shipped during the month to a pool plant.

§ 1064.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month or the immediately preceding month there is:

(1) Route disposition, except filled milk, in the marketing area that is not less than 15 percent of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to § 1064.13 by the handler operating such plant; and

(2) Route disposition, except filled milk, that is not less than the following percentage of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to § 1064.13 by the handler operating such plant: *Provided*, That the combined receipts and disposition of each handler who operates more than one distributing plant, each of which meets the performance requirements of paragraph (a)(1) of this section, shall be used in determining the percentages specified in this subparagraph:

(i) April through June, 35 percent;

(ii) September and October, 50 percent; and

(iii) All other months, 45 percent.

(b) A supply plant from which during the month 50 percent or more of the Grade A milk received at such plant from dairy farmers (including receipts from handler described in § 1064.9(c), except receipts of milk diverted pusuant to § 1064.13) is disposed of as fluid milk products (except filled milk) in one or both of the following ways: (1) Shipped to and received at pool distributing plants, or (2) as a route disposition sale in the marketing area. A supply plant which is a pool plant under this paragraph during each month of September through January shall be pooled for the following months of February through August, if the required percentage pursuant to this paragraph is not met, unless the plant operator files written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of shipments.

(c) A supply plant operated by a cooperative association in any month in which the member producer milk of such cooperative association received at pool distributing plants during the current month, or immediately preceding 12-month period ending with the current month, either by transfer from such supply plant or directly from member producers' farms, is 50 percent or more of such cooperative's total member producer milk. Such direct deliveries from member producers' farms shall be considered as having been received first at the plant of such cooperative association for the purpose of determining the qualification of such plant as a pool plant pursuant to this paragraph. If two or more cooperative associations desire to qualify a supply plant operated by one of the associations as a pool plant on the basis of their combined deliveries to pool distributing plants and have filed a written request to this effect with the market administrator on or before the first day of the month the agreement is effective, such a supply plant shall be a pool plant during the month if the above specified percentage of the total member producer milk of such cooperative associations was received at pool distributing plants during the current month, or the immediately preceding 12-month period ending with the current month.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant or supply plant operated by a State educational institution;

(3) A plant from which there is route disposition in the marketing area of less than an average of 600 pounds per day;

(4) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month a greater volume of fluid milk products, except filled milk, was disposed of as route disposition in such other marketing area and to pool plants qualified on the basis of route disposition in such other marketing area than was so disposed of in this marketing area except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its fluid product disposition, except filled milk, is made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(5) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month a greater volume of fluid milk products, except filled milk, was disposed of as route disposition in this marketing area and to pool plants qualified on the basis of route disposition in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(6) A supply plant meeting the pooling requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order, and which has greater direct marketing area route disposition, except filled milk, and qualifying shipments to plants regulated under such other order than are made under this order, unless during any month of February through August automatic pool plant status for such plant is retained under this part for such month; and

(7) A supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant also qualified as a pool plant pursuant to paragraph (c) of this section.

§ 1064.8 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 the plant of a handler pursuant to § 1064.9(h), an other order plant, or 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 which is not an other order plant, a producer-handler plant, or a plant of a handler pursuant to § 1064.9(h) from which a fluid milk product is shipped during the month to a pool plant.

§ 1064.9 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 § 1064.13 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its producers which is received by the cooperative from the farm for delivery to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association if the cooperative association, prior to delivery, notifies the market administrator in writing that it will be the handler for the milk. Such milk shall be considered to have been received at the location of the pool plant to which delivery is made;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant that is either a distributing plant or a supply plant;

(g) Any person who operates an unregulated supply plant; and

(h) A State educational institution which operates either a nonpool distributing plant or supply plant.

§ 1064.10 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm and a distributing plant at which each of the following conditions is met during the month:

(a) Milk is received from the dairy farm of such person but from no other dairy farm;

(b) The butterfat or skim milk disposed of in the form of a fluid milk product does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm of such person and in the form of a fluid milk product from pool plants of other handlers; and

(c) Such person shall furnish proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for the production of milk in his name and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1064.11 [Reserved]

§ 1064.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1064.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act or a handler pursuant to § 1064.9(h);

(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 § 1064.44(a)(8)(iii) and the corresponding step of § 1064.44(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.

§ 1064.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer or a handler described in § 1064.9(c);

(b) Received by a handler described in § 1064.9(c) from producers in excess of the quantity delivered to pool plants; or

(c) Diverted, subject to the following conditions, from a pool plant to a pool supply plant or to a nonpool plant that is not a producer-handler plant. "Diverted milk" is milk normally received at a pool distributing plant but which is moved directly from a dairy farm to a nonpool plant as specified in this paragraph or to a pool supply plant for the account of a handler operating a pool distributing plant or a handler described in § 1064.9(b). Such milk shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted except that milk diverted to a plant located more than 125 miles by the shortest highway distance as determined by the market administrator from the nearest of the City Halls of Kansas City, Mo., or Topeka, Kans., shall be deemed to have been received at the location of the plant to which diverted in applying §§ 1064.52 and 1064.75:

(1) A handler described in § 1064.9(b) may divert for its account the milk of any member producer whose milk is received at a pool distributing plant for at least 1 day's delivery during the month, without limit during the other days of the month. The total quantity of milk so diverted may not exceed the larger of the following amounts:

(i) The total quantity of its member producer milk received at all pool distributing plants during the current month, or

(ii) The average daily quantity of its member producer milk received at pool distributing plants during the previous month, multiplied by the number of days in the current month.

(2) A handler operating a pool distributing 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 (c)(1) of this section, whose milk is received at his pool distributing plant for at least 1 day's delivery during the month, without limit during the other days of the month. However, the total quantity of milk so diverted may not exceed the larger of the following amounts:

(i) The total quantity of milk received at such plant during the current month from producers who are not members of a cooperative association that has diverted milk pursuant to paragraph (c)(1) of this section; or

(ii) The average daily quantity of milk received at such plant during the previous month from producers who are not members of a cooperative association that has diverted milk in the current month pursuant to paragraph (c)(1) of this section, multiplied by the number of days in the current month.

(3) Diversions in excess of the applicable percentages pursuant to paragraph (c)(1) and (2) of this section shall first be assigned to diversions to nonpool plants and any excess quantity assigned to nonpool plants shall not be producer milk and shall not be deemed to have been received by the diverting handler. The diverting handler shall specify the dairy farmers whose milk shall not be included as producer milk pursuant to this subparagraph. Excess diversions to a pool supply plant shall be producer milk at the supply plant in applying §§ 1064.7 1064.52, and 1064.75.

§ 1064.14 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 § 1064.40(b)(1) from any source other than producers, handlers described in § 1064.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1064.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1064.40(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 § 1064.40(b)(1)) for which the handler fails to establish a disposition.

§ 1064.15 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 § 1064.40 (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.

§ 1064.16 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.

§ 1064.17 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).

§ 1064.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members.

HANDLER REPORTS

§ 1064.30 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 § 1064.9(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 § 1064.40(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 § 1064.9 (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.

§ 1064.31 Payroll reports.

(a) On or before the 23d day after the end of each month, each handler described in § 1064.9 (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 § 1064.76(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.

§ 1064.32 Other reports.

In addition to the reports required pursuant to §§ 1064.30 and 1064.31, the following shall be reported to the market administrator:

(a) On or before the seventh day after the end of each month with respect to receipts at each plant of milk from each producer, each handler described in § 1064.9 (a) and (b) shall report the average butterfat test, the pounds of butterfat contained therein, the number of days on which milk was received from such producer and for each of the months of February through July, the pounds of base and excess milk received from each producer;

(b) On or before the seventh day after the end of each month of February through July, each handler described in § 1064.9(c) shall report the quantities of skim milk and butterfat in producer milk for which it is the handler that is base milk and excess milk; and

(c) 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

§ 1064.40 Classes of utilization.

Except as provided in § 1064.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1064.30 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 § 1064.15; and

(6) In shrinkage assigned pursuant to § 1064.41(a) to the receipts specified in

§ 1064.41(a)(2) and in shrinkage specified in § 1064.41 (b) and (c).

§ 1064.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1064.30, 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 § 1064.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1064.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1064.9 (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.

§ 1064.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant (to a pool supply plant, in the case of diversion) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1064.44 (a)(12) and the corresponding step of § 1064.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1064.44(a)(7) or the corresponding step of § 1064.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1064.44(a) (11) or (12) or the corresponding steps of § 1064.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators; transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1064.40.

(c) *Transfers to producer-handlers and transfers and diversions to a State educational institution plant.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a plant of a handler described in § 1064.9(h) shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product, except that if a handler described in § 1064.9(h) certifies that the fluid milk product is acquired for use in Class II or Class III products for research or educational purposes, such fluid milk product shall be classified in the applicable lower class; 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 plant of a handler pursuant to § 1064.9(h) 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 § 1064.30 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 package 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.

§ 1064.43 General classification rules.

In determining the classification of producer milk pursuant to § 1064.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1064.30 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 § 1064.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1064.40, 1064.41, and 1064.42;

(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 § 1064.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1064.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1064.9(a) for each of his pool plants separately and of each handler described in § 1064.9 (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 § 1064.41(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 § 1064.40(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 § 1064.40(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 § 1064.40(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 prod-

uct) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1064.40(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 handler described in § 1064.9(h);

(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 § 1064.40(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 § 1064.45(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 § 1064.42(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.

§ 1064.45 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 § 1064.44(a)(12) and the corresponding step of § 1064.44(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 § 1064.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from such cooperative association in its capacity as a handler described in § 1064.9(c) and directly from members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after the allocation pursuant to § 1064.44(a)(1) through (13) and the corresponding steps of § 1064.44(b).

CLASS PRICES

§ 1064.50 Class prices.

Subject to the provisions of § 1064.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.74.

(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.

§ 1064.51 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.

§ 1064.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside the marketing area and more than 50 miles but not more than 70 miles by shortest highway distance as measured by the market administrator, from the nearer of the City Halls in Kansas City, Mo., or Topeka, Kans., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1064.50(a) shall be reduced by 10 cents, and by an additional 1.5 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from such City Hall.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned to the Class I disposition at the transferee-plant prorated with the sum of receipts at such plant of producer milk and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants.

(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.

§ 1064.53 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.

§ 1064.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1064.60 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 § 1064.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1064.44 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 § 1064.44(a)(14) and the corresponding step of § 1064.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1064.74, 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 § 1064.44(a)(9) and the corresponding step of § 1064.44(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 § 1064.44(a)(7)(i) through (iv) and the corresponding step of § 1064.44(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 § 1064.44(a)(7)(v) and (vi) and the corresponding step of § 1064.44(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 § 1064.44(a)(11) and the corresponding step of § 1064.44(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.

§ 1064.61 Computation of uniform price (including weighted average price and base and excess prices).

(a) For each month the market administrator shall compute the "uniform price" per hundredweight of milk of 3.5 percent butterfat content received from producers (or "weighted average price") as follows:

(1) Combine into one total the values computed pursuant to § 1064.60 for all handlers who filed the reports prescribed by § 1064.30 for the month and who made the payments pursuant to §§ 1064.71 and 1064.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1064.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section by 5 cents;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1064.60(f); and

(6) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price" and for the months of August through January shall be the "uniform price" for milk received from producers.

(b) For each month of February through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk as follows:

(1) Subtract from the amount resulting from the computations made pursuant to paragraph (a)(1) through (4) of this section an amount computed by multiplying the weighted average price plus 5 cents times the hundredweight of milk specified in paragraph (a)(5)(ii) of this section;

(2) Determine the value of excess milk by multiplying the hundredweight of producer milk determined to be excess milk in series beginning with Class III by the respective class prices minus 5 cents and adding together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract the value of excess milk obtained in paragraph (b)(2) of this section from the aggregate value of milk obtained in paragraph (b)(1) of this section and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent;

(5) Divide the amount obtained in paragraph (b)(4) of this section by the total hundredweight of producer milk determined to be base milk; and

(6) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (b)(5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content received from producers.

§ 1064.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform prices for such month.

Payments for Milk

§ 1064.70 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 funds received pursuant to paragraph (a) of this section and out of which he shall make all payments required pursuant to paragraph (b) of this section.

(a) Payments made by handlers pursuant to §§ 1064.71, 1064.76, and 1064.77.

(b) Payments due handlers pursuant to §§ 1064.72 and 1064.77: *Provided*, That payments due any handler shall be offset by payments due from such handler pursuant to §§ 1064.71, 1064.76, 1064.77, 1064.85, and 1064.86.

§ 1064.71 Payments to the producer-settlement fund.

(a) On or before the 14th 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 § 1064.60.

(2) The sum of:

(i) The amount required to be paid producers (including payments to producers through cooperative associations) pursuant to § 1064.73 before adjustment for butterfat content and before deductions authorized by the producer or cooperative association or for marketing services pursuant to § 1064.86; and

(ii) The value at the weighted average price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1064.60(f).

(b) During each month of February through July each handler pursuant to § 1064.9(c), on or before the 14th day after the end of the month, shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (b)(1) of this section exceeds the amount specified in paragraph (b)(2) of this section:

(1) The total value of such association's member producer milk at the applicable weighted average price computed pursuant to § 1064.61; and

(2) The total value of such association's member producer base and excess milk at the applicable uniform base and excess prices computed pursuant to § 1064.61.

(c) 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 (c)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1064.72 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 § 1064.71 (a)(2) or (b)(2) exceeds the amount computed pursuant to § 1064.71 (a)(1) or (b)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payment and shall complete such payments as soon as the necessary funds are available.

§ 1064.73 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 each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) or (d) of this section, at not less than the applicable uniform price(s) pursuant to § 1064.61, adjusted by the butterfat differential computed pursuant to § 1064.74 and the location adjustment to producers pursuant to § 1064.75, and less the following amounts: (1) the payments made pursuant to paragraph (b) of this section, (2) deductions for marketing services made pursuant to § 1064.86, and (3) any deductions authorized by the producer: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 1064.72 he may reduce his total payment to all producers uniformly by not less 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.

(b) On or before the 25th day of each month to each producer (1) for whom payment is not received from the handler by a cooperative association pursuant to paragraphs (c) and (d) of this section; and (2) who had not discontinued shipping milk to such handler before the 18th day of the month, a partial payment with respect to milk received from such producer during the first 15 days of the month at the approximate value of such milk, not to be less than the Class III price for the preceding month, without deduction for hauling.

(c) To a cooperative association which has filed a written request for such payment with such handler and with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 20th day of the month, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section less any deductions authorized in writing by such cooperative association; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association.

(d) To a cooperative association with respect to milk for which such association is acting in the capacity of a handler pursuant to § 1064.9(c):

(1) On or before the 20th day of the month an amount equal to the rate specified in paragraph (b) of this section times the volume received during the first 15 days of the month; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the value of such milk at the applicable weighted average or uniform price pursuant to § 1064.61(a), as adjusted pursuant to §§ 1064.74 and 1064.75, less payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of §§ 1064.73, 1064.74, and 1064.75;

(4) The rate which is used in making payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (b) of this section and § 1064.86 together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

(f) Each handler who receives milk from producers, payment for which is to be made to a cooperative association pursuant to paragraph (c) of this section, shall report to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) On or before the 23d day of the month, the total pounds of milk received during the first 15 days of the month; and

(2) On or before the seventh day after the end of the month:

(i) The pounds per shipment, the total pounds of milk and the average butterfat test of milk received from such producer during the month;

(ii) The amount or rate and nature of any deductions; and

(iii) The amount of any payments due such producer pursuant to § 1064.77.

§ 1064.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1064.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price pursuant to § 1064.61(a) and the uniform price for base milk pursuant to § 1064.61(b) for producer milk received at a pool plant or diverted from a pool plant shall be reduced according to the location of the pool plant at the rate set forth in § 1064.52, subject to § 1064.13(c).

(b) For purposes of computations pursuant to §§ 1064.71 and 1064.72 the weighted average price shall be adjusted at the rates set forth in § 1064.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price plus 5 cents shall not be less than the Class III price.

§ 1064.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant, except a plant described in § 1064.7(d)(3), 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 §§ 1064.30(b) and 1064.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1064.60 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 § 1064.60 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 § 1064.60 for such handler shall include, in lieu of the value of other source milk specified in § 1064.60(f) less the value of such other source milk specified in § 1064.71(a)(2)(ii), a value of milk determined pursuant to § 1064.60 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 § 1064.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1064.30(b) and 1064.31(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 § 1064.60 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 § 1064.74, 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 § 1064.74, 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.

§ 1064.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due the market administrator or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of the amount due and payment therefor shall be made within 5 days if such amount is due the market administrator, or on or before the next date for making payments to producers or a cooperative association, if such amount is due them. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made within 5 days.

§ 1064.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1064.71, 1064.73, 1064.77, 1064.85, and 1064.86 shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

Administrative Assessment and Marketing Service Deduction

§ 1064.85 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 12th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, of:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1064.44(a)(7) and (11) and the corresponding steps of § 1064.44(b), except such other source milk that is excluded from the computations pursuant to § 1064.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant (except from a plant described in § 1064.7(d)(3)) as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1064.76(a)(2).

§ 1064.86 Deduction for marketing services.

(a) *Deductions.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself pursuant to § 1064.73(a), shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the month, and shall pay such deductions to the market administrator on or before the 12th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from and to provide market information to such producers.

(b) *Deductions with respect to members of a cooperative association.* In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from the payments to be made directly to producers pursuant to § 1064.73(a), as are authorized by such producers, and on or before the 12th day after the end of each month, pay over such deductions to the association of which such producers are members, accompanied by a statement showing the amount of the deduction and the quantity of milk for which it was computed for each such producer.

BASE-EXCESS PLAN

§ 1064.90 Base milk and excess milk.

(a) "Base milk" means that producer milk received by a handler from a producer in each month of February through July that is not in excess of such producer's daily base computed pursuant to § 1064.91 multiplied by the number of days of production in the month that such milk was received by the handler.

(b) "Excess milk" means that producer milk received by a handler from a producer in each month of February through July that is in excess of base milk received from such producer in such month and shall include all milk received from a producer for whom no daily base can be computed pursuant to § 1064.91.

§ 1064.91 Computation of daily base for each producer.

The daily base for each producer applicable during each month of February through July, inclusive, shall be determined by the market administrator as follows: Divide the total pounds of milk received by a handler at a pool plant from such producer during the immediately preceding months of September through December by the number of days during such period on which milk was received from such producer or by 90 whichever is greater. In the case of producers delivering milk to a plant which first became a pool plant during or after the end of the base-forming period, the daily average base for eacn producer at such plant shall be that which would have been calculated for such producers for the entire base-forming period if the handler's plant had been a pool plant during such period.

§ 1064.92 Daily base rules.

(a) Except as provided in paragraph (b) of this section, a daily base shall apply only to milk produced by the producer in whose name such milk was delivered to the handler(s) during the base-forming period.

(b) A producer may transfer his daily base during the period of February through July by notifying the market administrator in writing before the last day of any delivery period that such base is to be transferred to the person named in such notice but under the following conditions only:

(1) In the event of the death or entry into military service of a producer, the entire daily base may be transferred to a member of such producer's immediate family who carries on the dairy operation on the same farm; and

(2) If a base is held jointly and such joint holding is terminated on the basis of written notice to the market administrator from the joint holders the entire daily base may be transferred to one of the joint holders, or divided in accordance with such notice between the former joint holders if they continue dairy operations.

§ 1064.93 Announcement of bases.

On or before February 1 of each year the market administrator shall notify in writing each producer who made deliveries of milk during the previous September through December and the handler receiving milk from such producer of the daily base established by such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1064.110 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 § 1064.121 (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.

§ 1064.111 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 § 1064.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to § 1064.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1064.113 (c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1064.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives but not less than five.

§ 1064.112 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.

§ 1064.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1064.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1064.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of

concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1064.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1064.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1064.110 and 1064.117.

1064.116 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 §§ 1064.110 and 1064.117;

(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 power 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.

§ 1064.117 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.

§ 1064.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1064.121(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.

§ 1064.119 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.

§ 1064.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1064.61(a)(4): *Provided*, That such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1064.61(a)(4).

§ 1064.121 Duties of the market administrator.

Except as specified in § 1064.116, 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 § 1064.113(c);

(b) Set aside the amounts subtracted under § 1064.61(a)(4) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1064.61(a)(4).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1064.120. Such refund shall be computed at the rate of 5 cents per hunderdweight of such producer's milk pooled for which deductions were made pursuant to § 1064.61(a)(4) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1064.110 through 1064.122).

(d) Make necessary audit to establish that all Agency funds are used only for authorized purposes.

§ 1064.122 **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 § 1064.70.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1065.1 General provisions.

DEFINITIONS

1065.2 Nebraska-Western Iowa marketing area.
1065.3 Route disposition.
1065.4 [Reserved]
1065.5 Distributing plant.
1065.6 Supply plant.
1065.7 Pool plant.
1065.8 Nonpool plant.
1065.9 Handler.
1065.10 Producer-handler.
1065.11 [Reserved]
1065.12 Producer.
1065.13 Producer milk.
1065.14 Other source milk.
1065.15 Fluid milk product.
1065.16 Fluid cream product.
1065.17 Filled milk.
1065.18 Cooperative association.

HANDLER REPORTS

1065.30 Reports of receipts and utilization.
1065.31 Payroll reports.
1065.32 Other reports.

CLASSIFICATION OF MILK

1065.40 Classes of utilization.
1065.41 Shrinkage.
1065.42 Classification of transfers and diversions.
1065.43 General classification rules.
1065.44 Classification of producer milk.
1065.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1065.50 Class prices.
1065.51 Basic formula price.
1065.52 Plant location adjustments for handlers.
1065.53 Announcement of class prices.
1065.54 Equivalent price.

UNIFORM PRICE

1065.60 Handler's value of milk for computing uniform price.
1065.61 Computation of uniform price.
1065.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1065.70 Producer-settlement fund.
1065.71 Payments to the producer-settlement fund.
1065.72 Payments from the producer-settlement fund.
1065.73 Payments to producers and to cooperative associations.
1065.74 Butterfat differential.
1065.75 Plant location adjustments for producers and on nonpool milk.
1065.76 Payments by handler operating a partially regulated distributing plant.
1065.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

Sec.
1065.85 Assessment for order administration.
1065.86 Deduction for marketing services.

ADVERTISING AND PROMOTION PROGRAM

1065.110 Agency.
1065.111 Composition of Agency.
1065.112 Term of office.
1065.113 Selection of Agency members.
1065.114 Agency operating procedure.
1065.115 Powers of the Agency.
1065.116 Duties of the Agency.
1065.117 Advertising, Research, Education and Promotion Program.
1065.118 Limitation of expenditures by the Agency.
1065.119 Personal liability.
1065.120 Procedure for requesting refunds.
1065.121 Duties of the market administrator.
1065.122 Liquidation.

AUTHORITY: The provisions of this Part 1065 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1065.1 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

§ 1065.2 Nebraska-Western Iowa marketing area.

The "Nebraska-Western Iowa marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of the counties and townships listed below, including such territory as is now occupied and as may be occupied in the future by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments. Where such establishment is partly within and partly without the designated boundaries, the marketing area shall include the entire area encompassed by such establishment.

(a) *Zone 1.*

IOWA COUNTIES

Fremont.
Harrison.
Monona.
Mills.
Pottawattamie (only the townships of Boomer, Crescent, Garner, Hardin, Hazel Dell, Kane, Keg Creek, Lake, Lewis, Minden, Neola, Norwalk, Rockford, Silver Creek, Washington, and York.)
Woodbury.

NEBRASKA COUNTIES

Antelope.
Boone.
Burt.
Butler.
Cass.
Cedar.
Clay.
Colfax.
Cuming.
Dakota.
Dixon.
Dodge.
Douglas.
Fillmore.
Gage.
Hamilton.
Jefferson.
Johnson.
Knox.
Lancaster.
Madison.
Merrick.
Nance.
Nemaha.
Nuckolls.
Otoe.
Pierce.
Platte.
Polk.
Saline.
Sarpy.
Saunders.
Seward.
Stanton.
Thayer.
Thurston.
Washington.
Wayne.
York.

SOUTH DAKOTA

That portion of Union County comprising Jefferson Township, North Sioux City, and the unorganized territory adjacent thereto, as defined and mapped in the United States 1960 Census of Population.

(b) *Zone 2.*

IOWA COUNTIES

Cass.
Cherokee.
Crawford.
Ida.
Montgomery.
O'Brien.
Page.
Plymouth.
Sac.
Shelby.
Sioux.
Pottawattamie (that portion not otherwise included in Zone 1).

(c) *Zone 3.*

NEBRASKA COUNTIES

Adams.
Banner.
Box Butte.
Buffalo.
Cheyenne.
Custer.
Dawes.
Dawson.
Deuel.
Franklin.
Frontier.
Furnas.
Garden.
Gosper.
Greeley.
Hall.
Harlan.
Howard.
Kearney.
Keith.
Kimball.
Lincoln.
Morrill.
Phelps.
Red Willow.
Scotts Bluff.
Sheridan.
Sherman.
Sioux.
Valley.
Webster.

§ 1065.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or through a distribution point, or sale from a plant store) of a fluid milk product classified as Class I to retail or wholesale outlets other than a delivery in bulk to a milk plant.

§ 1065.4 [Reserved]

§ 1065.5 Distributing plant.

"Distributing plant" means a plant which is approved by a duly constituted health authority for the processing or packaging of Grade A milk and from which there is route disposition of any fluid milk product during the month in the marketing area.

§ 1065.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable to a duly constituted health authority for distribution in the marketing area as Grade A milk, is shipped during the month to a pool plant qualified pursuant to § 1065.7.

§ 1065.7 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 not less than 15 percent of the Grade A milk received at such plant from dairy farmers, supply plants (exclusive of plants qualifying as pool plants pursuant to this paragraph), and handlers described in § 1065.9(c); and

(2) Total route disposition, except filled milk, equal to not less than 35 percent of the Grade A milk received at the plant from the sources specified in paragraph (a)(1) of this section.

(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 handlers described in § 1065.9(c) during such month. A supply plant that qualifies as a pool plant in each of the immediately preceding months of August through December shall be a pool plant for the succeeding months of January through July, unless the plant operator requests the market administrator, in writing, that such plant not be a pool plant, such nonpool plant status to be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments.

(c) A supply plant operated by a cooperative association if, during the month, 51 percent or more of the producer milk of members of the association is received at a pool distributing plant(s) of another handler(s), or is transferred to such plant(s) from the association's supply plant.

(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 from which a lesser volume of fluid milk products (not including filled milk) is disposed of in the Nebraska-Western Iowa marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period of January through July, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act; 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 a duly constituted health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1065.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1065.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant. In case a corporation with recognized divisions which are operated as separate business units operates two or more pool plants, each such division shall be the handler with respect to the pool plant(s) it operates;

(b) Any cooperative association with respect to milk of its member producers which is diverted pursuant to § 1065.13 for the account of such association;

(c) A cooperative association with respect to 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. The milk shall be deemed to have been received from producers by the cooperative association at the location of the plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1065.7(d).

§ 1065.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and fluid milk products from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products for reconstituting into fluid milk products; and

(c) The maintenance, care, and management of the dairy animals and other resources necessary to produce the milk, and the processing, packaging, and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

§ 1065.11 [Reserved]

§ 1065.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is received at a pool plant or by a handler described in § 1065.9(c) or is diverted as producer milk pursuant to § 1065.13.

(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 § 1065.44 (a)(8)(iii) and the corresponding step of § 1065.44(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.

§ 1065.13 Producer milk.

"Producer milk" of each handler means all skim milk and butterfat contained in milk from producers that is:

(a) Received from producers at a pool plant;

(b) Received from producers by a cooperative association handler described in § 1065.9(c);

(c) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant pursuant to paragraph (c) (1) or (2) of this section, subject to the conditions set forth in paragraph (c) (3) and (4) of this section;

(1) A cooperative association handler described in § 1065.9(b) may divert for its account the milk of any member-producer if at least 2 days' production of such producer is received at a pool plant(s) during the month. The total quantity of milk so diverted by the cooperative association handler shall not exceed, in each of the months of January, February, March, September, October, and November, 30 percent, and in any other month 40 percent, of the larger of:

(i) The total quantity of milk of member-producers received at all pool plants during the current month; or

(ii) The average daily quantity of milk of member-producers received at all pool plants during the immediately preceding month, multiplied by the number of days in the current month;

(2) A handler, other than a cooperative association, in his capacity as the operator of a pool plant, may divert for his account the milk of any producer other than a member of a cooperative association, if at least 2 days' production of such producer is received at the handler's pool plant(s) during the month. The total quantity of milk so diverted by the handler shall not exceed, in each of the months of January, February, March, September, October, and November, 30 percent, and in any other month 40 percent, of the larger of:

(i) The total quantity of milk of producers received at his pool plant(s) during the current month exclusive of milk received from producers who are members of a cooperative association; or

(ii) The average daily quantity of milk of producers received at his pool plant(s) during the immediately preceding month, exclusive of milk received from producers who are members of a cooperative association, multiplied by the number of days in the current month;

(3) In the event the quantity of milk diverted is in excess of the applicable quantity specified in paragraph (c)(1) and (2) of this section, the diverting handler shall designate the dairy farmers whose milk was overdiverted. If the

handler fails to make such designation, no milk diverted by him shall be producer milk for such month; and

(4) For the purposes of location adjustments pursuant to §§ 1065.52 and 1065.75, milk so diverted shall be priced at the location of the plant to which diverted.

§ 1065.14 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 § 1065.40(b)(1) from any source other than producers, handlers described in § 1065.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1065.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1065.40(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 § 1065.40(b)(1)) for which the handler fails to establish a disposition.

§ 1065.15 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, low-fat 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 § 1065.40(b) or (c)(1) (i) through (iv) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1065.16 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.

§ 1065.17 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).

§ 1065.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application of the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has full authority in the sale of milk of its members and is 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.

HANDLER REPORTS

§ 1065.30 Reports of receipts and utilization.

On or before the seventh day, excluding holidays, 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 § 1065.9(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 § 1065.40(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 § 1065.9(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.

§ 1065.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1065.9 (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 § 1065.76(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.

§ 1065.32 Other reports.

In addition to the reports required pursuant to §§ 1065.30 and 1065.31, 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

§ 1065.40 Classes of utilization.

Except as provided in § 1065.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1065.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products

(other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1065.15; and

(6) In shrinkage assigned pursuant to § 1065.41(a) to the receipts specified in § 1065.41(a)(2) and in shrinkage specified in § 1065.41(b) and (c).

§ 1065.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1065.30, 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 § 1065.9(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 § 1065.9 (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.

§ 1065.42 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 § 1065.9(c) to another handler's pool plant shall be classified as follows:

(1) Such transfers from a 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:

(i) 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 § 1065.44(a)(12) and the corresponding step of § 1065.44(b);

(ii) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1065.44(a)(7) or the corresponding step of § 1065.44(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

(iii) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1065.44(a) (11) or (12) or the corresponding steps of § 1065.44(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

(2) Such transfers by a handler described in § 1065.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class after the computations pursuant to § 1065.44(a)(13)(i) and the corresponding step of § 1065.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which

allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1065.40.

(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 § 1065.30 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.

§ 1065.43 General classification rules.

In determining the classification of producer milk pursuant to § 1065.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1065.30 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 § 1065.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1065.40, 1065.41, and 1065.42;

(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 § 1065.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1065.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1065.9(a) for each of his pool plants separately and of each handler described in § 1065.9 (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 § 1065.41 (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 miik 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 § 1065.40(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 § 1065.40(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 § 1065.40(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 § 1065.40(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 § 1065.9(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 § 1065.40(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 § 1065.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a) (12) (i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant according to the classification of such products pursuant to § 1065.42(a) (1); and

(ii) A handler described in § 1065.9(c) according to the classification of such products pursuant to § 1065.42(a) (2); 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.

§ 1065.45 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 § 1065.44(a) (12) and the corresponding step of § 1065.44(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 § 1065.44 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 the 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

§ 1065.50 Class prices.

Subject to the provisions of § 1065.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.60 for pool plants located in Zone 1, plus $1.50 in Zone 2, and plus $1.75 in Zone 3.

(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.

§ 1065.51 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-ten.n 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.

§ 1065.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant (or diverted to a nonpool plant) located outside the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section the Class I price shall be that effective pursuant to § 1065.50(a) at the nearest of the pricing zones as set forth in § 1065.2, subject to a reduction of 1.5 cents for each 10 road miles or fraction thereof that such plant is located more than 100 miles from the nearest of the city halls in Chadron, Grand Island, Lincoln, Norfolk, North Platte, Omaha, and Scottsbluff, all in the State of Nebraska, and Sioux City, Iowa.

(b) For the purpose of calculating such adjustments:

(1) All distances shall be by shortest hard-surfaced highways and/or all-weather roads, as determined by the market administrator; and

(2) 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 § 1065.9 (c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least 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.

§ 1065.53 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.

§ 1065.54 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

§ 1065.60 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 § 1065.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1065.44 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 § 1065.44(a)(14) and the corresponding step of § 1065.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1065.74, 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 § 1065.44(a)(9) and the corresponding step of § 1065.44(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 § 1065.44(a)(9) and the corresponding step of § 1065.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1065.44(a)(12) and the corresponding step of § 1065.44(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 § 1065.44(a)(7) (i) through (iv) and the corresponding step of § 1065.44(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 § 1065.44(a)(7) (v) and (vi) and the corresponding step of § 1065.44 (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 § 1065.44(a)(11) and the corresponding step of § 1065.44(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.

§ 1065.61 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 which is received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1065.60 for all handlers who filed the reports prescribed by § 1065.30 for the month and who made the payments pursuant to §§ 1065.71 and 1065.73 for the preceding month;

(b) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1065.75;

(c) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1065.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section by 5 cents;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1065.60 (f); and

(g) 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.

§ 1065.62 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

§ 1065.70 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 §§ 1065.71, 1065.76, and 1065.77, and out of which he shall make all payments pursuant to §§ 1065.72 and 1065.77.

§ 1065.71 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 § 1065.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1065.75, 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 § 1065.60(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.

§ 1065.72 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 § 1065.71(a)(2) exceeds the amount computed pursuant to § 1065.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler.

§ 1065.73 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 each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) or (d) of this section, at not less than the uniform price pursuant to § 1065.61, as adjusted pursuant to §§ 1065.74 and 1065.75, and less the following amounts:

(1) The payments made pursuant to paragraph (b) of this section;

(2) Deductions for marketing services pursuant to § 1065.86; and

(3) Any proper deductions authorized by the producer: *Provided,* That, if by such date such handler has not received full payment for such month pursuant to § 1065.72, 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;

(b) On or before the 27th day of each month to each producer:

(1) For whom payment is not received from the handler by a cooperative association pursuant to paragraph (c) or (d) of this section; and

(2) Who had not discontinued shipping milk to such handler, an advance payment with respect to milk received from such producer during the first 15 days of the month an amount per hundredweight not to be less than the uniform price for the preceding month;

(c) To a cooperative association which has filed a written request for such payment with such handler and with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 26th day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 14th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association;

(d) To a cooperative association with respect to receipts of milk for which such cooperative association is the handler pursuant to § 1065.9(c) as follows:

(1) On or before the 26th day of the month, for milk received during the first 15 days of the month an amount per hundredweight equal to not less than the uniform price for the preceding month; and

(2) On or before the 14th day after the end of each month not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1065.74, that are applicable at the location of the receiving handler's pool plant, less payment made pursuant to paragraph (d)(1) of this section;

(e) In making payments to producers pursuant to paragraphs (a) and (c) of this section, each handler shall furnish each producer or cooperative association with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate at which payment to the producer is required under the provisions of §§ 1065.61, 1065.74, and 1065.75;

(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 of each deduction claimed by the handler, including any deduction claimed under paragraph (b) of this section and § 1065.86 together with a description of the respective deductions; and

(6) The net amount of payment to the producer; and

(f) Nothing in this section shall abrogate the right of a cooperative association to make payments to its member producers in accordance with the payment plan of such cooperative association.

§ 1065.74 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.

§ 1065.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price computed pursuant to § 1065.61 shall be decreased 10 cents per hundredweight for producer milk received at a pool plant located in Zone 2, and shall be increased 15 cents per hundredweight at pool plants located in Zone 3.

(b) For producer milk received at a pool palnt or diverted to a nonpool plant located outside the marketing area the uniform price shall be that effective at the nearest of the pricing zones as set forth in § 1065.2, subject to a reduction at the rates set forth in § 1065.52.

(c) For purposes of computations pursuant to §§ 1065.71 and 1065.72 the uniform price shall be adjusted at the rates set forth in § 1065.52 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.

§ 1065.76 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 §§ 1065.30(b) and 1065.31(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 § 1065.60 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 § 1065.60 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 § 1065.60 for such handler shall include, in lieu of the value of other source milk specified in § 1065.60(f) less the value of such other source milk specified in § 1065.71(a)(2)(ii), a value of milk determined pursuant to § 1065.60 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 § 1065.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1065.30(b) and 1065.31(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 § 1065.60 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 § 1065.74, 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 § 1065.74, 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.

§ 1065.77 Adjustment of accounts.

Adjustments of accounts shall be made as follows:

(a) Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or from the producer-settlement fund pursuant to §§ 1065.71 and 1065.72, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the account so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make such payment to such handler; and

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association, discloses payments of less than is required by § 1065.73, the handler shall make up such payment to the producer or cooperative association not later than the time of making payments next following such disclosure.

Administrative Assessment and Marketing Service Deduction

§ 1065.85 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 14th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that classified pursuant to § 1065.42(a)(2)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1065.44(a) (7) and (11) and the corresponding steps of § 1065.44(b), except such other source milk that is excluded from the computation pursuant to § 1065.60 (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 § 1065.76(a)(2).

§ 1065.86 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 § 1065.73 shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to producer milk received by such handler (except such handler's own farm production) during the month and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such service shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him; and

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

Advertising and Promotion Program

§ 1065.110 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 § 1065.121(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.

§ 1065.111 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 § 1065.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to § 1065.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1065.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1065.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

§ 1065.112 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.

§ 1065.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1065.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1065.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1065.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1065.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1065.110 and 1065.117.

§ 1065.116 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 §§ 1065.110 and 1065.117;

(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.

§ 1065.117 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.

§ 1065.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1065.121(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.

§ 1065.119 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.

§ 1065.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1065.61(e): *Provided;* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refunds with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1065.61(e).

§ 1065.121 Duties of the market administrator.

Except as specified in § 1065.116, 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 § 1065.113(c);

(b) Set aside the amounts subtracted under § 1065.61(e) 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 § 1065.61(e).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1065.120. 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 § 1065.61(e) 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 (§§ 1065.110 through 1065.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1065.122 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 § 1065.70.

PART 1068—MILK IN MINNEAPOLIS-ST. PAUL, MINN., MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1068.1 General provisions.

DEFINITIONS

1068.2 Minneapolis-St. Paul, Minn., marketing area.
1068.3 Route disposition.
1068.4 Plant.
1068.5 [Reserved]
1068.6 [Reserved]
1068.7 Pool plant.
1068.8 Nonpool plant.
1068.9 Handler.
1068.10 Producer-handler.
1068.11 [Reserved]
1068.12 Producer.
1068.13 Producer milk.
1068.14 Other source milk.
1068.15 Fluid milk product.
1068.16 Fluid cream product.
1068.17 Filled milk.
1068.18 Cooperative association.

HANDLER REPORTS

1068.30 Reports of receipts and utilization.
1068.31 Payroll reports.
1068.32 Other reports.

CLASSIFICATION OF MILK

1068.40 Classes of utilization.
1068.41 Shrinkage.
1068.42 Classification of transfers and diversions.
1068.43 General classification rules.
1068.44 Classification of producer milk.
1088.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1068.50 Class prices.
1068.51 Basic formula price.
1068.52 Plant location adjustments for handlers.
1068.53 Announcement of class prices.
1068.54 Equivalent price.

UNIFORM PRICE

1068.60 Handler's value of milk for computing uniform price.
1068.61 Computation of uniform price.
1068.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1068.70 Producer-settlement fund.
1068.71 Payments to the producer-settlement fund.
1068.72 Payments from the producer-settlement fund.
1068.73 Payments to producers and to cooperative associations.
1068.74 Butterfat differential.
1068.75 Plant location adjustments for producers and on nonpool milk.
1068.76 Payments by handler operating a partially regulated distributing plant.
1068.77 Adjustment of accounts.
1068.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1068.85 Assessment for order administration.
1068.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1068 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1068.1 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

§ 1068.2 Minneapolis-St. Paul, Minn., marketing area.

"Minneapolis-St. Paul, Minn., marketing area" (referred to in this part as the "marketing area") means all the territory within the boundaries of the townships and counties listed below. The marketing area shall include all territory that is now, or in the future, occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishment if any part of such territory is within the designated geographical limits of the marketing area.

MINNESOTA COUNTIES

Anoka.	Mille Lacs.
Benton.	Pine.
Carver.	Ramsey.
Chisago.	Renville.
Dakota.	Scott.
Hennepin.	Sherburne.
Isanti.	Sibley.
Kanabec.	Stearns.
Kandiyohi.	Washington.
McLeod.	Wright.
Meeker.	

WISCONSIN COUNTIES

In Pierce County, the townships of:

Clifton.	River Falls.

In St. Croix County, the townships of:

Hudson.	Stanton.
Kinnickinnic.	Star Prairie.
Richmond.	Troy.
St. Joseph.	Warren.
Somerset.	

§ 1068.3 Route disposition.

"Route disposition" means any delivery either inside or outside the marketing area (including disposition by a vendor or from a plant store or from vending machines) of any fluid milk product classified as Class I milk to a wholesale or retail stop, including any governmentally operated institution, but excluding any disposition of skim milk or butterfat not eligible for sale in fluid form as Grade A milk in the marketing area from a nonpool plant to any other plant or to a commercial processor of foods.

§ 1068.4 Plant.

"Plant" means the entire land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, maintained and operated at the same location primarily for the receiving, processing or other handling of milk or milk products (including filled milk). Under this definition any separate portion of a premises or facilities qualified under § 1068.7(b) used to receive, process, or otherwise handle milk shall be deemed to be a separate plant. This definition shall not include any building, premises, facilities, or equipment used primarily (a) to hold or store bottled milk or milk products (including filled milk) in finished form in transit for wholesale or retail distribution on a route(s), or (b) to transfer milk from one conveyance to another in transit from farm to plant of first receipt.

§ 1068.5 [Reserved]

§ 1068.6 [Reserved]

§ 1068.7 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section, but not any plant withdrawn pursuant to paragraph (c) of this section, or any plant exempt pursuant to paragraph (d) of this section.

(a) A plant in which milk is processed or packaged and from which not less than 15 percent of its total disposition of Class I milk (except filled milk) during the month either by the operator of such plant or by another person is route disposition within the marketing area: *Provided,* That the total quantity of Class I milk (except filled milk) disposed of from such plant during the month either inside or outside the marketing area, is equal to 30 percent or more of such plant's total receipts of skim milk and butterfat eligible for sale in fluid form as Grade A milk within the marketing area in any of the months of January through June, or to 50 percent or more of such total receipts in any of the months of July through December.

(b) Any plant from which during any month 30 percent or more of such plant's total receipts for such month from farms of skim milk or butterfat eligible for sale in fluid form as Grade A milk within the marketing area is delivered (except as filled milk) to (1) a plant(s) which has qualified pursuant to paragraph (a) of this section, (2) any other plants located within the marketing area from which route disposition is made within the marketing area, or (3) a governmentally owned and operated institution which disposes of Class I milk solely for use on its own premises or to its own facilities: *Provided,* That if during each of the months of September, October, and November, 30 percent or more of such plant's receipts of skim milk or butterfat for such month as described above is delivered as provided in this paragraph, it shall be a pool plant through the following August: *And provided further,* That any deliveries of milk by a cooperative association during the months of September, October, and November directly from a farm(s) of its producer member(s) to a plant(s) described in paragraph (a) of this section may be considered, for purposes of this paragraph, as having been received first at a plant of such cooperative association.

(c) Upon written request by the handler to the market administrator, received or postmarked on or before the last day of any month, any plant qualified as a pool plant pursuant to paragraph (b) of this section may be withdrawn from pool plant status beginning with the next month. Any such plant withdrawn from automatic pool plant status may not regain such status prior to the next September 1 and then only by meeting the requirements set forth in the first proviso of paragraph (b) of this section in the same manner as a plant qualifying for pool plant status for the first time.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant withdrawn pursuant to paragraph (c) of this section; or

(3) A plant qualified as a pool plant pursuant to paragraph (a) or (b) of this section if the conditions of paragraph (d)(3) (i) and (ii) of this section are met. Such plant shall be exempt from the provisions of this part except for reports that may be required pursuant to § 1068.30(d) and verification of such reports by the market administrator in accordance with § 1000.5 of this chapter:

(i) The Secretary determines that a greater quantity of milk in fluid form is disposed of from such plant to a regulated marketing area as defined in another order issued pursuant to the Act either as route disposition, excluding filled milk, or to pool plants qualified on the basis of route disposition than is disposed of from such plant in the Minneapolis-St. Paul marketing area either as route disposition, excluding filled milk, or to pool plants qualified on the basis of route disposition.

(ii) Such milk would be subject to the class price and producer payment provisions of the other marketing agreement or order upon being made exempt from this part.

§ 1068.8 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 and from which fluid milk products eligible for sale as Grade A in consumer-type packages or dispenser units or filled milk are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which a Grade A fluid milk product or filled milk is shipped during the month to a pool plant.

§ 1068.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant(s);

(b) Any cooperative association with respect to milk of its members diverted for its account pursuant to § 1068.13;

(c) Any cooperative association qualifying as a handler pursuant to paragraph (a) of this section shall be, for the purposes of making payments pursuant to § 1068.71, the handler also with respect to producer milk caused to be delivered for the account of such association from the farms of producers to the pool plant(s) of an other handler(s);

(d) Any person in his capacity as the operator of a partially regulated distributing plant. This definition shall not apply to a governmentally owned and operated institution which disposes of Class I milk solely for use on its own premises or to its own facilities;

(e) A producer-handler,

(f) Any person in his capacity as the operator of an other order plant from which during the month there is route disposition in the marketing area or fluid milk products are shipped to a pool plant; or

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1068.10 Producer-handler.

(a) "Producer-handler" means any person who meets all of the following conditions:

(1) Operates a dairy farm and a distribution plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(2) Receives no milk or fluid milk products from the farms of other dairy farmers nor from any other source, except receipts of not more than 50,000 pounds of milk (3.5 percent milk equivalent of butterfat) during the month by transfer from pool plants of other handlers;

(3) Receives no nonfluid milk products from any source for use in reconstituting fluid milk products;

(4) Has route disposition consisting only of skim milk and butterfat obtained from his own farm production except that received pursuant to the exception set forth in paragraph (a)(2) of this section; and

(5) The maintenance, care and management of the dairy animals and other resources necessary to produce such milk and the processing, packaging, or distribution of such milk are the personal enterprise, and the personal risk, of such person.

(b) Any handler claiming producer-handler status shall furnish to the market administrator, for verification, evidence of his qualifications as a producer-handler pursuant to this section and shall furnish evidence of subsequent changes made in the manner of producing securing, or distributing milk that affect such qualifications as a producer-handler. Such verification by the market administrator shall be made within 15 days of receipt of the evidence and shall be effective as of the first day of the month during which verification is made.

§ 1068.11 [Reserved]

§ 1068.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is received at a pool plant as producer milk directly from the farm or diverted pursuant to § 1068.13.

(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 § 1068.44(a)(8)(iii) and the corresponding step of § 1068.44(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.

§ 1068.13 Producer milk.

"Producer milk" means the skim milk and butterfat in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be priced at the location of the nonpool plant to which diverted;

(2) In any month that less than 6 days' production of a producer is delivered to pool plants the quantity of milk of the producer diverted during the month that exceeds that delivered to pool plants shall not be producer milk;

(3) During the months of September through November, a cooperative association handler may divert for his account the milk of any member producer. The total quantity of producer milk diverted by such handler in excess of 10 percent of the milk received from member producers at pool plants during the month shall not be producer milk;

(4) During the months of December through August, a cooperative association handler may divert for his account the milk of any member producer. The total quantity of producer milk diverted by such handler in excess of 25 percent of the milk received from member producers at pool plants during the month shall not be producer milk;

(5) During the months of September through November, the operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association. The total quantity of producer milk diverted by such handler in excess of 10 percent of the milk received at such pool plant during the month from producers who are not members of a cooperative association shall not be producer milk;

(6) During the months of December through August, the operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association. The total quantity of producer milk diverted by such handler in excess of 25 percent of the milk received at such pool plant during the month from producers who are not members of a cooperative association shall not be producer milk; and

(7) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b)(3), (4), (5), and (6) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1068.14 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 § 1068.40(b)(1) from any source other than producers, handlers described in § 1068.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1068.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1068.40(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 § 1068.40(b)(1)) for which the handler fails to establish a disposition.

§ 1068.15 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 § 1068.40(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.

§ 1068.16 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.

§ 1068.17 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 con-

tains less than 6 percent nonmilk fat (or oil).

§ 1068.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act;"

(b) Has full authority in the sale of milk of its members and is 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.

HANDLER REPORTS

§ 1068.30 Reports of receipts and utilization.

On or before the 10th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, 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 § 1068.9(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 § 1068.40(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 § 1068.9 (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.

§ 1068.31 Payroll reports.

(a) On or before the last day of each month, each handler described in § 1068.9 (a), (b), and (c) shall report to the market administrator his producer payroll for the preceding 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 § 1068.76(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.

§ 1068.32 Other reports.

In addition to the reports required pursuant to §§ 1068.30 and 1068.31, the following shall be reported to the market administrator:

(a) Each handler specified in § 1068.9 (g) who operates an unregulated supply plant shall report as required in § 1068.30, except that the receipts of skim milk and butterfat in Grade A milk shall be reported in lieu of those in producer milk.

(b) 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

§ 1068.40 Classes of utilization.

Except as provided in § 1068.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1068.30 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 espcially 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 § 1068.15; and

(6) In shrinkage assigned pursuant to § 1068.41(a) to the receipts specified in § 1068.41(a)(2) and in shrinkage specified in § 1068.41 (b) and (c).

§ 1068.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1068.30, 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 § 1068.9(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 § 1068.9 (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.

§ 1068.42 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 § 1068.44(a)(12) and the corresponding step of § 1068.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1068.44(a)(7) or the corresponding step of § 1068.44(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 § 1068.44(a)(11) or (12) or the corresponding steps of § 1068.44(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 § 1068.40.

(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 § 1068.30 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.

§ 1068.43 General classification rules.

In determining the classification of producer milk pursuant to § 1068.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1068.30 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 § 1068.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1068.40, 1068.41, and 1068.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1068.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§ 1068.40 through 1068.45, butterfat in skim milk either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.065 percent, unless the handler has adequate records of the actual butterfat content of such skim milk.

§ 1068.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1068.9(a) for each of his pool plants separately and of each handler described in § 1068.9 (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 § 1068.41 (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 § 1068.40(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 § 1068.40(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 § 1068.40(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 § 1068.40(b)(1) that was not subtracted pussuant 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 § 1068.9(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 § 1068.40(b)(1) in inventory at the begining 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 ultilization 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 § 1068.45(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 shall be adjusted in the reverse direction

step at the handler's other pool plants 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 § 1068.42(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.

§ 1068.45 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 § 1068.44(a)(12) and the corresponding step of § 1068.44(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 § 1068.44 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.

CLASS PRICES

§ 1068.50 Class prices.

Subject to the provisions of § 1068.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.06.

(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.

§ 1068.51 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.

§ 1068.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk received at a plant located at least 35 miles (as determined by the market administrator) from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., shall be reduced by an amount indicated below:

Plant location (miles)	*Amount of deduction (cents)*
Less than 35	0
35 but less than 45	6

For distances of 45 miles or more, an additional 1.5 cents for each 10 miles or fraction thereof beyond 45 miles.

(b) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1068.53 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.

§ 1068.54 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

§ 1068.60 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 § 1068.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1068.44 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 § 1068.44(a)(14) and the corresponding step of § 1068.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1068.74, 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 § 1068.44(a)(9) and the corresponding step of § 1068.44(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 § 1068.44(a)(7) (i) through (iv) and the corresponding step of § 1068.44 (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 § 1068.44(a)(7) (v) and (vi) and the corresponding step of § 1068.44(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 § 1068.44(a)(11) and the corresponding step of § 1068.44(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 § 1068.40 (b) that was in the plant's inventory at

the end of the preceding month and classified as Class I milk.

§ 1068.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1068.60 for all handlers who filed reports pursuant to § 1068.30 for the month and who made the payments pursuant to § 1068.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1068.75;

(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 § 1068.60(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.

§ 1068.62 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 15th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1068.70 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 §§ 1068.71, 1068.76, and 1068.77 and out of which he shall make all payments due handlers pursuant to §§ 1068.72 and 1068.77: *Provided,* That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1068.71 Payments to the producer-settlement fund.

(a) On or before the 18th 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: *Provided,* That payment made by a cooperative association as a handler pursuant to this paragraph with respect to milk transferred to another handler from the pool plant of such cooperative association or caused to be delivered to such handler from the farms of producers for the account of such cooperative association shall not relieve the transferee-handler of any obligation on any such milk which is due the cooperative association, or otherwise due pursuant to §§ 1068.70 through 1068.75, §§ 1068.77 and 1068.78, and §§ 1068.85 and 1068.86:

(1) The total value of milk of the handler for such month as determined pursuant to § 1068.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1068.75, 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 § 1068.60(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 other 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.

§ 1068.72 Payments from the producer-settlement fund.

On or before the 19th day after the end of each month, the market administrator shall pay, subject to the proviso of § 1068.70, to each handler the amount, if any, by which the amount computed pursuant to § 1068.71(a)(2) exceeds the amount computed pursuant to § 1068.71(a)(1).

§ 1068.73 Payments to producers and to cooperative associations.

Each handler shall make payment for milk received from producers or cooperative associations as follows:

(a) On or before the 11th day after the end of the month in which the skim milk or butterfat was received, to a cooperative association which is a handler, for all skim milk and butterfat received from a pool plant(s) operated by such cooperative association or caused by it to be delivered to such handler from producers' farms, at not less than the class prices, as adjusted by the butterfat differential specified in § 1068.74, that are applicable at the location of the receiving handler's pool plant, less the amount of payment made pursuant to paragraph (c) of this section.

(b) On or before the 21st day after the end of the month during which the milk was received, to each producer for milk not caused to be delivered to such handler by a cooperative association which is a handler, as follows: *Provided,* That such payment shall be made, upon request, to a cooperative association which is not a handler, or to its duly authorized agent, with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of his milk, and any payment made pursuant to this proviso shall be made on or before the 20th day after the end of such month:

(1) At not less than the uniform price computed pursuant to § 1068.61, subject to the butterfat and location differentials set forth in §§ 1068.74 and 1068.75, and less the amount of payment made pursuant to paragraph (c) of this section.

(c) Handlers (other than cooperative associations) shall make partial payments to producers and cooperative associations pursuant to paragraph (c)(1) and (2) of this section: *Provided,* That in the event any producer discontinues shipping to such handler during the month, such partial payment shall not be made and full payment for all milk received from such producer during such month shall be made pursuant to paragraphs (a) and (b) of this section.

(1) On or before the 25th day of each month, each handler shall make payment, except as set forth in paragraph (c)(2) of this section, to each producer, at not less than the applicable uniform price computed pursuant to § 1068.61 for the preceding month, for the milk of such producer received by such handler during the first 15 days of the current month;

(2) On or before the 20th day of each month, each handler shall make payment to a cooperative association which is not a handler for milk of producers from whom such association has received written authorization to collect payment, at not less than such uniform price for the preceding month, for all such milk received by such handler during the first 15 days of the current month; and

(3) On or before the 20th day of each month, each handler shall make payment to a cooperative association which is a handler, at not less than the Class I price for the current month pursuant to § 1068.50 for all skim and butterfat received from a pool plant(s) operated by such cooperative association, or caused by such association to be delivered from the producer's farms to such handler, during the first 15 days of the current month.

(4) All payments made pursuant to this paragraph shall be subject to the butterfat differential specified in § 1068.74 and location adjustments specified in § 1068.75 applicable at the location of the plant of the handler making the payment.

(d) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom he received milk a support-

ing statement, in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment to the producer is required pursuant to this section;

(4) The rate used in making the payment if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1068.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1068.74 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.

§ 1068.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to § 1068.73 (b) and (c) for milk received at a pool plant located 35 miles or more from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., each handler shall deduct from the applicable price payable to such producers an amount in accordance with the location of the plant based on the rates set forth in § 1068.52; and

(b) For the purpose of computations pursuant to §§ 1068.71 and 1068.72, the uniform price shall be adjusted at the rates set forth in § 1068.52 applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1068.76 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 §§ 1068.30(b) and 1068.31(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;

that an equivalent amount 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 § 1068.60 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 § 1068.60 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 § 1068.60 for such handler shall include, in lieu of the value of other source milk specified in § 1068.60(f) less the value of such other source milk specified in § 1068.71(a)(2)(ii), a value of milk determined pursuant to § 1068.60 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 § 1068.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1068.30 (b) and 1068.31(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 § 1068.60 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 § 1068.74, 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 § 1068.74, 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.

§ 1068.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments by any handler discloses errors in payments to the producer-settlement fund pursuant to §1068.71, the market admin-

istrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make payment to such handler.

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association discloses payment of less than is required by §1068.73, the handler shall pay the balance due such producer or cooperative association not later than the time for making payments next following such disclosure.

§ 1068.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§1068.71, 1068.76, and 1068.77(a), for which remittance has not been made by the close of business on the next day following the date specified for such payment shall be increased three-fourths of 1 percent for each month and any remaining amount due shall be increased at a similar rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and for the purpose of this section any obligation that was determined at a date later than 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

§ 1068.85 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 3 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 § 1068.44(a) (7) and (11) and the corresponding steps of § 1068.44(b), except such other source milk that is excluded from the computations pursuant to § 1068.60 (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 § 1068.76(a)(2).

§ 1068.86 Deduction for marketing services.

(a) *Deductions for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1068.73, shall make a deduction of 6 cents per hundredweight, or such lesser deduction as the Secretary from time to time may prescribe, with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 18th day after the end of such month. Such moneys shall be expended by the market administrator for market information to, and for the verification of weights, sampling, and testing of milk received from, said producers.

(b) *Producers' cooperative associations.* In the case of producers for whom a cooperative association which the Secretary determines to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, no such deduction shall be made.

PART 1069—MILK IN DULUTH-SUPERIOR MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1069.1 General provisions.

DEFINITIONS

1069.2 Duluth-Superior marketing area.
1069.3 Route disposition.
1069.4 [Reserved]
1069.5 Distributing plant.
1069.6 Supply plant.
1069.7 Pool plant
1069.8 Nonpool plant.
1069.9 Handler.
1069.10 Producer-handler.
1069.11 [Reserved]
1069.12 Producer.
1069.13 Producer milk.
1069.14 Other source milk.
1069.15 Fluid milk product.
1069.16 Fluid cream product.
1069.17 Filled milk.
1069.18 Cooperative association.

HANDLER REPORTS

1069.30 Reports of receipts and utilization.
1069.31 Payroll reports.
1069.32 Other reports.

CLASSIFICATION OF MILK

1069.40 Classes of utilization.
1069.41 Shrinkage.
1069.42 Classification of transfers and diversions.
1069.43 General classification rules.
1069.44 Classification of producer milk.
1069.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1069.50 Class prices.
1069.51 Basic formula price.
1069.52 Plant location adjustments for handlers.
1069.53 Announcement of class prices.
1069.54 Equivalent price.

UNIFORM PRICE

1069.60 Handler's value of milk for computing uniform price.
1069.61 Computation of uniform price.
1069.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

Sec.
1069.70 Producer-settlement fund.
1069.71 Payments to the producer-settlement fund.
1069.72 Payments from the producer-settlement fund.
1069.73 Payments to producers and to cooperative associations.
1069.74 Butterfat differential.
1069.75 Plant location adjustments for producers and on nonpool milk.
1069.76 Payments by handler operating a partially regulated distributing plant.
1069.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1069.85 Assessment for order administration.
1069.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1069 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1069.1 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

§ 1069.2 Duluth-Superior marketing area.

"Duluth-Superior marketing area", hereinafter called the "marketing area", means all of the territory within Carlton County and the city of Duluth, in the State of Minnesota; and all of the territories within the counties of Ashland, Bayfield, and Douglas, in the State of Wisconsin.

§ 1069.3 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 product classified as Class I milk, other than a delivery in bulk form to a pool plant or nonpool plant.

§ 1069.4 [Reserved]

§ 1069.5 Distributing plant.

"Distributing plant" means a plant in which any Grade A fluid milk product is pasteurized or packaged and from which there is route disposition during the month in the marketing area.

§ 1069.6 Supply plant.

"Supply plant" means a plant from which Grade A milk is shipped during the month to a pool plant.

§ 1069.7 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 during the month, except filled milk, equal to 50 percent or more of total receipts of Grade A milk at such plant from dairy farmers, from other plants, and from cooperative associations in their capacity as handlers and from

which there is route disposition, except filled milk, in the marketing area equal to 10 percent or more of such total receipts: *Provided*, That such route disposition (not including filled milk) in the marketing area averages at least 500 pounds per day.

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the month 50 percent or more of its supply of Grade A milk from dairy farmers is moved to a distributing pool plant(s): *Provided*, That any supply plant which has qualified as a pool plant in each of the months of September, October, and November, shall be a pool plant for each of the following months of December through August unless written request for nonpool status is furnished in advance to the market administrator.

(c) A plant(s) (1) which is approved by a duly constituted health authority for the handling of Grade A milk, (2) which is operated by a cooperative association, and (3) from which the quantity of milk transferred by the association to plants specified in paragraph (a) of this section or delivered directly from the farm to such plants is equal to at least the following percentages, in the months indicated, of the quantity of Grade A milk delivered by all producers who are members of such association:

Month	*Minimum percentage*
September, October, November	40
April, May, June	20
All other months	30

The association shall furnish written notice to the market administrator specifying the plant(s) to be qualified pursuant to this paragraph and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the 7th day following the month to which such notice applies.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless:

(i) Such plant is qualified as a pool plant pursuant to paragraph (a), (b), or (c) of this section and a greater volume of Class I milk, except filled milk, is disposed of from such plant in the Duluth-Superior marketing area than in the marketing area regulated pursuant to such other order; or

(ii) The Secretary determines that the applicable order should more appropriately be determined on some other basis.

§ 1069.8 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 and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

§ 1069.9 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 producers which is diverted pursuant to § 1069.12 for the account of such cooperative association.

(c) Any cooperative association which chooses to report as a handler with respect to the milk of its member producers which is delivered to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association for the account of such cooperative association. Such milk shall be considered as having been received by such cooperative association at the plant to which it is delivered.

(d) Any person who operates a partially regulated distributing plant.

(e) A producer-handler.

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1069.10 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which each of the following conditions are met during the month:

(a) Milk is received from the dairy farm(s) of such person but from no other dairy farm;

(b) There is route disposition in the marketing area; and

(c) The butterfat or skim milk disposed of in the form of fluid milk products does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm(s) of such person and in the form of fluid milk products in bulk or in packaged form from pool plants of other handlers: *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 person in his capacity as a handler.

§ 1069.11 [Reserved]

§ 1069.12 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, or acceptable to, a duly constituted health authority, and whose milk is:

(1) Received at a pool plant; or

(2) Diverted from a pool plant to a nonpool plant by a handler or cooperative association for the account of such handler or cooperative association. Milk so diverted shall be deemed to have been received by the diverting handler at the plant from which it is diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1069.44(a)(8)(iii) and the corresponding step of § 1069.44(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.

§ 1069.13 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 § 1069.12.

§ 1069.14 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 § 1069.40(b)(1) from any source other than producers, handlers described in § 1069.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1069.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1069.40(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 §1069.40(b)(1)) for which the handler fails to establish a disposition.

§ 1069.15 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 § 1069.40 (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.

§ 1069.16 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.

§ 1069.17 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).

§ 1069.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association, 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

§ 1069.30 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 § 1069.9(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 § 1069.40 (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 § 1069.9 (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.

§ 1069.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1069.9 (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 § 1069.76(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.

§ 1069.32 Other reports.

In addition to the reports required pursuant to §§ 1069.30 and 1069.31, 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

§ 1069.40 Classes of utilization.

Except as provided in § 1069.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1069.30 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 § 1069.15; and

(6) In shrinkage assigned pursuant to § 1069.41(a) to the receipts specified in § 1069.41(a)(2) and in shrinkage specified in § 1069.41 (b) and (c).

§ 1069.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1069.30, 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 § 1069.9(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 paragraphs (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 § 1069.9 (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.

§ 1069.42 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 § 1069.44(a)(12) and the corresponding step of § 1069.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1069.44(a)(7) or the corresponding step of § 1069.44(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 § 1069.44(a) (11) or (12) or the corresponding steps of § 1069.44(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 § 1069.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted 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 or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other 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 divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1069.30 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.

§ 1069.43 General classification rules.

In determining the classification of producer milk pursuant to § 1069.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1069.30 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 § 1069.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1069.40, 1069.41, and 1069.42;

(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 § 1069.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1069.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1069.9(a) for each of his pool plants separately and of each handler described in § 1069.9 (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 § 1069.41 (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 § 1069.40(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 § 1069.40(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 § 1069.40(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 § 1069.40(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 § 1069.9(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 § 1069.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and 8 (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be prorata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1069.45(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 plant 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 § 1069.42(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.

§ 1069.45 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 § 1069.44(a)(12) and the corresponding step of § 1069.44(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 § 1069.44 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.

Class Prices

§ 1069.50 Class prices.

Subject to the provisions of § 1069.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.10.

(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.

§ 1069.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest 0.1 cent) per 0.1 percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1069.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a plant located more than 55 miles by the shortest highway distance, as determined by the market administrator, from the Courthouse at Duluth, Minn., or Ashland, Wis., whichever is closer, and which is classified as Class I milk, the price specified in § 1069.50(a) shall be reduced by 8 cents if such plant is located more than 55 miles but not more than 65 miles from such courthouse and by an additional 1.3 cents for each 10 miles or fraction thereof that such distance exceeds 65 miles.

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee-plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to 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.

§ 1069.53 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.

§ 1069.54 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

§ 1069.60 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 § 1069.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1069.44 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 § 1069.44(a)(14) and the corresponding step of § 1069.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1069.74, 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 § 1069.44(a)(9) and the corresponding step of § 1069.44(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 § 1069.44(a)(7) (i) through (iv) and the corresponding step of § 1069.44 (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 § 1069.44(a)(7) (v) and (vi) and the corresponding step of § 1069.44(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 § 1069.44(a)(11) and the corresponding step of § 1069.44(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.

§ 1069.61 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 § 1069.60 for all handlers who filed the reports prescribed by § 1069.30 for the month and who made the payments pursuant to §§ 1069.71 and 1069.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1069.75;

(c) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1069.60 (f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price".

§ 1069.62 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

§ 1069.70 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 §§ 1069.71, 1069.76, and 1069.77, and out of which he shall make payments to handlers pursuant to §§ 1069.72 and 1069.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1069.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1069.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1069.75, 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 § 1069.60(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.

§ 1069.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1069.71(a)(2) exceeds the amount computed pursuant to § 1069.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments required by this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1069.73 Payments to producers and to cooperative associations.

On or before the 20th day after the end of each month, each handler shall make payments as follows:

(a) To each producer from whom milk was received during the month at not less than the uniform price per hundredweight computed pursuant to § 1069.61 subject to the butterfat differential computed pursuant to § 1069.74 and the location adjustment computed pursuant to § 1069.75 and less (1) deductions for marketing services pursuant to § 1069.86, and (2) other proper deductions: *Provided*, That with respect to each deduction for hauling, or for any other purpose, made from such payment, the burden shall rest upon the handler making the deduction to prove that each deduction is authorized, and properly chargeable to the producer: *And provided further*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1069.72, he may reduce pro rata his payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payment pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) A handler who has not received on the 20th day after the end of each month the balance of the payments due him from the market administrator shall not be deemed to be in violation of paragraph (a) of this section if he reduced his payments to producers by not more than the amount of the reduction payment from the producer-settlement fund. The handler shall, however, complete such payments not later than the date for making such payments next following receipt of the balance from the market administrator; and

(c) On or before the 15th day after the end of each month, to each cooperative association with respect to receipts of milk for which such cooperative association is defined as the handler not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1069.74, that are applicable at the location of the receiving handler's pool plant.

§ 1069.74 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 but-

terfat 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.

§ 1069.75 Plant location adjustments for producers and on nonpool milk.

(a) For milk which is received at a pool plant located more than 55 miles but not more than 65 miles by shortest highway distance, as determined by the market administrator, from the courthouse at Duluth, Minn., or at Ashland, Wis., whichever is closer, there should be deducted 8 cents per hundredweight and an additional 1.3 cents should be deducted for each 10 miles or fraction thereof that such distance exceeds 65 miles; and

(b) For purposes of computations pursuant to §§ 1069.71 and 1069.72 the uniform price shall be adjusted at the rates set forth in § 1069.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1069.76 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 §§ 1069.30(b) and 1069.31(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 § 1069.60 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 § 1069.60 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 § 1069.60 for such handler shall include, in lieu of the value of other source milk specified in § 1069.60(f) less the value of such other source milk specified in § 1069.71(a)(2)(ii), a value of milk determined pursuant to § 1069.60 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 § 1069.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1069.30(b) and 1069.31(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 § 1069.60 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 § 1069.74 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 § 1069.74, 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.

§ 1069.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount 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.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1069.85 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 § 1069.44(a) (7) and (11) and the corresponding steps of

§ 1069.44(b), except such other source milk that is excluded from the computations pursuant to § 1069.60 (d) and (f); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1069.76(a) (2).

§ 1069.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1069.73, with respect to all milk received from each producer at a plant not operated by a cooperative association qualified under paragraph (b) of this section of which such producer is a member, shall deduct an amount not exceeding 3 cents per hundredweight (the exact amount to be determined by the market administrator subject to review by the Secretary) from the payments made direct to such producers and such handler shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to provide market information and to verify the accuracy of weights, sampling and testing of milk received from such producers.

(b) In the case of milk of producers who are members of a cooperative association which is actually performing the services described in paragraph (a) of this section, which is received at a plant not operated by such cooperative association, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made direct to such producers pursuant to § 1069.73, as are authorized by such producers and, on or before the 15th day after the end of such month, pay such deductions to such cooperative association.

PART 1070—MILK IN THE CEDAR RAPIDS-IOWA CITY MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1070.1 General provisions.

DEFINITIONS

1070.2 Cedar Rapids-Iowa City marketing area.
1070.3 [Reserved]
1070.4 [Reserved]
1070.5 Distributing plant.
1070.6 Supply plant.
1070.7 Pool plant.
1070.8 Nonpool plant.
1070.9 Handler.
1070.10 Producer-handler.
1070.11 [Reserved]
1070.12 Producer.
1070.13 Producer milk.
1070.14 Other source milk.
1070.15 Fluid milk product.
1070.16 Fluid cream product.
1070.17 Filled milk.
1070.18 Cooperative association.

HANDLER REPORTS

1070.30 Reports of receipts and utilization.
1070.31 Payroll reports.
1070.32 Other reports.

CLASSIFICATION OF MILK

1070.40 Classes of utilization.
1070.41 Shrinkage.
1070.42 Classification of transfers and diversions.
1070.43 General classification rules.
1070.44 Classification of producer milk.
1070.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1070.50 Class prices.
1070.51 Basic formula price.
1070.52 Plant location adjustments for handlers.
1070.53 Announcement of class prices.
1070.54 Equivalent price.

UNIFORM PRICE

1070.60 Handler's value of milk for computing uniform price.
1070.61 Computation of uniform price.
1070.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1070.70 Producer-settlement fund.
1070.71 Payments to the producer-settlement fund.
1070.72 Payments from the producer-settlement fund.
1070.73 Payments to producers and to cooperative associations.
1070.74 Butterfat differential.
1070.75 Plant location adjustments for producers.
1070.76 Payments by handler operating a partially regulated distributing plant.
1070.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1070.85 Assessment for order administration.
1070.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1070 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1070.1 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

§ 1070.2 Cedar Rapids-Iowa City marketing area.

"Cedar Rapids-Iowa City marketing area", called the "marketing area" in this part, means all the territory within the corporate limits of the cities of Cedar Rapids and Iowa City, both in the State of Iowa.

§ 1070.3 [Reserved]

§ 1070.4 [Reserved]

§ 1070.5 Distributing plant.

"Distributing plant" means a plant in which any Grade A fluid milk product is processed or packaged and 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.

§ 1070.6 Supply plant.

"Supply plant" means a plant from which Grade A milk or skim milk is shipped during the month to a pool plant qualified pursuant to § 1070.7.

§ 1070.7 Pool plant.

Except as provided in paragraph (e) of this section, "pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers 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 not less than 15 percent of such receipts are 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 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 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) A plant (1) which is approved by a duly constituted health authority for the handling of Grade A milk; (2) which is operated by a cooperative association; and (3) from which the milk transferred by the association to plants of other handlers specified in paragraph (a) of this section plus that delivered by such association pursuant to paragraph (d) of this section and that delivered directly from the farms of members of such association to such plants is Grade A milk delivered by producers who are members of the association. If written application is filed with the market administrator on or before the 5th day of any month, such plant may be designated a nonpool plant for such month and for any subsequent months, except as provided in paragraph (e) of this section.

(d) A cooperative association with respect to Grade A milk received from dairy farmers at their farms in a tank truck owned or operated by such cooperative association and delivered in such tank truck to a pool plant: *Provided*, That such milk shall be deemed to have been received by the cooperative association at the location of the pool plant to which it is delivered by the tank truck and such location shall be deemed to be the location of such cooperative association in its capacity as the operator of a pool plant.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant specified in paragraph (a), (b), (c), or (d) of this section during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under this section and to retail and wholesale outlets in the Cedar Rapids-Iowa City marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order.

§ 1070.8 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 in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1070.9 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 producer milk diverted by the association for its account pursuant to § 1070.13;

(c) [Reserved]

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1070.7(e).

§ 1070.10 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 or from a cooperative association in its capacity as the operator of a pool plant pursuant to § 1070.7(d) and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk products received from a pool plant.

§ 1070.11 [Reserved]

§ 1070.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is received at a pool plant.

(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 § 1070.44(a)(8)(iii) and the corresponding step of § 1070.44(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.

§ 1070.13 Producer milk.

"Producer milk" means all skim milk and butterfat produced by producers which is:

(a) Received at a pool plant directly from producers; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of a pool plant or a cooperative association, subject to the following:

(1) Such diversions may be without limit during the months of April through August, but not be for more than 25 days' production of any producer during any other month and milk diverted in excess of this limit shall not be producer milk;

(2) Milk so diverted for the account of the operator of a pool plant shall be deemed to have been received at the plant from which diverted; and

(3) Milk so diverted from the plant of another handler for the account of a cooperative association shall be priced at the location of the plant from which diverted.

§ 1070.14 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 § 1070.40(b)(1) from any source other than producers, or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1070.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1070.40(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 § 1070.40(b)(1)) for which the handler fails to establish a disposition.

§ 1070.15 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 § 1070.40(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.

§ 1070.16 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.

§ 1070.17 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).

§ 1070.18 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

§ 1070.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1070.40(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 § 1070.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1070.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1070.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1070.76(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.

§ 1070.32 Other reports.

In addition to the reports required pursuant to §§ 1070.30 and 1070.31, 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

§ 1070.40 Classes of utilization.

Except as provided in § 1070.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1070.30 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 dumped by a handler if 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 § 1070.15; and

(6) In shrinkage assigned pursuant to § 1070.41(a) to the receipts specified in § 1070.41(a)(2) and in shrinkage specified in § 1070.41 (b) and (c).

§ 1070.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1070.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank

samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1070.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1070.42 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 § 1070.44(a)(12) and the corresponding step of § 1070.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1070.44(a)(7) or the corresponding step of § 1070.44(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 § 1070.44(a)(11) or (12) or the corresponding steps of § 1070.44(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 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 § 1070.40.

(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 § 1070.30 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 possbile 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.

§ 1070.43 General classification rules.

In determining the classification of producer milk pursuant to § 1070.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1070.30 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 § 1070.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1070.40, 1070.41, and 1070.42;

(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 § 1070.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1070.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1070.9(a) for each of his pool plants separately and of each handler described in § 1070.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1070.41(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 § 1070.40(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 § 1070.40(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 § 1070.40(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 § 1070.40(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 § 1070.40(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 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 paragraph 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 § 1070.45(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 § 1070.42(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.

§ 1070.45 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 § 1070.44(a)(12) and the corresponding step of § 1070.44(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 § 1070.44 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 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

§ 1070.50 Class prices.

Subject to the provisions of § 1070.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.33.

(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.

§ 1070.51 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.

§ 1070.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located 50 miles or more by shortest hard-surfaced highway distance as measured by the market administrator, from the nearer of the City Halls in Cedar Rapids and Iowa City, Iowa, and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1070.50(a) shall be reduced by 10 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 65 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I utilization remaining at the transferee-plant after computations pursuant to § 1070.44 (a)(12) and the corresponding step of § 1070.44(b) which is in excess of 95 percent of receipts at such plant from producers, 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.

§ 1070.53 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.

§ 1070.54 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

§ 1070.60 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 § 1070.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1070.44 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 § 1070.44(a)(14) and the corresponding step of § 1070.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1070.74, 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 § 1070.44 (a)(9) and the corresponding step of § 1070.44(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 § 1070.44(a)(7) (i) through (iv) and the corresponding step of § 1070.44 (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 § 1070.44(a)(7) (v) and (vi) and the corresponding step of § 1070.44 (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 § 1070.44(a)(11) and the corresponding step of § 1070.44(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.

§ 1070.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price for producer milk of 3.5 percent butterfat content f.o.b. pool plants located within 50 miles of the city hall of Cedar Rapids or Iowa City, Iowa, as follows:

(a) Combine into one total the values computed pursuant to § 1070.60 for all handlers who filed the reports prescribed by § 1070.30 for the month and who made the payments pursuant to § 1070.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1070.75;

(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 § 1070.60(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.

§ 1070.62 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

§ 1070.70 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 §§ 1070.71, 1070.76, and 1070.77, and out of which he shall make all payments to handlers pursuant to §§ 1070.72 and 1070.77.

§ 1070.71 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 § 1070.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1070.75, 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 § 1070.60(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.

§ 1070.72 Payments from the producer-settlement fund.

On or before the 12th 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 § 1070.71(a)(2) exceeds the amount computed pursuant to § 1070.71(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. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1070.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1070.73 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 each month during which the milk was received, to each producer for milk received from him and for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, at not less than the uniform price computed in accordance with § 1070.61, subject to the butterfat differential computed pursuant to § 1070.74 and less location adjustments pursuant to § 1070.75.

(b) On or before the 12th day after the end of each month during which the milk was received, to a cooperative association for milk which it caused to be delivered to such handler from producers, if such cooperative association is authorized to collect such payments for its member producers and exercises such authority, an amount equal to the sum of the individual payments otherwise payable to such producers.

(c) On or before the 11th day after the end of each month during which milk was received at a pool plant from a cooperative association in its capacity as the operator of a pool plant pursuant to § 1070.7(d), at not less than the class prices for such milk, as adjusted by the butterfat differential specified in § 1070.74, that are applicable at the location of the receiving handler's pool plant, plus an amount equal to that payable on the same quantity of producer milk pursuant to § 1070.85.

§ 1070.74 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.

§ 1070.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant, at the rates set forth in § 1070.52; and

(b) For purposes of computations pursuant to §§ 1070.71 and 1070.72 the uniform price shall be adjusted at the rates set forth in § 1070.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1070.76 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 §§ 1070.30(b) and 1070.31(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, 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 § 1070.60 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 pant. 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 § 1070.60 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 § 1070.60 for such handler shall include, in lieu of the value of other source milk specified in § 1070.60(f) less the value of such other source milk specified in § 1070.71(a)(2)(ii), a value of milk determined pursuant to § 1070.60 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 § 1070.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1070.30(b) and 1070.31(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 § 1070.60 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 differenial specified in § 1070.74, 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 § 1070.74, 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.

§ 1070.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due (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

§ 1070.85 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 12th 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;

(b) Other source milk allocated to Class I pursuant to § 1070.44(a) (7) and (11) and the corresponding steps of § 1070.44(b), except such other source milk that is excluded from the computations pursuant to § 1070.60 (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 § 1070.76(a)(2).

§ 1070.86 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 § 1070.73 shall deduct 5 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 not later than the 12th 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.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions as are authorized by such producers and, on or before, the 12th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1076—MILK IN EASTERN SOUTH DAKOTA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1076.1 General provisions.

DEFINITIONS

1076.2 Eastern South Dakota marketing area.
1076.3 Route disposition.
1076.4 [Reserved]
1076.5 Distributing plant.
1076.6 Supply plant.
1076.7 Pool plant.
1076.8 Nonpool plant.
1076.9 Handler.
1076.10 Producer-handler.
1076.11 [Reserved]
1076.12 Producer.
1076.13 Producer milk.
1076.14 Other source milk.
1076.15 Fluid milk product.
1076.16 Fluid cream product.
1076.17 Filled milk.
1076.18 Cooperative association.

HANDLER REPORTS

1076.30 Reports of receipts and utilization.
1076.31 Payroll reports.
1076.32 Other reports.

CLASSIFICATION OF MILK

1076.40 Classes of utilization.
1076.41 Shrinkage.
1076.42 Classification of transfers and diversions.
1076.43 General classification rules.
1076.44 Classification of producer milk.
1076.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1076.50 Class prices.
1076.51 Basic formula price.
1076.52 Plant location adjustments for handlers.
1076.53 Announcement of class prices.
1076.54 Equivalent price.

UNIFORM PRICE

1076.60 Handler's value of milk for computing uniform price.
1076.61 Computation of uniform price.
1076.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

Sec.
1076.70 Producer-settlement fund.
1076.71 Payments to the producer-settlement fund.
1076.72 Payments from the producer-settlement fund.
1076.73 Payments to producers and to cooperative associations.
1076.74 Butterfat differential.
1076.75 Plant location adjustments for producers and on nonpool milk.
1076.76 Payments by handler operating a partially regulated distributing plant.
1076.77 Adjustment of accounts.
1076.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT

1076.85 Assessment for order administration.

AUTHORITY: The provisions of this Part 1076 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1076.1 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

§ 1076.2 Eastern South Dakota marketing area.

"Eastern South Dakota marketing area," hereinafter called the "marketing area," means all of the territory within the counties listed below, including all territory within such counties which is occupied by government (municipal, State or Federal) reservations, installations, institutions, or other establishments:

IOWA COUNTY

Lyon.

MINNESOTA COUNTY

Rock.

SOUTH DAKOTA COUNTIES

Aurora.
Beadle.
Bon Homme.
Brown.
Clark.
Clay.
Codington.
Davison.
Day.
Douglas.
Edmunds.
Hamlin.
Hanson.
Hutchinson.
Jerauld.
Kingsbury.
Lake.
Lincoln.
McCook.
McPherson.
Miner.
Minnehaha.
Moody.
Sanborn.
Spink.
Turner.
Union (except Jefferson Township and the city of North Sioux City and the unorganized territory adjacent thereto).
Walworth.
Yankton.

§ 1076.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or a sale from a plant store, or distribution center) of any fluid milk product classified as Class I milk to retail or wholesale outlets, except a delivery in bulk form to a milk (including filled milk) processing plant. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing plant.

§ 1076.4 [Reserved]

§ 1076.5 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 there is route disposition during the month in the marketing area.

§ 1076.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable to an 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 § 1076.7(a).

§ 1076.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which route disposition, except filled milk, equals not less than 35 percent of the Grade A milk received at such plant from dairy farmers, handlers described in § 1076.9(c), and supply plants and not less than 15 percent of such receipts is disposed of as route disposition, except filled milk, 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 35 percent of the Grade A milk received at such plant from dairy farmers and handlers described in § 1076.9(c) during such month. If such shipments are not less than 50 percent of such receipts during each of the immediately preceding months of September through November, such plant shall be a pool plant for the months of March through June, unless the operator of such plant requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and such plant shall thereafter be a nonpool plant until it again qualifies as a pool plant on the basis of the shipping requirements set forth in this paragraph.

(c) A plant, other than a distributing plant, operated by a cooperative association if more than 50 percent of the total milk supply of producer members of such cooperative association is shipped to pool distributing plants of other handlers during the month, either directly from the farm or by transfer 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 from which a lesser volume of fluid milk products, except filled milk, is disposed of in the Eastern South Dakota marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period of March through June, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act; 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 authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1076.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, and from which fluid milk products are shipped during the month to a pool plant.

§ 1076.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to the milk of producers diverted by the association for the account of such association pursuant to § 1076.13;

(c) A cooperative association with respect to 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 prior to the first day of the month in which the milk is delivered, that it wishes to be the handler for the milk. In this case, the milk is received from producers by the cooperative association at the location of the plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1076.7(d).

§ 1076.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own pro-

duction and from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products from any source for use in reconstituting fluid milk products; and

(c) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging, and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

§ 1076.11 [Reserved]

§ 1076.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1076.13.

(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 § 1076.44(a)(8)(iii) and the corresponding step of § 1076.44(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.

§ 1076.13 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 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 as described in § 1076.9(c); and

(c) With respect to diversions to nonpool plants pursuant to paragraphs (a)(2) and (b)(1) of this section:

(1) A cooperative handler may divert for its account the milk of any member producer, whose milk is delivered to a distributing pool plant on at least 3 days during the month without limit during the other days of such month. The total quantity of milk so diverted may be without limit during the months of March, April, May, and June, but shall not exceed 35 percent of its member producer milk received at all pool plants during any other month of the year. Diversions in excess of such percentage shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. If the cooperative association fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to a nonpool plant by such cooperative association;

(2) 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 (c)(1) of this section, whose milk is received at a pool plant on at least 3 days during the month, without limit during the other days of such month. The total quantity of milk so diverted may be without limit during the months of March, April, May, and June, but during any other month of the year shall not exceed 35 percent of the milk received from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (c)(1) of this section. Diversions in excess of such percentage shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If the handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to a nonpool plant by such handler; and

(3) For the purpose of location adjustments pursuant to §§ 1076.52 and 1076.75, milk so diverted shall be priced at the location of the plant from which diverted.

§ 1076.14 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 § 1076.40(b)(1) from any source other than producers, handlers described in § 1076.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1076.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1076.40(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 § 1076.40(b)(1)) for which the handler fails to establish a disposition.

§ 1076.15 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 § 1076.40(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.

§ 1076.16 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.

§ 1076.17 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).

§ 1076.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has 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.

HANDLER REPORTS

§ 1076.30 Reports of receipts and utilization.

On or before the 7th day (excluding holidays) 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 § 1076.9(c);

(3) Receipts of fluid milk products and bulk fluid cream producs 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 § 1076.40(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 § 1076.9 (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.

§ 1076.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1076.9 (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 § 1076.76(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.

§ 1076.32 Other reports.

In addition to the reports required pursuant to §§ 1076.30 and 1076.31, 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

§ 1076.40 Classes of utilization.

Except as provided in § 1076.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1076.30 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 § 1076.15; and

(6) In shrinkage assigned pursuant to § 1076.41(a) to the receipts specified in § 1076.41(a)(2) and in shrinkage specified in § 1076.41 (b) and (c).

§ 1076.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1076.30, 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 § 1076.9(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 from other order plants, excluding milk received by diversion and 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 § 1076.9 (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.

§ 1076.42 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 § 1076.9(c) to another handler's pool plant shall be classified as follows:

(1) Such transfers from a 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:

(i) 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 § 1076.44(a)(12) and the corresponding step of § 1076.44(b);

(ii) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1076.44(a)(7) or the corresponding step of § 1076.44(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

(iii) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1076.44 (a) (11) or (12) or the corresponding steps of § 1076.44(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

(2) Such transfers by a handler described in § 1076.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class after the computations pursuant to § 1076.44(a)(13)(i) and the corresponding step of § 1076.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1076.40.

(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 § 1076.30 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.

§ 1076.43 General classification rules.

In determining the classification of producer milk pursuant to § 1076.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1076.30 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 § 1076.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1076.40, 1076.41, and 1076.42;

(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 § 1076.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1076.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1076.9(a) for each of his pool plants separately and of each handler described in § 1076.9 (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 § 1076.41(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 § 1076.40(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 § 1076.40(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 § 1076.40(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 § 1076.40(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 § 1076.9(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 § 1076.40(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 § 1076.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant according to the classification of such products pursuant to § 1076.42(a)(1); and

(ii) A handler described in § 1076.9(c) according to the classification of such products pursuant to § 1076.42(a)(2); 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.

§ 1076.45 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 § 1076.44(a)(12) and the corresponding step of § 1076.44(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 § 1076.44 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 the milk caused to be delivered by the cooperative association or 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

§ 1076.50 Class prices.

Subject to the provisions of § 1076.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.50.

(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.

§ 1076.51 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.

§ 1076.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located 100 miles or more by shortest hard-surfaced highway distance as measured by the market administrator, from the nearest of the Post Offices of Aberdeen, Huron, Mitchell, Sioux Falls, and Watertown, S. Dak., and disposed of as Class I milk, the price computed pursuant to § 1076.50(a) shall be reduced 15 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition remaining at the transferee-plant after computations pursuant to § 1076.44(a)(12) and the corresponding step of § 1076.44(b) in excess of 95 percent of receipts at such plant of milk from producers and handlers described in § 1076.9(c), 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.

§ 1076.53 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.

§ 1076.54 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

§ 1076.60 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 § 1076.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1076.44 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 § 1076.44(a)(14) and the corresponding step of § 1076.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1076.74, 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 § 1076.44(a)(9) and the corresponding step of § 1076.44(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 § 1076.44(a)(7) (i) through (iv) and the corresponding step of § 1076.44(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 § 1076.44(a)(7) (v) and (vi) and the corresponding step of § 1076.44(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 § 1076.44(a)(11) and the corresponding step of § 1076.44(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.

§ 1076.61 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 which is received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1076.60 for all handlers who filed the reports prescribed in § 1076.30 for such month, except those in default of payments required pursuant

to § 1076.71 and 1076.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1076.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the aggregate value computed pursuant to paragraphs (a), (b), and (c) of this section 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 § 1076.60 (f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the uniform price for milk received from producers.

§ 1076.62 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

§ 1076.70 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 §§ 1076.71, 1076.76, and 1076.77 and out of which he shall make all payments to handlers pursuant to §§ 1076.72 and 1076.77: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from each handler.

§ 1076.71 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 § 1076.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1076.75, 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 § 1076.60(f).

(b) On or before the 25th day after the end of the month each handler who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more 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.

§ 1076.72 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 § 1076.71(a)(2) exceeds the amount computed pursuant to § 1076.71(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. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1076.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1076.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 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, as adjusted pursuant to §§ 1076.74 and 1076.75, plus or minus adjustments for errors made in previous payments to such producer; and less

(i) Payment made pursuant to paragraph (a)(1) of this section;

(ii) Location adjustment deductions pursuant to § 1076.75; and

(iii) Proper deductions authorized by such producer;

(b) Except as provided in paragraph (c) of this section each handler shall make payment to a cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section; and

(2) On or before the 13th day after the end of each month, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section;

(c) To a cooperative association with respect to receipts of milk for which such cooperative association is the handler as described in § 1076.9(c) as follows:

(1) On or before the 26th day of the month, for milk received during the first 15 days of the month an amount per hundredweight equal to not less than the uniform price for the preceding month; and

(2) On or before the 13th day after the end of each month not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1076.74, that are applicable at the location of the receiving handler's pool plant, and less payment made pursuant to paragraph (c)(1) of this section; and

(d) In making the payments for producer milk pursuant to 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 recipient, that shall show:

(1) The month and identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds and the average butterfat content of milk received from the producer;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate that 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.

§ 1076.74 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.

§ 1076.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price computed pursuant to § 1076.61 for producer milk received at a pool plant shall be reduced according to the location of the pool plant, at the rates set forth in § 1076.52; and

(b) For purposes of computations pursuant to §§ 1076.71 and 1076.72 the uniform price shall be adjusted at the rates set forth in § 1076.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1076.76 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 §§ 1076.30(b) and 1076.31(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 § 1070.60 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 § 1076.60 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 § 1076.60 for such handler shall include, in lieu of the value of other source milk specified in § 1076.60(f) less the value of such other source milk specified in § 1076.71(a)(2)(ii), a value of milk determined pursuant to § 1076.60 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 § 1076.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1076.30 (b) and 1076.31(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 § 1076.60 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 § 1076.74, 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 § 1076.74, 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.

§ 1076.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports of payments of any handler discloses errors made in payments to or from the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days of such billing make payments to the market administrator of the amount so billed and whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days make such payment to such handler.

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association discloses payment of less than is required by § 1076.73, the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

§ 1076.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1076.71(a) shall be increased by one-half of 1 percent for each month or portion thereof that such payment is overdue.

ADMINISTRATIVE ASSESSMENT

§ 1076.85 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 § 1076.44(a) (7) and (11) and the corresponding steps of § 1076.44(b), except such other source milk that is excluded from the computations pursuant to § 1076.60 (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 § 1076.76(a)(2).

PART 1078—MILK IN NORTH CENTRAL IOWA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1078.1 General provisions.

DEFINITIONS

1078.2 North Central Iowa marketing area.
1078.3 [Reserved]
1078.4 [Reserved]
1078.5 Distributing plant.
1078.6 Supply plant.
1078.7 Pool plant.
1078.8 Nonpool plant.
1078.9 Handler.
1078.10 Producer-handler.
1078.11 [Reserved]
1078.12 Producer.
1078.13 Producer milk.
1078.14 Other source milk.
1078.15 Fluid milk product.
1078.16 Fluid cream product.
1078.17 Filled milk.
1078.18 Cooperative association.

HANDLER REPORTS

1078.30 Reports of receipts and utilization.
1078.31 Payroll reports.
1078.32 Other reports.

CLASSIFICATION OF MILK

1078.40 Classes of utilization.
1078.41 Shrinkage.
1078.42 Classification of transfers and diversions.
1078.43 General classification rules.
1078.44 Classification of producer milk.
1078.45 Market administrator's reports concerning classification.

CLASS PRICES

1078.50 Class prices.
1078.51 Basic formula price.
1078.52 Plant location adjustments for handlers.
1078.53 Announcement of class prices.
1078.54 Equivalent price.

UNIFORM PRICE

1078.60 Handler's value of milk for computing uniform price.
1078.61 Computation of uniform price for each handler.
1078.62 Announcement of uniform price for each handler and butterfat differential.

PAYMENTS FOR MILK

1078.73 Payments to producers and to cooperative associations.
1078.74 Butterfat differential.
1078.75 Plant location adjustments for producers.
1078.76 [Reserved]
1078.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

Sec.
1078.85 Assessment for order administration.
1078.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1078 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1078.1 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

§ 1078.2 North Central Iowa marketing area.

"North Central Iowa marketing area" (hereinafter called the "marketing area") means all the territory within the boundaries of the city of Osage and the counties of Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Marshall, Tama, Webster, and Wright, all in the State of Iowa, including territory within such boundaries which is occupied by government (Municipal, State, or Federal) reservations, installations, institutions or other establishments.

§ 1078.3 [Reserved]

§ 1078.4 [Reserved]

§ 1078.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk 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 other plants) located in the marketing area.

§ 1078.6 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 § 1078.7.

§ 1078.7 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, equal to more than an average of 1,000 pounds per day or not less than 15 percent of the Grade A milk received at such plant from dairy farmers 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 other plants) in the marketing area.

(b) A supply plant for the month in which shipments of milk or skim milk are made to distributing plants which are pool plants on not less than 10 days in any of the months of September, October, and November and on not less than 5 days in other months: *Provided*, That a supply plant which was not a pool plant for each of the immediately preceding months of September, October, and November shall not be a pool plant for any month during which none of the milk or skim milk from such plant would be allocated to Class I milk pursuant to the procedure specified in § 1078.44(a)(13), and the corresponding step of § 1078.44(b) at a distributing plant which is a pool plant.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant to retail or wholesale outlets and to pool plants in the North Central Iowa marketing area than in the marketing area regulated pursuant to such other order.

§ 1078.8 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 in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1078.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more distributing or supply plants.

(b) [Reserved]

(c) A cooperative association with respect to Grade A milk received from dairy farmers in a tank truck, the operation of which is under the control of such cooperative association, and delivered in such tank truck to a pool plant: *Provided*, That such milk shall be deemed to have been received directly from producers at the location of the pool plant by the operator of the pool

plant to which it is delivered by the tank truck.

§ 1078.10 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.

§ 1078.11 [Reserved]

§ 1078.12 Producer.

Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of the pool plant (i) any day during the months of April through June, and (ii) on not more than one-half the days on which milk was delivered from a farm during any of the months of July through March.

(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 § 1078.44(a)(8)(iii) and the corresponding step of § 1078.44(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.

§ 1078.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk of producers that is (a) received at a pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 1078.12.

§ 1078.14 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 § 1078.40(b)(1) from any source other than producers, handlers described in § 1078.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1078.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1078.40(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 § 1078.40(b)(1)) for which the handler fails to establish a disposition.

§ 1078.15 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 § 1078.40 (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.

§ 1078.16 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.

§ 1078.17 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).

§ 1078.18 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

§ 1078.30 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 § 1078.9(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 § 1078.40(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 § 1078.9(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.

§ 1078.31 Payroll reports.

On or before the 20th day after the end of each month, each handler described in § 1078.9 (a) 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:

(a) His name and address;

(b) The total pounds of milk received from such producer;

(c) The average butterfat content of such milk; and

(d) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

§ 1078.32 Other reports.

(a) Each handler, except a producer-handler, shall report to the market administrator in the 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 milk; 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 §§ 1078.30 and 1078.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems nec-

essary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1078.40 Classes of utilization.

Except as provided in § 1078.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1078.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1078.15; and

(6) In shrinkage assigned pursuant to § 1078.41(a) to the receipts specified in § 1078.41(a)(2) and in shrinkage specified in § 1078.41 (b) and (c).

§ 1078.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1078.30, 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 § 1078.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1078.9(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 § 1078.9(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.

§ 1078.42 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 § 1078.44(a)(12) and the corresponding step of § 1078.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1078.44(a)(7) or the corresponding step of § 1078.44(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 § 1078.44(a)(11) or (12) or the corresponding steps of § 1078.44(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 § 1078.40.

(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 § 1078.30 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 folowing 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 plaint's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1078.43 General classification rules.

In determining the classification of producer milk pursuant to § 1078.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1078.30 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 § 1078.9(c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1078.40, 1078.41, and 1078.42;

(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 § 1078.9(c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1078.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1078.9(a) for each of his pool plants separately and of each handler described in § 1078.9(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 § 1078.41 (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 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 § 1078.40(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 § 1078.40(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) Substract 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 § 1078.40(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 § 1078.40(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 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, fluid milk products from pool 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 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, 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 § 1078.40(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) 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 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 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 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:

(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,

(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 § 1078.42(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.

§ 1078.45 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 § 1078.44 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 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:

Class Prices

§ 1078.50 Class prices.

Subject to the provisions of § 1078.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.25.

(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.

§ 1078.51 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.

§ 1078.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Zone 1" means all the territory in the Iowa counties of Humboldt, Wright, Franklin, Butler, Bremer, Webster, Hamilton, Hardin, Grundy, Black Hawk, and Buchanan.

(2) "Zone 2" means all the territory in the Iowa counties of Marshall, Tama, Linn, and Johnson.

(3) "Zone 3" means all the territory in the Iowa counties of Hancock, Cerro Gordo, Floyd, and Chickasaw and the city of Osage, Iowa.

(4) "Zone 4" means all the territory in Fayette County, Iowa, and the Minnesota counties of Freeborn and Mower.

(b) For milk received from producers at a pool plant located in Zone 2, 3, or 4 and classified as Class I milk, the price specified in § 1078.50(a) shall be adjusted by the following amount:

(1) Zone 2—plus 8 cents.

(2) Zone 3—minus 5 cents.

(3) Zone 4—minus 10 cents.

(c) For milk received from producers at a pool plant located outside Zones 1, 2, 3, and 4 and classified as Class I milk, the price specified in § 1078.50(a) shall be reduced 10 cents and, if the plant is located 65 miles or more by the shortest hard-surfaced highway distance as determined by the market administrator from the city halls of each of the cities of Fort Dodge, Marshalltown, Mason City, and Waterloo, Iowa, shall be reduced an additional 1.5 cents for each 10 miles or fraction thereof in excess of 65 miles that such plant is from the nearest of such city halls.

(d) For purposes of calculating the location adjustment applicable pursuant to this section, fluid milk products which are transferred between pool plants shall be assigned to the Class I milk remaining in the transferee-plant after calculations pursuant to § 1078.44(a)(12) and the corresponding step of § 1078.44(b) that is in excess of receipts at such plant from producers and handlers described in § 1078.9(c), such assignment to transferor-plants to be made first to plants at which a plus location adjustment is applicable, next at which no location adjustment is applicable and then in sequence beginning with the

plant at which the least location adjustment would apply.

§ 1078.53 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.

§ 1078.54 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

§ 1078.60 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 § 1078.44 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 § 1078.44(a)(14) and the corresponding step of § 1078.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1078.74, 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 § 1078.44(a)(9) and the corresponding step of § 1078.44(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 § 1078.44(a)(9) and the corresponding step of § 1078.44(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 § 1078.44(a)(11) and the corresponding step of § 1078.44(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 his receipts and utilization of skim milk and butterfat for previous months.

§ 1078.61 Computation of uniform price for each handler.

For each month the market administrator shall compute a uniform price for the producer milk received by each handler as follows:

(a) Add to and subtract from the amount computed pursuant to § 1078.60, the totals of the location adjustments to be made pursuant to § 1078.75;

(b) Add if a deduction was made, or subtract if an addition was made, in computing the uniform price for such handler to the nearest cent for the preceding month the amount of such adjustment; and

(c) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The quotient, adjusted to the nearest cent, shall be the uniform price for such handler for producer milk of 3.5 percent butterfat content received at plants in Zone 1. Uniform prices at plants outside Zone 1 shall be adjusted pursuant to § 1078.75.

§ 1078.62 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 10th day after the end of each month the uniform price for each handler for such month.

PAYMENTS FOR MILK

§ 1078.73 Payments to producers and to cooperative associations.

Each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 14th 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 § 1078.61, as adjusted pursuant to § 1078.74, plus or minus adjustments for errors made in previous payments to such producer; and less (1) location adjustments pursuant to § 1078.75, (2) deductions for marketing services pursuant to § 1078.86, and (3) proper deductions authorized by such producer: *Provided*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk the handler shall, if requested by the cooperative association, pay such cooperative association on or before the 12th day after the end of each month an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this paragraph;

(b) In making the payments to producers pursuant to paragraph (a) 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 for each month:

(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 such 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

§ 1078.74 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.

§ 1078.75 Plant location adjustments for producers.

The uniform prices for milk received from producers at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1078.52.

§ 1078.76 [Reserved]

§ 1078.77 Adjustment of accounts.

Whenever verification by the market administrator of payment by a handler discloses errors resulting in money due a producer, a cooperative association, 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

§ 1078.85 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, (b) other source milk allocated to Class I pursuant to § 1078.44 (a) (7) and (11) and the corresponding steps of § 1078.44(b), and (c) Class I milk disposed of from a partially regulated distributing plant on routes in the

marketing area that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1078.86 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 § 1078.73, shall deduct 5 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 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) 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.

PART 1079—MILK IN DES MOINES, IOWA, MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1079.1 General provisions.

DEFINITIONS

1079.2 Des Moines, Iowa.
1079.3 [Reserved]
1079.4 [Reserved]
1079.5 Distributing plant.
1079.6 Supply plant.
1079.7 Pool plant.
1079.8 Nonpool plant.
1079.9 Handler.
1079.10 Producer-handler.
1079.11 [Reserved]
1079.12 Producer.
1079.13 Producer milk.
1079.14 Other source milk.
1079.15 Fluid milk product.
1079.16 Fluid cream product.
1079.17 Filled milk.
1079.18 Cooperative association.

HANDLER REPORTS

1079.30 Reports of receipts and utilization.
1079.31 Payroll reports.
1079.32 Other reports.

CLASSIFICATION OF MILK

1079.40 Classes of utilization.
1079.41 Shrinkage.
1079.42 Classification of transfers and diversions.
1079.43 General classification rules.
1079.44 Classification of producer milk.
Sec.
1079.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1079.50 Class prices.
1079.51 Basic formula price.
1079.52 Plant location adjustments for handlers.
1079.53 Announcement of class prices.
1079.54 Equivalent price.

UNIFORM PRICE

1079.60 Handler's value of milk for computing uniform price.
1079.61 Computation of uniform price.
1079.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1079.70 Producer-settlement fund.
1079.71 Payments to the producer-settlement fund.
1079.72 Payments from the producer-settlement fund.
1079.73 Payments to producers and to cooperative associations.
1079.74 Butterfat differential.
1079.75 Plant location adjustments for producers and on nonpool milk.
1079.76 Payments by handler operating a partially regulated distributing plant.
1079.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1079.85 Assessment for order administration.
1079.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1079 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1079.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and make a part of this order.

§ 1079.2 Des Moines, Iowa, marketing area.

"Des Moines, Iowa, marketing area" (hereinafter called the "marketing area"), means all the territory within the boundaries of the city of Grinnell and the counties of Adair, Appanoose, Bonne, Clarke, Dallas, Decatur, Greene, Guthrie, Jasper, Lucas, Madison, Mahaska, Marion, Monroe, Polk, Story, Union, Warren, Wappello, and Wayne, all in the State of Iowa, including territory within such boundaries which is occupied by government (municipal, State or Federal) reservations, installations, institutions, or other establishments.

§ 1079.3 [Reserved]

§ 1079.4 [Reserved]

§ 1079.5 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.

§ 1079.6 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 §1079.7.

§ 1079.7 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, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers 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 not less than 15 percent of such receipts or an average of not less than 7,000 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 equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of March through June, unless written application is filed with the market administrator on or before the 15th day of any of the months of March, April, May, or June to be designated a nonpool plant for such month and for each subsequent month through June of the same year.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified pursuant to this section and to retail and wholesale outlets in the Des Moines, Iowa, marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order except in the following circumstances:

(i) If a distributing plant were qualified pursuant to paragraph (a) of this section during each of the 3 immediately preceding months, it would continue to be subject to all the provisions of this part until after the third consecutive month in which it remains so qualified and has a greater proportion of its fluid milk product disposition, except filled milk, made in the above-described manner in such other marketing area, unless, notwithstanding the provisions of this

paragraph, it is regulated under such other order; or

(ii) A distributing plant qualified pursuant to paragraph (a) of this section that is fully regulated under another Federal order but which has greater fluid milk product (except filled milk) disposition during the month on routes in the Des Moines marketing area and to pool plants qualified on the basis of route distribution in the Des Moines marketing area than in such other Federal order marketing area; and

(3) 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 authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1079.8 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 in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1079.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to the milk of producers diverted pursuant to § 1079.13 by the association for the account of such association;

(c) [Reserved]

(d) Any person as the operator of a partially regulated distributing plant.

§ 1079.10 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 or from sources other than pool plants and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk received from a pool plant.

§ 1079.11 [Reserved]

§ 1079.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority which milk is received by a handler as producer milk.

(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 § 1079.44 (a)(8)(iii) and the corresponding step of § 1079.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1079.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk received at a pool plant directly from a producer: *Provided*, That milk diverted under the conditions set forth in paragraphs (a), (b), and (c) of this section from a pool distributing plant to a nonpool plant that is not a producer-handler plant for the account of either the operator of the pool distributing plant or a cooperative association shall also be producer milk and shall be deemed to have been received by the diverting handler at the plant to which diverted.

(a) A handler described in § 1079.9(b) may divert for its account without limit during the other days of the month the milk of any member producer whose milk is received at a pool distributing plant for at least one delivery during the month. The total quantity of milk so diverted may not exceed 50 percent in September through March and 100 percent in April through August of the larger of the following amounts: (1) The total quantity of its member milk received at all pool distributing plants during the current month, or (2) the average daily quantity of its member milk received at all pool distributing plants during the previous month multiplied by the number of days in the current month.

(b) A handler in his capacity as the operator of a pool distributing 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) of this section whose milk is received at his pool distributing plant for at least one delivery during the month without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 50 percent in September through March and 100 percent in April through August of the larger of the following amounts: (1) The total quantity of producer milk received at such plant during the current month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a) of this section, or (2) the average daily quantity of producer milk received at such plant during the previous month multiplied by the number of days in the current month from producers who are not members of a cooperative association which has diverted milk in the current month pursuant to paragraph (a) of this section.

(c) Any milk so diverted by the operator of a pool plant or by a handler described in § 1079.9(b) in excess of the limits prescribed pursuant to paragraphs (a) and (b) of this section shall not be producer milk and if the diverting handler fails to designate the dairy farmers whose milk is not producer milk, then no milk diverted by such handler during the month shall be producer milk.

§ 1079.14 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 § 1079.40 (b)(1) from any source other than producers, or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1079.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1079.40 (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 § 1079.40(b)(1)) for which the handler fails to establish a disposition.

§ 1079.15 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 § 1079.40 (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.

§ 1079.16 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.

§ 1079.17 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).

§ 1079.18 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 is engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1079.30 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) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1079.40(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 § 1079.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1079.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1079.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1079.76(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.

§ 1079.32 Other reports.

(a) Each handler, except a producer-handler, shall report to the market administrator in the 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 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 §§ 1079.30 and 1079.31 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

§ 1079.40 Classes of utilization.

Except as provided in § 1079.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1079.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given

the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1079.15; and

(6) In shrinkage assigned pursuant to § 1079.41(a) to the receipts specified in § 1079.41(a)(2) and in shrinkage specified in § 1079.41 (b) and (c).

§ 1079.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1079.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1079.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1079.42 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 § 1079.44(a)(12) and the corresponding step of § 1079.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1079.44(a)(7) or the corresponding step of § 1079.44(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 § 1079.44(a)(11) or (12) or the corresponding steps of § 1079.44(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 § 1079.40.

(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 § 1079.30 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 utlization, 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.

§ 1079.43 General classification rules.

In determining the classification of producer milk pursuant to to § 1079.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1079.30 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 § 1079.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1079.40, 1079.41, and 1079.42;

(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 § 1079.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1079.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk for each handler described in § 1079.9(a) for each of his pool plants separately and of each handler described in § 1079.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1079.41(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 § 1079.40(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 § 1079.40(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 § 1079.40(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 § 1079.40(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 re-

maining 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 § 1079.40(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 § 1079.45(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 § 1079.42(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.

§ 1079.45 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 § 1079.44(a)(12) and the corresponding step of § 1079.44(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 another order plant, the class to which such receipts are allocated pursuant to § 1079.44 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 of each handler during the month that was utilized in each class. For the purpose of this report the milk so delivered shall be allocated to each class in the same ratio as all producer milk received at such plant during the month.

CLASS PRICES

§ 1079.50 Class prices.

Subject to the provisions of § 1079.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.40.

(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.

§ 1079.51 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.

§ 1079.52 Location adjustments for handlers.

(a) For producer milk received at a plant located outside the marketing area, and 60 miles or more by the shortest hard-surfaced highway distance, as measured by the market administrator from the main post offices of Des Moines and Ottumwa, Iowa, which is classified as Class I or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1079.50(a) shall be reduced 10 cents, and shall be reduced an additional 1.5 cents for each 10 miles or fraction thereof in excess of 75 miles from the designated post offices.

(b) For pursposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition remaining at the transferee-plant after computations pursuant to § 1079.44(a)(12) and the corresponding step of § 1079.44(b) in excess of 95 percent of receipts of producer milk at such plant, 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.

§ 1079.53 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.

§ 1079.54 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

§ 1079.60 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 § 1079.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1079.44 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 § 1079.44(a)(14) and the corresponding step of § 1079.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1079.74, 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 § 1079.44(a)(9) and the corresponding step of § 1079.44(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 § 1079.44(a)(7) (i) through (iv) and the corresponding step of § 1079.44(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 § 1079.44 (a)(7) (v) and (vi) and the corresponding step of § 1079.44 (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 § 1079.44(a)(11) and the corresponding step of § 1079.44(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.

§ 1079.61 Computation of uniform price.

For each month the market administrator shall compute an aggregate value from which to determine the uniform price per hundredweight for producer milk of 3.5 percent butterfat content, f.o.b. plants located within the marketing area, as follows:

(a) Combine into one total the values computed pursuant to § 1079.60 for all pool plants for which the reports prescribed in § 1079.30 for such month were made, except those in default of payments required pursuant to § 1079.71 for the preceding month;

(b) Add an amount equal to the sum of the location adjustment deductions to be made pursuant to § 1079.75;

(c) Add an amount equal to one-half of the unobligated cash 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 § 1079.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the uniform price for milk received from producers.

§ 1079.62 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

§ 1079.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made to such fund pursuant to §§ 1079.71, 1079.76, and 1079.77, and out of which he shall make all payments from such fund pursuant to §§ 1079.72 and 1079.77: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1079.71 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 § 1079.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1079.75, 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 § 1079.60(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. It 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.

§ 1079.72 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 § 1079.71(a)(2) exceeds the amount computed pursuant to § 1079.71(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. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1079.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1079.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 15th day after the end of each month, for producer milk received during such month, an amount computed at not less than the uniform price pursuant to § 1079.61 adjusted pursuant to §§ 1079.74, 1079.75, and 1079.86, and less the payment made pursuant to paragraph (a)(1) of this section.

(b) Each handler shall make payment to a cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 13th day after the end of each month for milk received during such month.

(c) In making the payments for producer milk pursuant to 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 recipient, 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 producer milk;

(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.

§ 1079.74 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.

§ 1079.75 Location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk pursuant to § 1079.61 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in § 1079.52.

(b) For purposes of computations pursuant to §§ 1079.71 and 1079.72 the uniform price shall be adjusted at the rates set forth in § 1079.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1079.76 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 §§ 1079.30(b) and 1079.31(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, 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 § 1079.60 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 § 1079.60 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 § 1079.60 for such handler shall include, in lieu of the value of other source milk specified in § 1079.60(f) less the value of such other source milk specified in § 1079.71(a)(2)(ii), a value of milk determined pursuant to § 1079.60 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 § 1079.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1079.30(b) and 1079.31(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 § 1079.60 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 § 1079.74, 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 § 1079.74, 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.

§ 1079.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors in payments to or from the producer-settlement fund pursuant to §§ 1079.71 and 1079.72, the market administrator shall promptly bill such handler for any unpaid amounts and such handler shall, within 15 days of such billing, make payments to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or to a cooperative association discloses payment of an amount less than is required by § 1079.73 the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1079.85 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;

(b) Other source milk allocated to Class I pursuant to § 1079.44(a) (7) and (11) and the corresponding steps of § 1079.44(b), except such other source milk that is excluded from the computa-

tions pursuant to § 1079.60 (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 § 1079.76(a)(2).

§ 1079.86 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 § 1079.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

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FEDERAL HOME LOAN BANK BOARD

■

MUTUAL-TO-STOCK CONVERSIONS BY FEDERALLY INSURED INSTITUTIONS

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 74-145]

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

Mutual-To-Stock Conversions

FEBRUARY 28, 1974.

The Federal Home Loan Bank Board, in a companion resolution, Resolution No. 74-144, dated February 28, 1974 and effective April 8, 1974, has amended the rules and regulations for Insurance of Accounts (12 CFR Ch. V, Subchapter D) by adding a new Part 563b—Conversions from Mutual to Stock Form, governing mutual-to-stock conversions by both Federally chartered and State-chartered institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("Corporation").

Since said Part 563b will exclusively govern such conversions, the Board has determined that the provisions of § 546.5 of the rules and regulations for the Federal Savings and Loan System (12 CFR 546.5) will not be required after the effective date of said Part 563b. Accordingly, the Federal Home Loan Bank Board hereby amends Part 546 of such regulations (12 CFR Part 546) by revoking § 546.5 thereof, effective April 8, 1974.

Section 546.5 prohibits Federal savings and loan associations (except for those which have filed "study applications", as defined in § 563.22-1(e) of this chapter) from taking certain steps toward conversion which, under the provisions of new Part 563b, are prerequisite to the filing of an application for preliminary approval of conversion. Therefore, Federal associations cannot file such applications, under the new regulations, prior to April 8, 1974. However, any Federal association which has filed a "study application" may revise such application to be in conformity with the provisions of new Part 563b at any time after the publication thereof, and such revised application will be promptly processed by the Corporation, but no preliminary approval of any such revised application will be granted prior to April 8, 1974. On and after April 8, 1974, the board of directors of any other Federal association may adopt a plan of conversion and such association may file an application for preliminary approval of conversion with the Corporation; however, except with respect to "study applications", the Corporation will not grant final approval of any conversion application prior to June 30, 1974.

Since the revocation of § 546.5 relieves restriction, the Board hereby finds that notice and public procedure thereon are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b).

(Sec. 4, Pub. L. 93-100, August 16, 1973; sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.74-5061 Filed 3-6-74;8:45 am]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 74-146]

PART 563—OPERATIONS

Mutual-To-Stock Conversions

FEBRUARY 28, 1974.

The Federal Home Loan Bank Board, in a companion resolution, Resolution No. 74-144, dated February 28, 1974 and effective April 8, 1974, has amended the rules and regulations for Insurance of Accounts (12 CFR Chapter V, Subchapter D) by adding a new Part 563b—Conversions from Mutual to Stock Form, governing mutual-to-stock conversions by both Federally chartered and State-chartered institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("Corporation").

Since said Part 563b will exclusively govern such conversions, the Board has determined that the provisions of § 563.22-1 of the rules and regulations for Insurance of Accounts (12 CFR 563.22-1) will not be required after the effective date of said Part 563b. Accordingly, the Federal Home Loan Bank Board hereby amends Part 563 of such regulations (12 CFR Part 563) by revoking § 563.22-1 thereof, effective April 8, 1974.

Section 563.22-1 prohibits insured institutions (except for those which have filed "study applications", as defined in paragraph (e) of such section) from taking certain steps toward conversion which, under the provisions of new Part 563b, are prerequisite to the filing of an application for preliminary approval of conversion. Therefore, insured institutions cannot file such applications, under the new regulations, prior to April 8, 1974. However, any insured institution which has filed a "study application" may revise such application to be in conformity with the provisions of new Part 563b at any time after the publication thereof, and such revised application will be promptly processed by the Corporation, but no preliminary aproval of any such revised application will be granted prior to April 8, 1974. On and after April 8, 1974, the board of directors of any other mutual insured institution may adopt a plan of conversion and such institution may file an application for preliminary approval of conversion with the Corporation; however, except with respect to "study applications", the Corporation will not grant final approval of any conversion application prior to June 30, 1974.

Since the revocation of § 563.22-1 relieves restriction, the Board hereby finds that notice and public procedure thereon are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b).

(Sec. 4, Pub. L. 93-100, August 16, 1973; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730. Reorg. Plan No. 3 of 1947, 12 FR 4981; 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

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[No. 74-144]

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

PART 563c—ACCOUNTING REQUIREMENTS

Conversions of Insured Institutions from Mutual to Stock Form

FEBRUARY 28, 1974.

The third unnumbered paragraph of section 5(i) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464 (i)), among other things, authorizes Federal mutual savings and loan associations to convert to the stock form upon an equitable basis and subject to the approval by regulations or otherwise of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation (the "Corporation" or "FSLIC"). Under Title IV of the National Housing Act, as amended (12 U.S.C. 1724 et seq.), the Board, as operating head of the FSLIC, has authority to regulate any such conversion involving a State-chartered insured institution.

Since December 5, 1963, the Board has maintained a moratorium on conversions of all institutions whose accounts are insured by the Corporation ("insured institutions"), both Federally chartered and State-chartered, from the mutual to the stock form. This moratorium was imposed primarily because of abuses arising from earlier conversions and because of the absence of sufficient information and knowledge with respect to the necessary safeguards, standards and control to enable conversions to occur in a safe and fair manner and without undue injury to the stability of the financial structure of the savings and loan industry.

During the time that such moratorium has been in effect, the Board has engaged three detailed studies of this difficult subject (the so-called "Scott Report", "Hester Report", and "Friend Report"). In order to gain further information and experience, the Board in February, 1972 approved a test conversion involving Citizens Federal Savings and Loan Association of San Francisco, California. In an additional effort to obtain information and experience in this area, the Board in July, 1972 called for study applications. Five such applications were received prior to the Board's Resolution No. 72-1112 of September 22, 1972, which stated that the Board would not accept further study applications pursuant to its July announcement.

The Board's administrative moratorium had the effect of rendering inoperative the two provisions of the Board's regulations relating to conversions of mutual institutions to the stock form of

organization. Section 546.5 of the rules and regulations for the Federal Savings and Loan System (12 CFR 546.5) concerned such conversions of Federal associations, and § 563.22–1 of the rules and regulations for Insurance of Accounts (12 CFR 563.22–1) contained substantially similar provisions concerning such conversions of State-chartered mutual insured institutions. The Board had long held the view that §§ 545.6 and 563.22–1 were totally inadequate to govern mutual-to-stock conversions and that they prescribed standards for such conversions which, if generally followed, would produce inequitable results. Accordingly, and on the basis of the information and experience referred to above, in September, 1972 the Board directed the preparation of a proposal for completely new conversion regulations and determined that the administrative moratorium is terminated effective upon the final adoption of the new conversion regulations.

On January 3, 1973, the Board, in Resolution No. 73–25 and Resolution No. 73–26, proposed to revoke §§ 545.6 and 563.22–1, respectively, and to add a new Part 563b and a new § 571.8 to the rules and regulations for Insurance of Accounts, to govern mutual-to-stock conversions by both Federally chartered and State-chartered insured institutions. Notice of such proposed rulemaking was duly published in the FEDERAL REGISTER of January 11, 1973 (38 FR 1334), with an invitation for interested persons to submit written comments by March 12, 1973. On March 12 and 13, 1973, public hearings were held on the proposal. On March 8, 1973, the Board briefly extended the comment period and announced that the Board intended, after considering the comments received during the comment period and the views presented at the public hearings, to issue revised proposed conversion regulations at a future date.

On August 16, 1973, the President signed into law Pub. L. 93–100, section 4 of which added a new subsection (j) to section 402 of the National Housing Act, as amended (12 U.S.C. 1725). New subsection (j) provides as follows:

(j) (1) Except as provided in paragraph (2), until June 30, 1974, the Corporation shall not approve, under regulations adopted pursuant to this title or section 5 of the Home Owners' Loan Act of 1933, by order or otherwise, a conversion from the mutual to the stock form of organization involving or to involve an insured institution, including approval of any application for such conversion pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the Corporation to approve conversions in supervisory cases. The Corporation may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

(2) After December 31, 1973, the Corporation may approve any study application filed prior to May 22, 1973, pursuant to regulations in effect and adopted pursuant to this title or section 5 of the Home Owners' Loan Act of 1933.

In general terms, section 402(j) imposes two statutory moratoria on mutual-to-stock conversions involving or to involve any institution whose accounts are insured by the Corporation (with the exception of supervisory cases). The one moratorium extended through December 31, 1973, and applied only to study applications. The other moratorium extends until June 30, 1974, and applies to all other mutual-to-stock conversions by insured institutions. Section 402(j) explicitly recognizes the Board's jurisdiction, as operating head of the Corporation, over all mutual-to-stock conversions involving or to involve any insured institution.

On August 27, 1973, by Resolution No. 73–1243 and Resolution No. 73–1244, the Board revised §§ 546.5 and 563.22–1, respectively, by replacing entirely the then existing provisions of those sections with new language to implement the provisions of said section 402(j) with respect to the two statutory moratoria. The effect of these actions was to withdraw such prior provisions of §§ 546.5 and 563.22–1 from the regulations of the Board and the Corporation, respectively. In the preamble to these implementing regulations, the Board stated in general terms its future plans with respect to further revision of, and final adoption of, proposed Part 563b, indicating that it intended to publish revised proposed conversion regulations in the later part of 1973.

On November 28, 1973, the Board acted to propose this revised set of conversion regulations. By resolution No. 73–1769, the Board proposed to amend the rules and regulations for Insurance of Accounts (12 CFR Chapter V, Subchapter D) by adding thereto a new Part 563b, exclusively governing conversions from mutual to stock form by both Federally chartered and State-chartered insured institutions. In the same resolution, the Board also proposed to amend § 563c.1 of such regulations (12 CFR 563c.1) to provide that the requirements of that section, governing the form and content of financial statements, be made applicable to financial statements prepared for inclusion in the proxy statements and offering circulars which would be required in connection with conversions under Part 563b, and to provide for the disclosure, in such financial statements, of certain information relevant to converted insured institutions.

This resolution indicated that the new proposal would supersede the Board's proposals of January 3, 1973, and stated the Board's determination not to adopt the amendments proposed by Resolution No. 73–25 and Resolution No. 73–26, except for the provisions proposed in Resolution No. 73–26 relating to the form and content of financial statements (which were adopted on November 28, 1973, by Resolution No. 73–1768, as new § 563c.1).

Notice of such proposed rule making was duly published in the FEDERAL REGISTER of December 10, 1973 (38 FR 34060) with an invitation for interested persons to submit written comments by January 31, 1974. In this notice, the Board indicated that final conversion regulations were not expected to be published until late February, 1974.

On January 3, 1974, the Board, by Resolution No. 74–48, proposed to amend its outstanding proposal on conversions by adding a new paragraph (i) to § 563b.3 thereof relating to acquisition of control of newly converted stock insured institutions. Notice of such proposed rule making was duly published in the FEDERAL REGISTER on February 5, 1974 (39 FR 4594) with an invitation for interested persons to submit written comments by February 20, 1974.

On the basis of the Board's consideration of all relevant material presented by interested persons and otherwise available, the Board hereby amends the rules and regulations for Insurance of Accounts (12 CFR Chapter V, Subchapter D) by adding thereto a new Part 563b (including the provisions of § 563b.3(i)) and by revising § 563c.1 (12 CFR 563c.1), to read as set forth below, effective April 8, 1974. In adopting these final regulations, the Board notes the termination of its administrative moratorium on mutual to stock conversions, in accordance with the terms of Board Resolution No. 72–1112, dated September 22, 1972.

New Part 563b is captioned "Conversions from Mutual to Stock Form" and contains eight sections.

The first section, § 563b.1, deals with the applicability of the provisions of Part 563b and of the forms prescribed thereunder. Paragraph (a), which provides that mutual-to-stock conversions of insured institutions are governed exclusively by such provisions, contains two changes from the proposal. First, the phrase "Except as the Corporation may otherwise determine * * *" has been inserted at the beginning of the first sentence, to indicate that the regulations are somewhat experimental in nature and that the Board, as the operating head of the Corporation, will, in its discretion, grant exceptions and waivers and impose additional requirements where warranted in specific cases. Second, the phrase "except as the Corporation may otherwise provide in supervisory cases" has been added to the second sentence to make it clear that the Corporation may approve conversions in "supervisory cases" without requiring adherence to all of the requirements of Part 563b. Paragraph (c) of this section provides a mechanism for waiver of requirements contained in Part 563b in the event of conflict with applicable State law.

Section 563b.2 contains the definitions applicable to the provisions of Part 563b and the forms prescribed thereunder. This section is adopted with three changes from the proposal. First, the definition of "additional entitlement shares" has been deleted from paragraph (a)(16) since the term is not used in the final regulations. Second, the definition of "sale" and "sell" in para-

graph (a)(26) has been revised to make it clear that an exchange of securities in connection with a merger or acquisition approved by the Board or the Corporation is not considered a sale. Third, a definition of "study application" has been added as paragraph (a)(30).

Section 563b.3, captioned "General principles for conversions", sets forth the basic requirement that a converting insured institution sell its capital stock at the estimated pro forma market value of such stock, with eligible accountholders having priority rights to subscribe for the purchase of such stock. Paragraph (a) of this section contains the Board's findings with respect to the equitability of the proposed conversion regulations, which findings are based on the studies, hearings and written comments referred to herein and on other relevant material considered by the Board. These findings conclude that no method of conversion can be considered equitable unless so-called "windfall" distributions which result in significant shifts of savings funds are virtually eliminated and that certain methods of conversion other than that contained in the regulations do not virtually eliminate such "windfall" distributions. These findings are adopted substantially as proposed.

In adopting the findings contained in paragraph (a), the Board considered, inter alia, a detailed economic study prepared by its Office of Economic Research (OER). Among other things, this study provided a method of estimating perceived windfall gains; analyzed the factors affecting windfall-induced shifts of funds; provided data on the interest rate sensitivity of savers in thrift institutions; analyzed the interest rate elasticities for savings at savings and loan associations on the industry, local and individual levels, as well as the speed of adjustment to rate changes on the local and national levels; estimated on a conservative national aggregative basis the magnitude of windfall-induced shifts of funds; and specified the disruptive effects of such shifts on the savings and loan industry, other financial institutions, and the capital markets generally. The study recommended that the Board not allow any conversion plan that would permit windfall gains of a magnitude sufficient to cause any significant shift of savings funds.

The OER study is dated the same date as this resolution, and, after it has been finally edited, set in type and printed, it will be made publicly available at its cost per copy to the Board. The conclusions and voluminous evidence presented in the OER study were important determinants in the Board's final adoption of the findings in § 563.3(a) and of the mandatory provisions of § 563b.3(c). The OER study was intended to be primarily descriptive, with the burden of evaluation placed on the Board. It is the Board's evaluation that any plan of conversion which permits windfall gains in conversions of a magnitude sufficient to cause any signficant shift of savings funds would not only be inequitable but grossly disruptive and damaging to the national economy and totally inconsistent with the statutory mandates of this agency.

The substantial revisions from the proposals of January 3, 1973, which the Board has made in § 563b.3 were required in order for plans of conversions to be equitable. The substantiality of these revisions are an indication of both the extreme difficulty and importance of the matter of determining a proper method of handling mutual-to-stock conversions and of the critical necessity to the safety and soundness of thrift and other financial institutions of the imposition and maintenance of the Board's administrative moratorium. The Board also wishes to note that, should serious inequities develop in the conduct of conversions after the regulations adopted hereby become effective, the Board may be required to reimpose and maintain an administrative moratorium pending consideration of actions to eliminate such inequities. While the Board believes that the regulations adopted hereby will properly control shifting of funds, the Board continues to be concerned about inequities that may result from disproportionate benefits among particular classes or groups of account holders, and will be especially alert to such inequities during the initial period following adoption of these regulations.

Section 563b.3 specifies the provisions that are required in a plan of conversion, including provisions governing the purchase and sale of capital stock and the establishment of a liquidation account to be maintained for the benefit of eligible account holders in the event of a complete liquidation subsequent to conversion. This section also contains a number of optional provisions which may be included in the plan of conversion. The mandatory and optional provisions relating to subscription for purchase of stock, contained in paragraphs (c) and (d) of this section, have been substantially revised from the proposal.

Under the proposal, it would have been mandatory for each eligible account holder to receive, without payment, nontransferable subscription rights to purchase a number of "entitlement shares" of capital stock. The number of "entitlement shares" that an eligible account holder would have a right to purchase would have been determined by multiplying the total number of shares to be issued by a fraction of which the numerator is the amount of the eligible account holder's qualifying deposit and the denominator is the total amount of all qualifying deposits in the converting institution.

There were, in addition, several optional provisions concerning purchase of shares during the subscription period. First, the plan of conversion could provide for a discount of up to 10 percent of the purchase price of entitlement shares purchased by eligible account holders, in which event the shares must be subject to a restriction on sale or transfer for a period of not less than 6 months.

The plan of conversion could also have provided for each eligible account holder to receive nontransferable subscription rights to purchase "additional entitlement shares", to the extent that such shares were available out of the unsubscribed entitlement shares. The additional entitlement shares were to be limited to four for each entitlement share or to a number sufficient to make the account holder's total subscription equal 100 shares. The purchase price for the additional entitlement shares after any discount would not be less than the purchase price for the entitlement shares. If a discount applied, the additional entitlement shares must be subject to a restriction on sale or transfer of not less than 6 months.

The plan of conversion could also have provided for purchase without discount of any remaining unsubscribed shares by eligible account holders, other account holders and borrowing members, as part of the subscription offering. A reasonable limit could be placed on the number of these shares purchased by any person.

The plan of conversion could also have provided, after satisfaction of these priorities, for purchase of any remaining unsubscribed shares by directors, officers and employees, as part of the subscription offering. The purchase price for such shares after any discount could not be less than the purchase price for the entitlement shares. If a discount applied, the shares purchased under this provision must be subject to a restriction on sale or transfer of not less than two years. The number of shares which could be so purchased would be subject to a limit of between 10 and 20 percent of the total shares being issued and sold under the plan of conversion, with the percentage depending on the asset size of the converting institution. The purchase rights must be equitably allocated among directors, officers and employees, and a reasonable limit could be placed on the number of shares which may be purchased by any person.

Paragraph (c) of § 563b.3 has been revised to make it mandatory that each eligible account holder receive nontransferable subscription rights to purchase up to 100 "entitlement shares" or, if greater, up to such number of shares as will result in the total maximum purchase price being equal to the amount of his qualifying deposit (rounded down to the nearest whole share). This first mandatory provision is stated in subparagraph (2) of § 563b.3(c). In the event of an oversubscription for such "entitlement shares", the shares are required to be allocated among the subscribers in accordance with the formula specified in subparagraph (2)(iii).

Subdivision (3) of § 563b.3(c) contains a second mandatory provision permitting eligible account holders to subscribe to all shares that remain available after the allocation of "entitlement shares" to subscribing eligible account holders, with proration in the event of oversubscrip-

tion. As an option, the subscription provided for under this second mandatory provision may be limited to an amount not less than one percent of the total offering for each person or group of persons affiliated or acting in concert.

In addition, mandatory provisions have been added to paragraph (c) relating to restrictions on resale of stock issued at the time of conversion.

With respect to optional provisions under paragraph (d) of § 563b.3, the regulations retain the discount of up to 10 percent on entitlement shares purchased by eligible account holders. The discount would not be available with respect to the additional shares purchased by eligible account holders under paragraph (c)(3).

The optional provision permitting subscription by eligible account holders, other account holders and borrowing members without discount is modified in two respects. First, it is limited to borrowing members and account holders other than eligible account holders, since eligible account holders are fully provided for under the mandatory provisions. Second, each of the persons in this category will be permitted to subscribe for up to 100 shares with a discount, subject to proration, with additional subscription rights for purchase without discount also permitted.

With respect to the subscription by directors, officers and employees, this optional provision will be permitted only if borrowing members and other account holders are permitted to subscribe for up to 100 shares. A discount on these management shares may be provided only if a discount is provided on entitlement shares and on the first 100 shares offered to borrowing members and other account holders, and the discount may not be greater than that provided in either such category.

The overall 10–20 percent limit (depending on asset size) on the number of shares which officers, directors and employees may subscribe for under this optional provision is retained. Officers, directors and employees can also purchase shares under other subscription categories if they meet the requirements thereof.

The mandatory holding periods for shares purchased at a discount would remain as proposed: six months for eligible account holders; two years for officers and directors without regard to the provision under which the shares are purchased; and two years for employee purchases under the 10–20 percent provision, otherwise six months. There is a holding period of six months for shares purchased at a discount by borrowing members and other account holders. Finally, there is a new one-year holding period for shares purchased by officers and directors without a discount on original issue, either directly from the issuer (by subscription or otherwise) or through an underwriter.

Paragraph (f) of § 563b.3, governing the establishment and maintenance of the liquidation account, has been revised from the proposal in several respects. First, changes have been made in subparagraphs (1) and (2) to make it clear that the liquidation account does not constitute a separate net worth account on the balance sheet of the converted insured institution and that the earmarking of specific net worth accounts is not required. Second, a sentence has been added at the end of subdivision (3) to make it clear that rights in the liquidation account survive a merger, consolidation or similar transaction.

Paragraph (g) of § 563b.3, relating to restrictions on repurchase of stock and payment of dividends, has three changes from the proposal. In subdivision (1), an exception to the stock repurchase restriction has been provided for directors' qualifying shares. In subdivision (3), the restrictions on payout are made applicable to stock repurchases as well as payment of cash dividends, and the allowable annual payout has been reduced to two-thirds of the greater of (i) net income for the current fiscal year or (ii) the average of net income for the current fiscal year and not more than two of the immediately preceding fiscal years.

New paragraph (i) of § 563b.3, relating to acquisition of control of newly converted stock insured institutions, is adopted as proposed. Subparagraph (1) thereof contains findings by the Board to the effect that newly converted stock insured institutions, because of the new infusion of capital, would be specially vulnerable to takeover attempts and that acquisition of control of such converted insured institutions by companies significantly engaged in unrelated business activities is inconsistent with economical home financing. The term "inconsistent with economical home financing" is found in section 403(c) of the National Housing Act and is a purpose of that Act which the Corporation is authorized to carry out by the adoption of regulations pursuant to section 402(a) of the Act.

Subparagraph (2) thereof provides for a required agreement between the converted insured institution and the Corporation providing that no company significantly engaged, directly or through an affiliate, in an unrelated business activity (defined as any business activity not permitted for multiple savings and loan holding companies) may acquire control of the converted insured institution. A company is significantly engaged in an unrelated business activity if such activity represents more than 15 percent of the company's consolidated net worth or consolidated net income. Since the agreement is mandatory, it is limited to a 3-year period following conversion, during which time the converted insured institution can effectively invest its new capital. Section 407(e)(1) of the National Housing Act expressly recognizes the authority of the Corporation to impose conditions and require agreements in connection with the approval of applications.

Subparagraph (3) thereof provides for an optional charter provision containing the same restriction, which may be adopted by a converted insured institution if State law permits. Since the charter provision is intended to enable a converted insured institution to protect itself from undesirable acquisition on a longer-term basis, the charter provision is optional and can be amended by a vote of the shareholders of the converted insured institution. The charter provision can require that up to 75 percent of the total outstanding votes be cast for an amendment of that provision. If the converted insured institution elects to adopt the optional charter provision, the Corporation will impose, as a condition of the approval of the conversion, a requirement that the converted insured institution fully enforce the charter provision.

Section 563b.4, adopted substantially as proposed, deals with such procedural matters as publication of notice that an application for preliminary approval of conversion has been filed, contents of public statements, and confidentiality of information contained in an application.

Section 563b.5, adopted substantially as proposed, concerns proxies, proxy solicitation, and the use of the proxy statement prepared in accordance with Form PS. This section and Form PS are based on Regulation 14A, Schedule 14A, and Form 10 of the Securities and Exchange Commission (17 CFR 240.14a–1 to .14a–12, 240.14a–101, and 249.210, respectively). It is the intent of the Board that this section and Form PS operate to give association members the information needed for informed voting on the plan of conversion and to provide information which can be incorporated into offering circulars to enable eligible account holders and others to make informed investment decisions with respect to the purchase of the converted institution's capital stock. It is also contemplated that the information generated by Form PS will enable the converted institution to meet the registration requirements of section 12(g) of the Securities Exchange Act of 1934, without substantial additional expense.

Section 563.6, adopted substantially as proposed, deals with the required vote of the members of the association, notice of the meeting, and application to the Corporation for final approval of the conversion. This section requires a majority of the total outstanding votes of the members for approval of a conversion.

Section 563b.7 governs the pricing of the converted institution's capital stock, the use of the offering circular and disclosure of price information, and requirements as to the order form for subscriptions to purchase capital stock. A primary requirement of this section is that the prices be set only after thorough and independent appraisal. Paragraph (g)(1)(iv), relating to materials required in support of an appraisal, has been revised to provide specific reference to valuation on the basis of capitalized earnings. In addition several clarifying changes have been made in paragraph (j), concerning direct payment of discount.

Section 563b.8 sets forth the general sequence of processing applications for conversion and provides for numerous administrative requirements such as number of copies, place of filing, format for filing, amendments, and incorporation by reference. Section 563b.8 is modeled on Regulation C of the Securities and Exchange Commission (17 CFR 230.400–494) and is designed in part to insure that the filings under Part 563b can be used by insured institutions without substantial additional expense to meet the formal filing requirements of the Commission. This section is adopted substantially as proposed, with an addition to paragraph (a)(3) providing that the Board may grant final approval of conversion, with respect to insured institutions which have filed "study applications", after April 8, 1974 and, with respect to all other applicants, on and after June 30, 1974.

The provisions of proposed § 563b.9 would have permitted, in addition to direct conversions, conversions involving holding company acquisitions or mergers. In the case of acquisition by a newly organized or an existing holding company or of merger into an existing stock insured institution subsidiary of a holding company, the eligible account holders of the converting institution would purchase securities of the holding company. Since the issuance of such securities would not be exempt from the registration requirements of the Securities Act of 1933, the conversion transaction would be subject to the requirements of both the SEC and the Board. This dual jurisdiction would cause the conversion transaction to become extremely complicated and would probably cause lengthy delays in processing of conversion applications, especially in the event of differences between the Board's requirements and those of the SEC.

The provisions of proposed § 563b.9 would have permitted merger of a mutual insured institution into an existing stock insured institution not a subsidiary of a holding company. Although SEC registration would not be involved, there is particular concern in this type of merger, as well as in any existing holding company acquisition or merger, with the fairness of the transaction. There are difficult valuation problems in any conversion, and these problems are substantially increased when there is an acquisition or merger involving an existing stock insured institution.

Because of these problems and because of uncertainty as to the Federal income tax aspects of conversion transactions other than direct conversions, the Board has determined not to adopt the provisions of proposed § 563b.9 at this time. It should be noted, however, that the omission of proposed § 563b.9 does not prevent a conversion involving the merger of two mutual institutions as part of, but prior to, the conversion, with shares offered to the eligible account holders of the two former mutual institutions.

The Board hereby adopts, in addition to the regulations, four forms to be used in connection with conversions. Form PA is the prescribed form of Application for Preliminary Approval of Conversion; Form PS is the form for the required Proxy Statement; Form OC is the form for the required Offering Circulars; and Form FA is the prescribed form of Application for Final Approval of Conversion. Because of their integral and significant relationship to the operation of Part 563b, these forms are published herein, following the text of the regulations.

Item 15(a) of Form PS has been changed from the proposal to require that the applicant furnish, in addition to an audited statement of financial condition for the latest fiscal year, a comparative audited statement for the previous fiscal year. Except for this change and some minor corrections and clarifying changes, the forms published herein are adopted without substantial change from those published in the proposal.

Section 563b.8(1)(5) of new Part 563b provides that § 563c.1 of the rules and regulations for Insurance of Accounts (12 CFR 563c.1) governs the certification, form and content of financial statements to be included in the proxy statement and offering circular. In this connection, the Board has amended said § 563c.1 by revising paragraph (a) thereof to provide that the requirements of that section shall be applicable to financial statements prepared pursuant to § 563b.8(1)(5).

In addition, two new provisions are added to paragraph (p) of said § 563c.1, relating to information to be disclosed in financial statements in connection with a conversion. The first provision, a new subdivision (13) unchanged from the proposal, requires a converting institution to give a brief description of the plan of conversion and the financial statement implications thereof. The second provision, a new subdivision (14), requires a converted institution to provide information regarding the liquidation account to be maintained for the benefit of eligible preconversion account holders. This provision has been revised to permit the use of estimated balances and adjustments and to permit discontinuance of the liquidation account disclosure whenever the adjusted balance is reduced to less than 5 percent of the institution's then current net worth.

In companion actions taken by the Board on this date, the Board has, by Resolution No. 74–145 and Resolution No. 74–146, respectively revoked § 546.5 of the rules and regulations for the Federal Savings and Loan System (12 CFR 546.5) and § 563.22–1 of the rules and regulations for Insurance of Accounts (12 CFR 563.22–1), such revocations to be effective on April 8, 1974, the effective date of the regulations adopted herein. During the period prior to such effective date, any insured institution which has filed a "study application" (as defined in § 563b.2(a)(30)) may revise such application to be in conformity with the provisions of new Part 563b, and such revised application will be promptly processed by the Corporation. On and after such effective date, the Corporation will accept and consider applications for preliminary approval of conversion from all insured institutions, and preliminary approval thereof may be granted. However, as provided in § 563b.8(a)(3), the Corporation will not grant final approval of any conversion application prior to June 30, 1974, except that, in the case of a "study application", the Corporation may grant such final approval prior to such date.

1. Section 563c.1 of 12 CFR Chapter V is amended by revising paragraph (a) thereof and by adding to paragraph (p) thereof new subparagraphs (13) and (14), immediately after subparagraph (12), and redesignating present subparagraphs (13) and (14) as subparagraphs (15) and (16), as follows:

§ 563c.1 Form and content of financial statements.

(a) *Application of this section.* (1) This section states the requirements as to the form and content of financial statements to be furnished by an insured institution with the following:

(i) Any proxy statement or offering circular required to be used in connection with a conversion under the provisions of Part 563b of this subchapter; and

(ii) Any offering circular or private placement memorandum required to be used in connection with an issuance of subordinated debt securities under the provisions of § 563.8–1 of this subchapter.

(2) The term "financial statements" shall be deemed to include all notes to the statements and related schedules.

* * * * *

(p) *General notes to financial statements.* * * *

(13) *Plan of conversion.* If the financial statements are to be furnished with a proxy statement or offering circular in connection with a conversion, a brief description of the plan of conversion and the financial statement implications thereof, including any subsequent dividend restrictions, shall be given. Such description may incorporate by reference any material contained in the proxy statement or offering circular.

(14) *Preconversion accountholders' net worth.* An institution that is required to maintain financial records for a liquidation account to be paid out to preconversion eligible accountholders in the event of complete liquidation shall state in a note to the stockholders' equity section of its statement of financial condition: (i) The actual or estimated current adjusted balance of the account; (ii) the purpose and general character of the account; (iii) the accounting method or principle used to adjust the account; and (iv) a summary of the adjustments or estimated adjustments to the account since its inception. This note will not be required whenever the actual or estimated current adjusted balance of the liquidation account is less than 5 percent of the institution's then current net worth.

(15) *Income tax expense.* * * *
(16) *Warrants or rights outstanding.* * * *

* * * * *

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260 as amended; 12 U.S.C. 1725, 1726, 1730; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

2. The text of said new Part 563b is as follows:

Sec.
563b.1 Scope of part.
563b.2 Definitions.
563b.3 General principles for conversion.
563b.4 Notice of filing; public statements; confidentiality.
563b.5 Solicitation of proxies; proxy statement.
563b.6 Vote by members; application for final approval.
563b.7 Pricing and sale of securities.
563b.8 Procedural requirements.

AUTHORITY: Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 563b.1 Scope of part.

(a) *General.* Except as the corporation may otherwise determine the provisions of this part shall exclusively govern conversion of Federally-chartered mutual insured institutions and State-chartered mutual insured institutions to State-chartered capital stock insured institutions. No such mutual insured institution shall convert to the capital stock form of organization without the prior written approval of the Corporation pursuant to the provisions of this part, except as the corporation may otherwise provide in supervisory cases.

(b) *Provisions of prescribed forms.* Any provision in a form prescribed under this part and covering the same subject matter as any provision of this part shall have the same force and effect as if it were a provision of this part.

(c) *Conflicts with State law.* (1) In the event an applicant finds that compliance with any provision of this part would be in conflict with applicable State law, the applicant may file with the Corporation a written request for waiver of compliance with such provision. Such request may be incorporated in the application for preliminary approval of conversion; otherwise, the applicant shall file four copies of such request.

(2) In making any such request, the applicant shall:

(i) Specify the provision or provisions of this part with respect to which the applicant desires waiver;

(ii) Furnish an opinion of counsel demonstrating that applicable State law is in conflict with the specified provision or provisions of this part; and

(iii) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its accountholders or other insured institutions or be contrary to the public interest.

§ 563b.2 Definitions.

(a) As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(1) *Affiliate.* An "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) *Amount.* The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(3) *Applicant.* An "applicant" is an insured institution which has applied to convert pursuant to this part.

(4) *Associate.* The term "associate", when used to indicate a relationship with any person, means (i) any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (ii) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the applicant or any of its parents or subsidiaries.

(5) *Association members.* The term "association members" refers to persons who, pursuant to the charter or bylaws of the applicant, are eligible to vote at the applicant's meeting at which conversion will be voted upon.

(6) *Board.* The term "Board" refers to the Federal Home Loan Bank Board.

(7) *Capital stock.* The term "capital stock" includes permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.

(8) *Charter.* The term "charter" includes articles of incorporation, articles of association, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(9) *Control.* The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(10) *Corporation.* The term "Corporation" refers to the Federal Savings and Loan Insurance Corporation.

(11) *Dealer.* The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(12) *Director.* The term "director" means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(13) *Eligibility record date.* The term "eligibility record date" means the record date for determining eligible account holders of a converting institution.

(14) *Eligible account holder.* The term "eligible account holder" means any person holding a savings account in a converting institution on the eligibility record date.

(15) *Employee.* The term "employee" does not include a director or officer.

(16) *Entitlement shares.* The term "entitlement shares" refers to the shares of capital stock which an eligible account holder is entitled to purchase on the basis of the amount of his qualifying deposit as determined in accordance with § 563b.3(e).

(17) *Equity security.* The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such security; or any such warrant or right.

(18) *Insured institution.* The term "insured institution" has the same meaning as in § 561.1 of this subchapter.

(19) *Material.* The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant, or matters as to which an average prudent association member ought reasonably to be informed in voting upon the plan of conversion of the applicant.

(20) *Member.* The term "member" means any person qualifying as a member of an insured institution pursuant to its charter or bylaws.

(21) *Offer.* The term "offer", "offer to sell", or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(22) *Officer.* The term "officer" means the chairman of the board, president, vice-president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(23) *Person.* The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(24) *Proxy.* The term "proxy" includes every form of authorization by which a person is, or may be deemed to be, designated to act for an association member in the exercise of his voting rights in the affairs of an insured institution. Such an

authorization may take the form of failure to dissent or object.

(25) *Purchase.* The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(26) *Sale.* The terms "sale" and "sell" include every contract to sell or otherwise dispose of a security or interest in a security for value; but such terms do not include an exchange of securities in connection with a merger or acquisition approved by the Board or the Corporation.

(27) *Savings account.* The term "savings account" has the same meaning as in § 561.11 of this subchapter and includes certificates of deposit.

(28) *Security.* The term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

(29) *Solicitation; solicit.* The terms "solicitation" and "solicit" refer to (i) any request for a proxy whether or not accompanied by or included in a form of proxy; (ii) any request to execute, not execute, or revoke a proxy; or (iii) the furnishing of a form of proxy or other communication to association members under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. The terms do not apply, however, to the furnishing of a form of proxy to an association member upon the unsolicited request of such association member, the performance of acts required by § 563b.5 (f), or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

(30) *Study application.* The term "study application" means any of the 5 study applications filed after the Board's announcement of July 26, 1972, that it would accept study applications to obtain additional information relevant to the possible termination of its "moratorium" on conversions, and before the Board's Resolution No. 72–1112 of September 22, 1972, stating that the Board would not accept further study applications under its announcement of July 26, 1972.

(31) *Subscription offering.* The term term "subscription offering" refers to the offering, through nontransferable subscription rights issued to eligible account holders, of shares of capital stock as required by § 563b.3(c)(2) and (3). The term also includes the offering of such shares, through subscriptions rights issued to other account holders and/or borrowing members, as permitted by § 563b.3(d)(3), and the offering of such shares to directors, officers and employees, as permitted by § 563b.3(d)(4).

(32) *Subsidiary.* A "subsidiary" of a specified person is an affiliate controlled by such person, directly or indirectly through one or more intermediaries.

(33) *Supervisory Agent.* The term "Supervisory Agent" means (i) the President of the Bank of the Federal Home Loan Bank district in which the applicant has its principal office, or (ii) any other person who is specifically designated as an agent by the Corporation to act in its behalf in the administration of this part.

(34) *Underwriter.* The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which he is the underwriter.

(b) Terms defined in other parts of this subchapter, when used in this part, shall have the meanings given in such definitions, to the extent such definitions are not inconsistent with the definitions contained in this part, unless the context otherwise requires.

§ 563b.3 General principles for conversions.

(a) *Findings of Federal Home Loan Bank Board.* (1) The regulations contained in this part are promulgated to provide rules by which mutual insured institutions may convert to the stock form of organization on an equitable basis. In determining the equity of conversion standards and procedures, the Board, both directly and as operating head of the Corporation, finds that it is necessary to consider the effects of various standards and procedures that might be adopted, not only on an individual applicant but also on the entire system of insured institutions. Indeed, the Board believes that it has a public responsibility also to consider the effects on financial institutions which are not thrift institutions and on thrift institutions which are not subject to the Board's regulatory jurisdiction. If a particular method of conversion would unacceptably threaten the financial stability of such institutions, or a substantial portion of them, the Board cannot consider such method of conversion to be on an equitable basis. Further, if a particular method of conversion would tend to force individual mutual insured institutions to convert to the stock form irrespective of whether such institutions or the communities they serve would be benefited thereby, the Board cannot consider such a method of conversion to be on an equitable basis.

(2) The Board has determined that a method of conversion which provides a so-called "windfall" distribution to the account holders of a converting mutual insured institution would create strong incentives for significant shifts of savings funds among insured institutions and other financial institutions and that such shifts of savings funds would unacceptably threaten the financial stability of such institutions. The Board has also determined that a method of conversion which provides a so-called "windfall" distribution would tend to force individual mutual insured institutions to convert to the stock form irrespective of whether such institutions or the communities they serve would be benefited thereby. The Board therefore finds that no method of conversion can be considered equitable unless such "windfall" distribution is virtually eliminated. The Board further finds that such "windfall" distribution is not virtually eliminated by methods of conversion under which the control of such distribution is intended to be effected by systems of averaging or weighting deposits, by restricting transferability of the capital stock of converted insured institutions, by placing such stock in escrow or trust, by delayed distribution of such stock or its equivalent in cash by placing such stock in escrow or trust, by delayed distribution of such stock or its equivalent in cash, or by segregating the net worth accounts of converted insured institutions and proportionally allocating the future income of such institutions to such accounts, or by any of the foregoing methods taken in combination. The Board also finds that, in order for conversion regulations to be effective against the undesirable results of such "windfall" distributions, the basic provisions of such regulations must operate with substantial uniformity with respect to mutual insured institutions on a national scale.

(3) The regulations contained in this part, while providing the account holder with rights to a share in the equity of the converting mutual insured institution in the event of a subsequent complete liquidation, are designed virtually to eliminate the "windfall" aspect of conversion and the resulting disruptive effect on the economy. Accordingly, the Board finds that these regulations provide a means by which mutual insured institutions may convert to stock form on an equitable basis.

(b) *General requirements.* No application for preliminary approval of conversion shall be approved by the Corporation if—

(1) The plan of conversion adopted by the applicant's board of directors is not in accordance with the provisions of this part;

(2) The conversion would result in any reduction of the Federal insurance reserve or would cause the applicant to fail to meet any net worth requirement of § 563.13 of this subchapter;

(3) The conversion may result in a taxable reorganization of the applicant under the Internal Revenue Code of 1954, as amended; or

(4) The converted institution would not have its accounts insured by the Corporation.

(c) *Required provisions in plan of conversion.* The plan of conversion shall:

(1) Provide that the converting insured institution shall issue and sell shares of its capital stock at a total price equal to the estimated pro forma market value of such shares in the converted insured institution, based on an independent valuation, as provided in § 563b.7, less any discount permitted under the plan pursuant to paragraph (d) of this section.

(2) Provide that each eligible accountholder shall receive, without payment, nontransferable subscription rights to purchase entitlement shares, subject to the following conditions:

(i) The subscription price per share shall be the price fixed in accordance with § 563b.7, less any discount permitted under the plan pursuant to paragraph (d) of this section;

(ii) The maximum number of entitlement shares which an eligible account holder may subscribe for under this subdivision (2) shall be the greater of:

(A) 100 shares; or

(B) Such number of shares as shall be equal to the quotient (rounded down to the next whole number) obtained by dividing the amount of the qualifying deposit of the eligible account holder by the subscription price per share;

(iii) In the event of an oversubscription for entitlement shares, the shares shall be allocated among the subscribing eligible account holders as follows:

(A) Each eligible account holder shall first be permitted to purchase such number of entitlement shares as shall be equal to the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting insured institution.

(B) Any shares not allocated in accordance with paragraph (c)(2)(iii)(A) of this section shall next be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his total allocation (including the number of shares allocated in accordance with paragraph (c)(2)(iii)(A) of this section) equal to 100 shares.

(C) Any shares not allocated in accordance paragraph (c)(2)(iii)(A) and (B) of this section shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion.

(3) Provide that each eligible account holder shall also receive, without payment, nontransferable subscription rights to purchase additional shares of capital stock, to the extent that such shares are available after satisfying the subscriptions provided for under paragraph (c)(2) of this section, subject to the following conditions:

(i) The subscription price per share shall be the price fixed in accordance with § 563b.7 without any discount;

(ii) The number of shares which an eligible account holder may subscribe for under this paragraph (c)(3) may be made subject to a limit of not less than 1 percent of the total offering of shares for each eligible account holder or group of eligible account holders affiliated with each other or otherwise acting in concert; and

(iii) In the event of an oversubscription for such additional shares, the shares available shall be allocated among the subscribing eligible account holders on a pro rata basis.

(4) Provide that all shares not purchased upon exercise of subscription rights shall be sold at the price determined in accordance with § 563b.7; and specify the underwriting or other marketing arrangements to be made to assure the sale of all unsubscribed entitlement shares.

(5) Provide that each savings account holder of the converting insured institution shall receive, without payment, a withdrawable savings account or accounts in the converted insured institution equal in withdrawable amount to the withdrawal value of such account holder's savings account or accounts in the converting insured institution.

(6) Provide for the establishment and maintenance of a liquidation account for the benefit of eligible account holders in the event of a subsequent complete liquidation of the converted insured institution, in accordance with the provisions of paragraph (f) of this section.

(7) Provide for an eligibility record date, which shall be not less than 90 days prior to the date of adoption of the plan by the converting insured institution's board of directors.

(8) Provide that the holders of the capital stock of the converted insured institution shall have exclusive voting rights, unless State law requires savings account holders and/or borrowers of the converted insured institution to have voting rights, in which case the charter of the converted insured institution shall (i) limit such voting rights to the minimum required by State law, and (ii) provide for the management of the converted insured institution to solicit proxies from such savings account holders and/or borrowers in the same manner as it solicits proxies from its shareholders.

(9) Provide that the plan of conversion adopted by the applicant's board of directors may be substantively amended by such board of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from members to vote on the plan and at any time thereafter with the concurrence of the Corporation; and that the conversion may be terminated by such board of directors at any time prior to final approval by the Corporation and at any time thereafter with the concurrence of the Corporation.

(10) Provide that all shares of capital stock purchased by directors and officers without a discount on original issue, either directly from the insured institution (by subscription or otherwise) or from an underwriter of such shares, shall be subject to the restriction that such shares shall not be sold for a period of not less than one year following the date of purchase, except in the event of death of the shareholder.

(11) Provide that, in connection with shares of capital stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the transfer agent for the converted insured institution's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(iii) Any shares issued as a stock dividend, stock split or otherwise with respect to any such restricted stock shall be subject to the same restriction as may apply to such restricted stock.

(12) Contain no provision which the Corporation shall determine to be inequitable or detrimental to the applicant, its savings account holders or other insured institutions or to be contrary to the public interest.

(d) *Optional provisions in plan of conversion.* The plan of conversion may provide any or all of the following:

(1) That each eligible account holder exercising subscription rights to purchase entitlement shares shall be required to purchase up to a minimum of 25 shares to the extent such shares are available (but the aggregate price for any minimum share purchase shall not exceed $500).

(2) That eligible account holders exercising subscription rights to purchase entitlement shares shall receive a discount of not more than 10 percent of the price fixed in accordance wth § 563b.7, subject to a restriction that such shares shall not be sold for a period of not less than six months following the date of purchase, except in the event of death of the shareholder.

(3) That savings account holders and/or borrowering members of the converting insured institution, other than those who are eligible account holders, shall receive, wthout payment, nontransferable subscription rights to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders provided for under paragraph (c) (2) and (3) of this section, subject to the following conditions:

(i) Each such account holder and/or borrowing member shall be entitled to subscribe for the purchase of up to 100 shares at a subscription price per share equal to the price fixed in accordance with § 563b.7, less such discount, not in excess of the discount provided for entitlement shares under paragraph (c)(2) of this section, as may be provided in the plan of conversion;

(ii) Each such account holder and/or borrowing member may also be given rights to subscribe for additional shares

of capital stock at a subscription price per share equal to the price fixed in accordance with § 563b.7, without any discount, subject to a reasonable limitation on the number of shares which may be purchased by any person or group of affiliated persons or group of persons acting in concert;

(iii) In the event of an oversubscription for shares under the provisions of this subdivision (3), the shares available shall be allocated among the subscribing account holders and/or borrowing members on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion; and

(iv) If any shares purchased under the provisions of this paragraph (d)(3) are purchased at a discount, such shares shall be subject to the restriction that such shares shall not be sold for a period of not less than six months following the date of purchase, except in the event of death of the shareholder.

(4) That director, officers, and employees of the converting insured institution, as part of the subscription offering, shall be entitled to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders provided for under paragraph (c)(2) and (3) of this section and the subscriptions of other savings account holders and/or borrowing members provided for under paragraph (d)(3) of this section, subject to the following conditions:

(i) The plan of conversion may contain the provisions permitted by this paragraph (d)(4) only if the plan also provides that other savings account holders and borrowing members, under the provisons permitted by paragraph (d)(3) of this section, may each subscribe for the purchase of up to 100 shares of capital stock;

(ii) The subscription price per share shall be the price fixed in accordance with § 563b.7, less such discount as may be provided in the plan of conversion: but no such discount may be so provided unless discounts not less in amount are provided for subscriptions under paragraphs (c)(2) and (d)(3)(i) of this section;

(iii) The total number of share which may be purchased under this paragraph (d)(4) shall not exceed 20 percent of the total number of shares to be issued in the case of a converting insured institution with total assets of less than $50 million or 10 percent in the case of a converting insured institution with total assets of $500 million or more; in the case of a converting insured institution with total assets of $50 million or more but less than $500 million, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, 15 percent in the case of a converting insured institution with total assets of approximately $275 million);

(iv) The shares shall be allocated among directors, officers, and other employees on an equitable basis such as by giving weight to period of service, compensation and position, subject to a reasonable limitation on the amount of shares which may be purchased by any person or group of affiliated persons or group of persons acting in concert; and

(v) All shares purchased by directors and officers at a discount under this paragraph (d)(4) or under paragraphs (c)(2) or (d)(3) of this section and all shares purchased by employees at a discount under this paragraph (d)(4) shall be subject to the restriction that such shares shall not be sold for a period of not less than two years following the date of purchase, except in the event of death of the shareholder.

(5) That management employment contracts may be authorized and a qualified stock option plan may be adopted at the meeting at which the plan of conversion is voted upon by the members of the converting insured institution.

(6) That the converted insured institution shall issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in which event any reference in the provisions of this part to capital stock shall apply to such units of equity securities unless the context otherwise requires.

(e) *Determination of amount of qualifying deposit; predecessor and successor accounts.* (1) Unless otherwise provided in the plan of conversion, for the purposes of this section, the amount of the qualifying deposit of an eligible account holder shall be the total of the deposit balances in the eligible account holder's savings accounts in the converting institution as of the close of business on the eligibility record date. However, the plan of conversion may provide that any one or more of the following optional provisions shall apply in determining the amount of the qualifying deposit:

(i) Any savings accounts with total deposit balances of less than $100 (or any lesser amount) shall not constitute a qualifying deposit.

(ii) The amount of the qualifying deposit shall be the average of the total of the deposit balances in the eligible account holder's savings accounts as of the close of business on the eligibility record date and not more than four of the previous quarterly earnings distribution dates.

(iii) If the total of the deposit balances in the eligible account holder's savings accounts as of the close of business on the date of adoption of the plan of conversion by the institution's board of directors is less than the total of the deposit balances on the eligibility record date (or the average of the total of the deposit balances determined in accordance with paragraph (e)(1)(ii) of this section), the amount of the qualifying deposit shall be the total of the deposit balances (if any) as of the close of business on the date of adoption of the plan.

(2) As used in this section, the term "savings account" includes a predecessor or successor account of a given savings account which is held only in the same right and capacity and on the same terms and conditions as the given savings account. However, the plan of conversion may provide for lesser requirements for consideration as a predecessor or successor account.

(f) *Liquidation account.* (1) Each converted insured institution shall, at the time of conversion, establish a liquidation account in an amount equal to the amount of net worth of the converting insured institution as of the latest practicable date prior to conversion. For the purposes of this paragraph, the insured institution may use the net worth figure set forth in its latest statement of financial condition contained in the proxy statement. The function of the liquidation account is to establish a priority on liquidation and, except as provided in paragraph (g)(2) of this section, the existence of the liquidation account shall not operate to restrict the use or application of any of the net worth accounts of the converted insured institution.

(2) The liquidation account shall be maintained by the converted insured institution for the benefit of eligible account holders who maintain their savings accounts in such institution. Each such eligible account holder shall, with respect to each savings account held, have a related inchoate interest in a portion of the liquidation account balance ("subaccount").

(3) In the event of a complete liquidation of the converted insured institution (and only in such event), each eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for savings accounts then held, before any liquidation distribution may be made with respect to capital stock. No merger, consolidation, purchase of bulk assets with assumption of savings accounts and other liabilities, or similar transaction, in which the converted institution is not the surviving institution, is considered to be a complete liquidation for this purpose. In such transactions, the liquidation account shall be assumed by the surviving insured institution.

(4) The initial subaccount balance for a savings account held by an eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposit in the savings account and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting insured institution. Such initial subaccount balance shall not be increased, and it shall be subject to downward adjustment as provided in paragraph (f)(5) of this section.

(5) If the deposit balance in any savings account of an eligible account holder at the close of business on any annual closing date subsequent to the eligibility record date is less than the lesser of (i) the deposit balance in such savings account at the close of business on any other annual closing date subsequent to

the eligibility record date or (ii) the amount of the qualifying deposit in such savings account, the subaccount balance for such savings account shall be adjusted by reducing such subaccount balance in an amount proportionate to the reduction in such deposit balance. In the event of such a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related savings account. If any such savings account is closed, the related subaccount balance shall be reduced to zero.

(g) *Restrictions on repurchase of stock and payment of dividends.* Any approval of a conversion by the Corporation under this part shall be subject to the following conditions:

(1) No converted insured institution shall repurchase any of its capital stock from any director, officer, former director or officer, or associate thereof, except in the case of an offer to repurchase on a pro rata basis made to all shareholders of such institution and except for the repurchase of qualifying shares of a director.

(2) No converted insured institution shall declare or pay a cash dividend on, or repurchase any of, its capital stock if the effect thereof would cause the net worth of the converted insured institution to be reduced below (i) the amount required for the liquidation account or (ii) the net worth requirements contained in § 563.13(b) of this subchapter.

(3) Without the prior approval of the Corporation, no converted insured institution shall, for a period of 10 years after the date of its conversion, declare or pay a cash dividend on, or repurchase any of, its capital stock in an amount in excess of two-thirds of the greater of:

(i) The institution's net income (as defined in § 572.3(b) of this subchapter) for the current fiscal year; or

(ii) The average of the institution's net income (as so defined) for the current fiscal year and not more than two of the immediately preceding fiscal years.

(h) *Manipulative and deceptive devices.* In the offer, sale or purchase of securities issued incident to its conversion, no insured institution, or any director, officer or employee thereof, shall (1) employ any device, scheme, or artifice to defraud, or (2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(i) *Acquisition of converted insured institutions*—(1) *General.* The Board finds that the new capital to be received by converted insured institutions upon the sale of capital stock will cause such insured institutions, during an initial period following conversion, to be specially vulnerable to attempts by other companies to acquire control of such insured institutions. The Board further finds that acquisition of control of such insured institutions by companies significantly engaged in unrelated business activities is inconsistent with the provision of economical home financing by such insured institutions. Accordingly, the provisions of this paragraph are designed to prevent such acquisitions of newly converted insured institutions for a limited period of time following conversion sufficient to reduce or eliminate their special vulnerability and the adverse impact on the provision of economical home financing.

(2) *Required agreement.* No conversion shall be approved by the Corporation unless the plan of conversion provides that the converted insured institution shall enter into an agreement with the Corporation, in form satisfactory to the Corporation, which shall provide that for a period of three years following the conversion any company significantly engaged in an unrelated business activity, either directly or through an affiliate thereof, shall not be permitted, regardless of the form of the transaction, to acquire control of the converted insured institution.

(3) *Optional charter provision.* To the extent permitted by applicable State law, a plan of conversion may provide for a provision in the charter of the converted insured institution containing, in substance, the restriction set forth in paragraph (i)(2) of this section. There may also be included a restriction providing that such charter provision may be amended only by a vote of up to 75 percent of the votes eligible to be cast at a regular or special meeting of shareholders of the converted insured institution. If the converted insured institution elects to adopt the foregoing optional charter provision, the Corporation will impose, as a condition to its approval of the conversion, a requirement that the converted institution fully enforce such charter provision.

(4) *Definitions.* As used in this paragraph—

(i) The term "affiliate" means any person or company which controls, is controlled by, or is under common control with, a specified company.

(ii) The term "control" shall have the meaning given to it by section 408(a)(2) of the National Housing Act, as amended.

(iii) A company shall be deemed to be "significantly engaged" in an unrelated business activity if its unrelated business activities would represent, on either an actual or a pro forma basis, more than 15 percent of its consolidated net worth at the close of its preceding fiscal year or of its consolidated net earnings for such fiscal year.

(iv) The term "unrelated business activity" means any business activity not authorized for a multiple savings and loan holding company under section 408(c)(2) of the National Housing Act, as amended, or under regulations adopted pursuant thereto.

§ 563b.4 Notice of filing; public statements; confidentiality.

(a) *Information prior to preliminary approval of plan of conversion.* (1) An insured institution which is considering converting pursuant to this part and its directors, officers and employees shall maintain such consideration in confidence to the extent consistent with the need to prepare information for filing an application for preliminary approval. If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant.

(2) Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the insured institution shall (i) notify its members of such action by publishing a statement in a newspaper having general circulation in each community in which an office of the insured institution is located and/or by mailing a letter to each of its members and (ii) have copies of the adopted plan of conversion available for inspection by its members at each office of the insured institution. The insured institution may also issue a press release with respect to such action. Copies of the proposed statement, letter and press release are not required to be filed with the Corporation, but may be submitted for comment to the Office of General Counsel. Copies of the definitive statement, letter and press release shall be filed with the Corporation as part of the application for preliminary approval.

(3) The statement, letter and press release, unless otherwise authorized by the Corporation shall contain only (but need not contain all of) the following:

(i) A statement that the board of directors has adopted a proposed plan to convert the insured institution from a Federal (or State, as the case may be) mutual institution to a State-chartered capital stock insured institution;

(ii) A statement that the proposed plan of conversion must be approved by at least a majority of the votes eligible to be cast either in person or by proxy by association members at a meeting at which the plan will be submitted for their approval;

(iii) A statement that existing proxies held with respect to voting rights in the insured institution will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion;

(iv) A statement that a proxy statement setting forth more detailed information with respect to the proposed plan of conversion will be sent to association members prior to the meeting of members;

(v) A statement that the proposed plan of conversion is subject to approval by the Federal Home Loan Bank Board and by the appropriate State regulatory authority or authorities (naming such an authority or authorities) before such plan can become effective;

(vi) A statement that the proposed plan of conversion is contingent upon obtaining favorable tax rulings from the Internal Revenue Service or an appropriate tax opinion;

(vii) A statement that there is no assurance that the approval of the Federal Home Loan Bank Board or the approval of the appropriate State authority or authorities will be obtained, and also no assurance that the favorable tax rulings or tax opinion will be received;

(viii) The proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

(ix) A brief description of the proposed plan of conversion;

(x) The par value (if any) and approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion;

(xi) A brief statement as to the extent to which directors, officers and employees will participate in the conversion;

(xii) A statement that savings account holders will continue to hold accounts in the converted insured institution identical as to dollar amount, rate of return and general terms, and that their accounts will continue to be insured by the Federal Savings and Loan Insurance Corporation;

(xiii) A statement that the insured institution will continue to be a member of the Federal Home Loan Bank System;

(xiv) A statement that borrowers' loans will be unaffected by conversion, and that the amount, rate, maturity, security and other conditions will remain contractually fixed as they existed prior to conversion;

(xv) A statement that the normal business of the insured institution in accepting savings and making loans will continue without interruption; that the converted insured institution will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

(xvi) A statement that the proposed plan of conversion may be substantively amended by the board of directors as a result of comments from the regulatory authorities or otherwise prior to the meeting, and that the proposed plan may also be terminated by the board of directors; and

(xvii) A statement that questions of members will be answered in the proxy material to be sent after the regulatory approvals of the proposed plan of conversion have been obtained and that any questions at this time may be answered by telephoning or writing to the insured institution.

(4) Such statement, letter and press release shall not in any manner solicit proxies, include financial statements, or describe the benefits of conversion or the value of the capital stock of the insured institution upon conversion. In replying to inquiries, the insured institution should limit its answers to the matters listed in paragraph (a)(3) of this section.

(b) *Notice of filing.* (1) Upon determination that an application for preliminary approval is properly executed and is not materially incomplete, the Corporation will advise the applicant, in writing, to publish a notice of the filing of such application. Promptly after receipt of such advice, the applicant shall publish a notice of such filing in a newspaper printed in the English language and having general circulation in each community in which an office of the applicant is located, as follows:

NOTICE OF FILING OF APPLICATION FOR PRELIMINARY APPROVAL TO CONVERT TO A STOCK SAVINGS AND LOAN ASSOCIATION

Notice is hereby given that, pursuant to Part 563b of the Rules and Regulations for Insurance of Accounts _____

_____

(fill in name of applicant)

has filed an application with the Federal Savings and Loan Insurance Corporation for preliminary approval to convert to the stock form of organization. Copies of the application have been delivered to the Office of the Secretary of said Corporation, 101 Indiana Avenue, NW., Washington, D.C. 20552 and to the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of _____.

_____, _____, _____.

(Street address) (City) (State)

_____.

(Zip code)

Written comments from any member of the applicant will be considered by the Corporation if filed within ten business days after the date of this publication. Three copies of such comments should be sent to the aforementioned Office of the Secretary with one copy to said Office of the Supervisory Agent. The proposed plan of conversion and any comments thereon will be available for inspection by any member of the applicant at said Office of the Secretary and at said Office of the Supervisory Agent. A copy of the plan may also be inspected at each office of the applicant.

If a signficant number of the applicant's members speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of such notice shall also be published in such newspaper.

(2) Promptly after publication of the notice or notices prescribed in paragraph (b)(1) of this section, the applicant shall file four copies thereof with the Corporation accompanied by an affidavit of publication from each publisher.

(c) *Confidential information.* Should the applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or a part of any exhibit included in any application under this part, such information pertaining to such item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which such information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this part shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the Corporation determines to withhold from public availability under 5 U.S.C. 552 and Part 505 of this chapter. The Corporation will withhold the public availability of preliminary copies of proxy soliciting materials without the necessity of their being bound and labeled as "confidential". The applicant will be advised of any decision by the Corporation to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, to the extent it deems necessary the Corporation may comment on such confidential submissions in any public statement in connection with its decision on the application without prior notice to the applicant.

§ 563b.5 Solicitation of proxies; proxy statement.

(a) *Solicitations to which rules apply.* This section applies to every solicitation of a proxy from an association member of an insured institution for the meeting at which a conversion plan will be voted upon, except the following:

(1) Any solicitation made otherwise than on behalf of the management of the insured institution where the total number of persons solicited is not more than 50;

(2) Any solicitation through the medium of a newspaper advertisement which informs association members, following preliminary approval of the plan of conversion, of a source from which they may obtain copies of a proxy statement, form of proxy, or any other soliciting material and does no more than (i) name the insured institution, (ii) state the reason for the advertisement, (iii) identify the proposal or proposals to be acted upon by association members, and (iv) urge the member to vote at the meeting.

(b) *Use of proxy soliciting material to be authorized.* No proxy soliciting material required to be filed with the Corporation prior to use shall be furnished to association members or otherwise released for distribution until the use of such material has been authorized in writing by the Corporation.

(c) *Information to be furnished association members.* No solicitation subject to this section shall be made unless each person solicited is concurrently furnished, or has previously been furnished, a written proxy statement the use of which has been authorized by the Corporation.

(d) *Requirements as to proxy.* (1) The form of proxy (i) shall indicate in bold face type whether the proxy is solicited on behalf of the management, (ii) shall provide specifically designated blank spaces for dating and signing the proxy, (iii) shall identify clearly and impartially each matter or group of releated matters intended to be acted upon, (iv) shall be clearly labeled "Revocable Proxy" in bold face type (at least as large as 18 point), (v) shall describe any charter or State law requirement restricting or conditioning voting by proxy, (vi) shall contain an acknowledgement by the person giving the proxy that he

has received a proxy statement prior to signing the form of proxy, (vii) shall contain the date, time and place of meeting, if practicable, and (viii) shall provide by a box or otherwise, a means whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter referred to therein as intended to be acted upon, and (ix) shall indicate in bold face type how the proxy shall be voted on each such matter to which no choice is so specified.

(2) No proxy subject to this section shall confer authority to vote at any meeting other than the meeting (or any adjournment thereof) to vote on conversion. A proxy may be deemed to confer authority to vote with respect to matters incident to the conduct of such meeting. If the plan of conversion is considered at an annual meeting, existing proxies may be voted with respect to matters not related to the plan of conversion.

(3) The proxy statement or form of proxy shall provide that the votes represented by the proxy will be voted; that, where the person solicited specifies by means of a ballot provided pursuant to paragraph (d)(1)(viii) of this section a choice with respect to any matter to be acted upon, the votes will be voted in accordance with the specifications so made; and that if no choice is so specified, the votes will be cast as indicated in bold face type on the form of proxy.

(e) *Material required to be filed.* (1) Applicants shall file ten preliminary copies of such proxy materials as are required by the form for applying for preliminary approval to convert under this part.

(2) Ten preliminary copies of any additional soliciting material subject to this section including soliciting material in the form of press releases, and radio or television scripts, to be used or furnished to association members subsequent to furnishing the proxy statement, shall be filed with the Corporation at least five business days prior to the date on which the Corporation is requested to authorize the use of such material. Speeches may, but need not be, filed with the Corporation prior to use.

(3) Twenty-five copies of the proxy statement and ten copies of the form of proxy and all other soliciting material, in the form in which such material is furnished to association members, shall be filed with or mailed for filing to the Corporation not later than the date such material is first sent or given to association members. All materials filed pursuant to this paragraph (e)(3) shall be accompanied by a statement of the date on which copies of such materials are to be released to association members.

(4) If the solicitation is to be made in whole or in part by personal solicitation, ten preliminary copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is to be furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the Corporation at least five business days prior to the date on which the Corporation is requested to authorize the use of such material.

(5) All preliminary copies of material filed pursuant to paragraph (e)(1), (2) and (4) of this section shall be clearly marked on the cover page "Preliminary Copy." Such preliminary copies shall be for the information of the Corporation only and shall not be deemed available for public inspection except that such material may be disclosed to any department or agency of the United States Government or appropriate State Government and the Corporation may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Corporation.

(6) Unless requested by the Corporation, copies of replies to inquiries from members of the insured institution and copies of communications which do not more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this paragraph (e).

(7) Where any proxy statement, form of proxy or other material filed pursuant to this paragraph (e) is amended or revised, four of the required copies of such amended or revised material filed with the Corporation shall be marked to indicate clearly and precisely the changes effected therein subsequent to the last prior filing.

(f) *Mailing communications for association members.* If the management of the applicant has adopted a plan of conversion, the applicant shall perform such of the following acts as may be duly requested in writing with respect to a matter to be considered at the meeting to vote on the plan of conversion by any association member who will defray the reasonable expenses to be incurred by the applicant in the performance of the act or acts requested.

(1) The applicant shall mail or otherwise furnish to such association member the following information as promptly as practicable after the receipt of such request:

(i) A statement of the approximate number of association members who have been or are to be solicited on behalf of the management, or any group of such holders which the association member shall designate.

(ii) An estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to such association members.

(2) (i) Copies of any proxy statement, form of proxy or other communication furnished by the association member and as approved by the Corporation shall be mailed by the applicant to such of the association members specified in paragraph (f)(1)(i) of this section as the association member shall designate.

be mailed with reasonable promptness by the applicant after receipt of the material to be mailed, envelopes or other

(ii) Any such material which is furnished by the association member shall

containers therefor and postage or payment for postage.

(iii) Neither the management nor the applicant shall be responsible for such proxy statement, form of proxy or other communication.

(g) *False or misleading statements.* (1) No solicitation of a proxy by the applicant, its management, or any other person for the meeting to vote on conversion shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for such meeting which has become false or misleading.

(2) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Corporation and authorized for use shall not be deemed a finding by the Corporation that such material is accurate or complete or not false or misleading, or that the Corporation has passed upon the merits of or approved any proposal contained therein. No representation contrary to the foregoing shall be made by any person.

(3) If a solicitation by management violates any provision of this section, the Corporation may require remedial measures including:

(i) Correction of any such violation by means of a retraction and new solicitation;

(ii) Rescheduling of the meeting for a vote on the conversion;

(iii) Withholding final approval of the conversion; and

(iv) Any other actions the Corporation may deem appropriate in the circumstances in order to ensure a fair vote.

(h) *Prohibition of certain solicitations.* No person soliciting a proxy from an association member for the meeting to vote on conversion shall solicit:

(1) Any undated or post-dated proxy; or

(2) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the association members; or

(3) Any proxy which is not revocable at will by the association member giving it; or

(4) Any proxy which is part of any other document or instrument (such as an account card).

§ 563b.6 Vote by members; application for final approval.

(a) *Vote at special meeting.* Following Corporation approval of an application for preliminary approval, the plan shall be submitted to a special meeting of members, unless State law requires that the plan be considered at an annual meeting of members.

(b) *Determining members eligible to vote.* The record date for determining those members eligible to vote at the meeting called to consider a plan of conversion shall be not more than 50 nor less than 20 days prior to the date of such meeting, unless State law requires a different voting record date.

(c) *Notice to members.* Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the Corporation which notice shall be given not more than 45 nor less than 20 days prior to the date of the meeting to each association member and each eligible account holder, postage prepaid, at his last address as shown on the books of the applicant, unless State law requires a different notice period.

(d) *Required vote.* The plan shall be approved by a vote of at least a majority of the total outstanding votes of the association members, unless State law requires a higher percentage for a State-chartered connecting insured institution, in which case the higher percentage shall be used. Voting may be in person or by proxy.

(e) *Application for final approval.* (1) Upon approval by the association members of the plan of conversion in accordance with the vote required by paragraph (d) of this section, the applicant shall submit to the Corporation an application for final approval of the plan of conversion on the appropriate form prescribed by the Corporation, as soon as practicable after the meeting.

(2) No plan of conversion under this part shall be implemented following approval of the plan by the members, unless an application for final approval shall have been approved by the Corporation.

(3) Approval by the Corporation of the application for final approval terminates the Federal charter of an applicant effective upon the issuance to it of a stock charter under the laws of the State in which the home office of the applicant is located. Such Federal charter shall promptly be surrendered to the Board for cancellation.

(4) Every applicant under this part shall promptly file with the Corporation a copy of the stock charter issued to it. The savings accounts of the converted insured institution shall be insured to the same extent and in the same manner as the savings accounts of the converting insured institution. The certificate of insurance of the converting insured institution shall promptly be surrendered to the Corporation for cancellation, and the Corporation shall promptly issue a new certificate of insurance to the converted insured institution.

§ 563b.7 Pricing and sale of securities.

(a) *General.* No sale or distribution of securities of the applicant pursuant to the plan of conversion may be made prior to approval by the corporation of the application for final approval pursuant to § 563b.6. No offer to sell such securities may be made prior to approval by the Corporation of the application for preliminary approval. The provisions of this paragraph shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be privity of contract with the applicant.

(b) *Distribution of offering materials.* The proxy statement authorized for use by the Corporation, or any preliminary offering circular for the subscription offering which has been filed with the Corporation, may be distributed to eligible account holders not entitled to vote on the plan of conversion and to others in connection with the subscription offering at the same time as or after such proxy statement is mailed to association members pursuant to § 563b.6(c). Any preliminary offering circular for the public or other offering of unsubscribed shares, which has been filed with the Corporation, may be distributed in connection with such offering at the same time as or after such proxy statement is mailed to association members pursuant to § 563b.6(c). No final offering circular for the subscription offering or final offering circular for the public or other offering shall be distributed unless the use thereof has been authorized by the Corporation.

(c) *Estimated price information in proxy statements and preliminary offering circulars.* With respect to the capital stock of the applicant to be sold under the plan of conversion, the proxy statement and any preliminary offering circular for the subscription offering shall set forth (1) an estimated subscription price or prices or subscription price range or ranges and (2) an estimated public or other offering price or price range. The proxy statement and any such preliminary offering circular shall separately indicate any different estimated subscription prices or price ranges that may be available to different classes of persons under the terms of the plan of conversion relating to discounts. Whenever a price range is used, the maximum of such price range should normally be no more than 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no more than 15 percent below such average.

(d) *Price information in offering circulars and order forms.* (1) In the application for final approval, the applicant shall fix a maximum subscription price or prices and a maximum public offering or other price to be stated in the offering circular for the subscription offering. The maximum public or other offering price should normally be no more than $50 per share and should normally be not less than $10 per share.

(2) The maximum subscription price or prices shall be stated in the order forms, and shall be the amount to be paid when the order forms described in paragraph (h) of this section are returned. If the actual public or other offering price is less than the maximum public or other offering price stated in the offering circular for the subscription offering, the subscription offering price or prices shall be correspondingly reduced to maintain the specified discount and the difference shall be refunded to those who have paid the maximum subscription price or prices. However, if the actual subscription price is more than 25 percent less than the maximum subscription price, previously returned order forms shall not be binding and a resolicitation through new order forms shall be required.

(e) *Prohibited representations.* The Corporation will review the price information required under paragraphs (c) and (d) of this section in determining whether to give approval to applications for preliminary or final approval of conversion. No representations may be made in any manner that such price information has been approved by the Corporation or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the Federal Home Loan Bank Board or the Corporation or that the Board or the Corporation has passed upon the accuracy or adequacy of any offering circular covering such shares.

(f) *Underwriting expenses.* Underwriting discounts and commissions shall not exceed an amount or percentage per share acceptable to the Corporation. No underwriting discounts or commissions shall be allowed or paid with respect to shares of capital stock sold in the subscription offering; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is so small that reasonable underwriting discounts or commissions thereon would not be sufficient to cover total accountable expenses.

(g) *Pricing materials.* (1) In considering the pricing information required under paragraph (c) and (d) of this section, the Corporation will apply the following guidelines to the materials in support of such price ranges and prices:

(i) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the Corporation;

(ii) The materials shall contain data which are sufficient to support the conclusions reached therein;

(iii) The materials shall contain a complete and detailed description of the appraisal methodology employed; and

(iv) To the extent that the appraisal is based on a capitalization of the pro forma income of the converted insured institution, the materials must indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock associations, the materials must demonstrate the appropriate comparability of the form and substance of such outstanding capital stock and the appropriate comparability of such ex-

isting stock associations in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

(2) In addition to the information required in paragraph (g)(1) of this section, the applicant shall submit information demonstrating to the satisfaction of the Corporation the independence and expertise of any person preparing materials under this paragraph. However, a person will not be considered as lacking independence for the reason that such person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with such appraisal.

(h) *Order forms for purchase of capital stock.* (1) Upon approval by the Corporation of the application for final approval, the applicant shall distribute order forms for the purchase of shares of capital stock in the subscription offering to all eligible account holders and other persons who may subscribe for such shares under the plan of conversion.

(2) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering and a set of detailed instructions explaining how to properly complete such order forms.

(3) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear and intelligible a manner as possible, the actions which are required or available to him with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

(i) Indicate the number of entitlement shares and the number of additional entitlement shares for purchase by the eligible account holder, and indicate separately other subscription rights which are available to eligible account holders and to other persons who may subscribe for capital stock under the plan of conversion. If there are several different types of subscription rights under the plan of conversion so that their inclusion on a single order form would cause it to be too complex, the applicant may wish, and the Corporation may require, the distribution of different order forms to different classes of persons who may subscribe;

(ii) Indicate the period of time within which the subscription rights must be exercised, which period of time shall not be less than 20 days following the date of the mailing of the order form;

(iii) State the maximum subscription price or prices per share of capital stock;

(iv) Indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(v) Provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder or other person wishes to purchase;

(vi) Indicate that payment may be made by cash if delivered in person or by check or by withdrawal from an account holder's passbook savings account or certificate of deposit without penalty. If payment is to be made by such withdrawal, a box to check should be provided;

(vii) Provide specifically designated blank spaces for dating and signing the order form;

(viii) Contain an acknowledgement by the eligible account holder or other person signing the order form that he has received the final offering circular for the subscription offering prior to so signing; and

(ix) Indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The tions shall, indicate the place or places to which the order forms are to be returned and when the applicant will consider order forms received, such as by date and time of actual receipt in the applicant's offices or by date and time of postmark.

(4) The order form may provide that it may not be modified without the applicant's consent after its receipt by the applicant. If payment is to be made by withdrawal from a passbook savings account or certificate of deposit, the applicant may, but need not, cause such withdrawal to be made upon receipt of the order form. If such withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the amount withdrawn as if such amount had remained in the account from which it was withdrawn until such closing date.

(i) *Withdrawal from certificate accounts.* Notwithstanding any regulatory provision regarding penalties for early withdrawal from certificate accounts and minimum qualifying balances for such accounts, the applicant may allow payment for capital stock during the subscription period by withdrawal from a certificate account without the assessment of such penalties or causing the rate of return on the remaining balance in such account to be paid at less than the rate applicable to such account prior to such withdrawal, except that such certificate account may not be renewed at a certificate rate unless a minimum qualifying balance is restored at the time of such renewal.

(j) *Direct payment of discount.* If (1) a small number of eligible account holders under the applicant's plan of conversion reside in a particular State; (2) the offer of subscription rights to such account holders would require the applicant, under the securities laws of such State, to register as a broker or dealer or to register or otherwise qualify its securities for sale in such State; (3) such registration or qualification would be impracticable for reasons of cost or otherwise; and (4) the applicant's plan of conversion provides for a discount to such eligible account holders on their entitlement shares, the applicant, with the specific approval of the Corporation, may sell the subscription rights to such entitlement shares and remit the amount of the discount to such eligible account holders. If the applicant acts in accordance with the foregoing sentence, the applicant may not offer any other subscription rights to such eligible account holders.

(k) *Period for completion of sale.* The sale of all shares of capital stock of the converted insured institution to be made under the plan of conversion, including any sale by a public or other offering, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period.

§ 563b.8 Procedural requirements.

(a)(1) *Preliminary approval.* An applicant that desires to convert in accordance with this part shall file ten copies of an application for preliminary approval in the form prescribed by the Corporation. Copies of such application form may be obtained from any Federal Home Loan Bank or the Office of the Secretary of the Board.

(2) *Approval of members.* The plan of conversion shall not be submitted to a vote of the members in accordance with § 563b.6 until the Corporation has approved the application for preliminary approval of conversion.

(3) *Final approval.* (i) After approval by association members of a plan of conversion, an applicant that desires to complete such conversion shall file ten copies of an application for final approval, in accordance with § 563b.6(e), in the form prescribed by the Corporation. Copies of such application form may be obtained from any Federal Home Loan Bank or the Office of the Secretary of the Board.

(ii) With respect to an applicant which has filed a "study application" (as defined in § 563b.2(a)(30)), the Corporation may approve an application for final approval at any time after April 8, 1974. With respect to any other applicant, the Corporation may approve an application for final approval on and after June 30, 1974.

(b) *Return of improperly executed or materially incomplete filings.* Any application for preliminary approval that is improperly executed, or that does not contain copies of a (1) plan of conversion, (2) preliminary proxy statement with signed financial statements, (3) preliminary form of proxy, and (4) preliminary offering circular for use in the subscription offering, shall not be accepted for filing and shall be returned to the applicant. Any application for preliminary approval containing a materially incomplete plan of conversion, proxy statement or form of proxy may be returned by the Corporation to the applicant.

(c) *Number of copies; place of filing; binding; signatures.* (1) Whenever a requirement is made under this part for the filing of four copies of any document with the Corporation, one copy shall be filed with the Supervisory Agent and three copies with the Office of the Secretary of the Board. Whenever a requirement is made under this part for the filing of ten or more copies of any document with

the Corporation, three copies shall be filed with the Supervisory Agent and the remaining copies with such Office of the Secretary of the Board. Whenever a requirement is made under this part that a document to be filed be manually signed, one manually signed copy shall be filed with the Supervisory Agent and another with such Office of the Secretary. Other copies shall be conformed. Each of the copies filed under this part shall be bound, in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

(2) At least two copies of every application and every amendment thereto filed shall be manually signed by (i) a duly authorized representative of the applicant on its behalf, (ii) its principal executive officer, (iii) its principal financial officer, (iv) its principal accounting officer, and (v) at least two-thirds of its directors.

(3) If any name is signed to an application or any amendment thereto pursuant to a power of attorney, four copies of such power of attorney, including two manually signed, shall be filed with the application.

(4) (i) Except as provided in paragraph (c) (4) (ii) of this section, the filing of any application or amendment thereto under this part shall constitute a representation of the applicant by its duly authorized representative, the applicant's principal executive officer, the applicant's principal financial officer, and the applicant's principal accounting officer, and each member of the applicant's board of directors (whether or not such director has signed the application or any amendment thereto) severally that (A) he has read such application or amendment, (B) in the opinion of each such person, he has made such examination and investigation as is necessary to enable him to express an informed opinion that such application or amendment complies to the best of his knowledge and belief with the applicable requirements of this part and forms prescribed thereunder, and (C) each such person holds such informed opinion.

(ii) The representations specified in paragraph (c) (4) (i) of this section shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if, and only to the extent that, such director files with the Corporation within 10 business days after the filing of such application or amendment a statement describing those portions of such filing as to which he does not so represent.

(d) *Requirements as to paper and printing.* (1) Applications shall be filed on good quality, unglazed, white paper approximately 8½ by 13 or 8½ by 11 inches in size, insofar as practicable. However, tables, charts, maps and financial statements may be on larger paper if folded to such sizes, and the plan of conversion, proxy statement and offering circular may be on smaller paper if the applicant so desires.

(2) Applications and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed or typewritten. However, applications or any portion thereof may be prepared by any similar process which, in the opinion of the Corporation, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(e) *Method of preparation.* Every application shall furnish information in item-and-answer form in response to the items of the appropriate form, and shall include the captions of the form, but omit the text of all items and instructions. Every proxy statement and offering circular shall present information as provided in paragraph (1) of this section in response to the items of the appropriate form in lieu of furnishing the information in item-and-answer form, and shall omit the captions and text of all items and instructions. Every preliminary application shall include a cross reference sheet showing the location in the proxy statement and offering circular of the response to the items of the appropriate form. If any such item is inapplicable, or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross reference sheet.

(f) *Interpretation of requirements.* (1) Unless the context indicates otherwise, the forms require information only as to the applicant.

(2) Whenever words relate to the future, they have reference solely to present intention.

(3) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

(g) *Additional information.* In addition to the information expressly required to be included in any application under this part, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(h) *Information unknown or not reasonably available.* Information required need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

(1) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(2) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

(i) *Incorporation of certain information by reference.* (1) Where an item in an application calls for information not required to be included in the proxy statement or offering circular, matter contained in any part of the application, including exhibits, may be incorporated by reference in answer, or partial answer, to such item. No information may be incorporated by reference in a proxy statement or offering circular, unless the document containing such information is attached thereto or is summarized or outlined as provided in paragraph (j) of this section. However, an offering circular may incorporate by reference the information contained in a proxy statement previously delivered, without need of summary or outline.

(2) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the application where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(j) *Summaries or outlines of documents.* Where a summary or outline of the provisions of any document is required, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(k) *Legibility of materials.* The body of all printed plans of conversion, proxy statements, and offering circulars, including all notes to financial statements and other tabular data included therein, shall be in roman type at least as large and as legible as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other tabular data, including tabular data in notes, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(l) *Presentation of information.* (1) The information required in a proxy statement or offering circular need not follow the order of the items or other requirements in the appropriate form. Such information shall not, however, be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incom-

plete or misleading. Where an item requires information to be given in tabular form it shall be given in substantially the tabular form specified in the item.

(2) All information contained in a plan of conversion, proxy statement or offering circular shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in any form under this part shall be divided into reasonably short paragraphs or sections.

(3) Every proxy statement and offering circular shall include in the forepart thereof a reasonably detailed table of contents showing the subject matter of its various sections or subdivisions and the page number on which each such section or subdivision begins

(4) All information required to be included in a proxy statement or offering circular shall be clearly understandable without the necessity of referring to the particular form or to the regulations under this part. Except as to financial statements and information required in tabular form, the information set forth in a proxy statement or offering circular may be expressed in condensed or summarized form.

(5) Financial statements are to be set forth in comparative form, and shall include the notes thereto and the accountants' certificate or certificates. Section 563c.1 of this subchapter governs the certification, form and content of such financial statements including the basis of consolidation.

(m) *Application of amendments to regulations and forms.* (1) The form and contents of any filing made under the provisions of this part need conform only to the applicable regulations and forms then in effect, and contain the information including financial statements specified therein, required at the time the filing is made, notwithstanding subsequent amendments to such regulations, except as otherwise provided in any such amendment or in paragraph (m)(2) of this section.

(2) Whenever the Corporation prohibits by order or otherwise the use of any filing under this part, the form and contents of any filing used thereafter shall conform to the requirements of such order and the applicable regulations and forms in effect at the time such prohibition ceases to be effective.

(n) *Consents of experts.* (1) If any accountant, attorney, investment banker, appraiser, or other persons whose professions give authority to a statement made in any application under this part is named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of such person shall be filed with the application. If any portion of a report of an expert is quoted or summarized as such in any filing under this part, the written consent of the expert shall expressly state that the expert consents to such quotation or summarization.

(2) All written consents filed pursuant to this paragraph (n) shall be dated and signed manually. A list of such consents shall be filed with the application. Where the consent of the expert is contained in his report, a reference shall be made in the list to the report containing such consent.

(o) *Consents of persons about to become directors.* If any person who has not signed an application is named in the proxy statement or offering circular as about to become a director, the written consent of such person shall be filed with the appropriate form.

(p) *Date of filing.* The date on which any documents are actually received by the Office of the Secretary of the Board shall be the date of filing thereof.

(q) *Amendments.* All amendments to any application under this part shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall conform to all pertinent regulations applicable to the type of application which they amend.

(r) *Pre-filing conferences with applicants.* (1) The staff of the Board and the Supervisory Agent will be available for conferences with prospective applicants or their representatives in advance of filing an application to convert. These conferences may be held for the purpose of discussing generally the problems confronting an applicant in effecting conversion or to resolve specific problems of an unusual nature.

(2) Pre-filing review of an application may be refused by the staff of the Board and the Supervisory Agent if such review would delay the examination and processing of material which has already been filed or would favor certain applicants at the expense of others. In any conference under this paragraph (r), the staff of the Board and the Supervisory Agent will not undertake to prepare material for filing but will limit itself to indicating the kind of information required, leaving the actual drafting to the applicant and its representatives.

(s) *Post-conversion reports.* The applicant shall file such post-conversion reports concerning its conversion as the Corporation may require.

3. The text of the forms prescribed for use in connection with Part 563b is as follows:

FORM PA

[Facing Sheet]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

101 Indiana Avenue, N.W.
Washington, D.C. 20552

Application for Preliminary Approval of Conversion

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

Date of Application

GENERAL INSTRUCTIONS

A. RULE AS TO USE OF FORM PA

Form PA shall be used by any insured institution seeking Federal Home Loan Bank Board or Federal Savings and Loan Insurance Corporation preliminary approval of conversion from the mutual to the stock form of organization pursuant to Part 563b of the Rules and Regulations for Insurance of Accounts.

B. APPLICATION OF RULES AND REGULATIONS

Attention is directed to Insurance Regulation § 563b.8. That section contains general requirements regarding preparation and filing of this Form. The definitions in Insurance Regulation § 563b.2 also should be noted.

Item 1. *Form of Application.* Set forth an application for preliminary approval of the plan of conversion in the following form with the names and titles of the officers and directors signing the application indicated below their signatures:

The undersigned hereby makes application for preliminary approval to convert into a stock association, and submits herewith a statement of its proposed plan of conversion and other information and exhibits as required by Part 563b of the Rules and Regulations for Insurance of Accounts of the Federal Savings and Loan Insurance Corporation.

In submitting this application the applicant understands and agrees that, if further examinations or appraisals, or both, are required by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, they will be conducted by, or as approved by, the Board or the Corporation at the expense of the applicant; and applicant will pay the costs thereof as computed by the Board or the Corporation.

This application has been approved by at least two-thirds of the board of directors of the applicant. In accordance with § 563b.8(c)(4) of the Rules and Regulations for Insurance of Accounts, by the filing of this application, the applicant by its duly authorized representative, the undersigned officers and each member of the applicant's board of directors severally represent, except to the extent otherwise provided in said section, (1) that each such person has read this application; (2) that in the opinion of each such person, he has made such examination and

investigation as is necessary to enable him to express an informed opinion that this application complies to the best of his knowledge and belief with the applicable requirements of Part 563b of the Rules and Regulations for Insurance of Accounts and forms thereunder; and (3) that each such person holds such informed opinion.

ATTEST:

_____
Applicant

By _____
(Duly Authorized Representative)

_____
(Principal Executive Officer)

_____
(Principal Financial Officer)

_____
(Principal Accounting Officer)

_____
(Director)

_____
(Director)

_____
(Director)

_____
(Director)

_____
(Director)

(Signatures of at least two-thirds of the Board of Directors)

Item 2. *Plan of Conversion.* Furnish the complete formal written plan adopted by the board of directors for conversion of the applicant to the stock form of organization. The terms of the plan submitted pursuant to this Item will be a basis for the Corporation's approval and the plan as approved will be distributed as an attachment to the proxy statement and the offering circular.

Item 3. *Proxy Statement and Offering Circular.* Furnish preliminary copies of the proxy statement and offering circular. The proxy statement and offering circular should be prepared in accordance with Forms PS and OC, respectively.

Item 4. *Form of Proxy.* Furnish preliminary copies of the form of proxy to be distributed to association members by the management.

Item 5. *Sequence and Timing of the Plan.* Set forth the expected chronological order of the events connected with the plan of conversion beginning with the filing of this application through completion of the sale of all the capital stock under the plan. Indicate the expected timing of any requisite approvals by State authorities. Indicate the proposed timing of all aspects of the subscription offering. If there will be an underwritten public or other offering of the applicant's securities as part of the plan of conversion, indicate the proposed timing of all aspects of such offering. For purposes of completing this item, the applicant should allow a minimum of 30 business days after filing of this application for receipt of comments from the Corporation's staff and a minimum of ten business days after filing substantive amendments in response to such comments for preliminary approval of the conversion by the Corporation.

Item 6. *Record Date and Averaging.* If the applicant's plan of conversion contains an eligibility record date substantially earlier than 90 days prior to the date of adoption of the plan of conversion by the board of directors, state the reason for the selection of such earlier date. If the plan of conversion provides for a system of averaging to determine the amount of qualifying deposits, state the reasons for the selection of such system.

Item 7. *Savings Account Balances of Personnel.* For each director and officer of the applicant whose total account balances, including the balances of each associate of the foregoing persons, were more than $20,000 as of the eligibility record date and which balances had increased by more than 25 percent during the six months' period prior to the eligibility record date, set forth in tabular form his total account balances as of (a) the eligibility record date and (b) each of the four earnings distribution dates of the applicant immediately preceding the eligibility record date.

Item 8. *Management Syndicate.* If the directors and officers of the applicant propose to form a group or syndicate for the purpose of purchasing the unsubscribed shares under the plan of conversion in lieu of a public offering of such shares, give a detailed description of any financing arrangements to be employed by such group or syndicate.

Item 9. *Expenses Incident to the Conversion.* Provide in substantially the tabular form indicated below the estimated expense of the conversion to the applicant.

Legal	$
Postage and Mailing	
Printing	
Escrow or Agent Fees	
Underwriting Fees	
Appraisal Fees	
Transfer Agent Fees	
Auditing and Accounting	
Proxy Solicitation Fees	
Advertising	
Other Expenses	
Total	

Instructions. 1. The applicant may exclude costs represented by salaries and wages of regular employees and officers, if a statement to that effect is made.

The cost of solicitation by specially engaged employees or paid solicitors under paragraph (b) of Item 3 of Form PS shall be stated under "Proxy Solicitation Fees" in this Item.

2. If the applicant has any category of expense exceeding $10,000 which is not specified in this Item, such expense shall be itemized rather than including it under the category "Other Expenses".

3. If the solicitation is conducted other than by management of the applicant, the information required in this Item shall be provided with respect to the cost of such solicitation.

Item 10. *Indemnification of Directors and Officers.* State the general effect of any charter provisions, bylaw, contract, arrangement, statute, or regulation to be in effect after conversion under which any director or officer of the applicant will be insured or indemnified in any manner against any liability which he may incur in his capacity as such.

EXHIBITS

The following exhibits shall be attached to this Form.

Exhibit 1. *Resolution of Board of Directors.* Set forth a certified copy or copies of a resolution or resolutions of the board of directors (1) adopting the plan of conversion filed with this application; (2) authorizing the filing of this application; and (3) applying for continued insurance of accounts by the Federal Savings and Loan Insurance Corporation and continued membership in the appropriate Federal Home Loan Bank. The action adopting the plan of conversion and authorizing the filing of this application must be approved by two-thirds of the board of directors.

Exhibit 2. *Copies of Documents, Contracts and Agreements.* Furnish the following documents, contracts and agreements: (a) proposed certificates for capital stock and any other securities to be issued; (b) proposed order forms with respect to the subscription rights; (c) proposed charter and bylaws of the applicant to take effect upon conversion including, if applicable, the optional charter provision provided for in § 563b.3(1)(3); (d) any proposed qualified stock option plan and form of qualified stock option agreement; (e) any proposed management employment contracts; (f) any contract described in response to Item 6(e) of Form PS; (g) contracts or agreements with paid solicitors described in response to Item 3(b) of Form PS; (h) any material loan agreements relating to borrowings by the applicant other than from a Federal Home Loan Bank and other than subordinated debt securities approved by the Corporation; (i) proposed underwriting contracts and agreements among underwriters; (j) the agreement with the Corporation required by § 563b.3(i)(2); (k) any contracts or agreements among the members of a management group of syndicate regarding the purchase of unsubscribed shares; (l) any documents referred to in the answer to Item 10; (m) any trustee agreements or indentures; and (n) any agreements for the making of markets or the listing on exchanges of the stock of the converted insured institution. Documents, contracts and agreements which are furnished in proposed form under this exhibit shall be furnished in final form prior to final approval by the Corporation, except for the documents required by paragraph (i) which shall be furnished in substantially final form.

Exhibit 3. *Opinion of Counsel.* Furnish an opinion of counsel for the applicant regarding each of the following matters: (a) The legal sufficiency of the applicant's proposed certificates and order forms for capital stock and any other securities, (b) State law requirements applicable to the plan of conversion including citations to applicable State law and whether such requirements will be fulfilled by the plan, (c) the legal sufficiency of the applicant's proposed charter and bylaws, (d) the type and extent of each class of voting rights in the applicant after conversion, including any requirement of State law that savings account holders or borrowers have voting rights in the converted insured institution, and (e) the legality and Federal income tax effect to the applicant of any proposed qualified stock option plan described in response to Item 12 of Form PS.

Exhibit 4. *Federal and State Tax Opinions and Rulings.* (a) Furnish an opinion of the applicant's tax advisor or an Internal Revenue ruling as to the Federal income tax consequences of the plan of conversion to the applicant and to eligible account holders.

Instruction. The Corporation recommends that each applicant obtain a ruling from the Internal Revenue Service regarding the Federal income tax consequences of the plan of conversion. The Corporation may require

that such a ruling be obtained if the applicant's plan of conversion is not substantially similar to plans of conversion which have received favorable rulings. The Corporation may also require that such a ruling be obtained if the applicant's plan of conversion contains novel provisions or there is otherwise a question as to the Federal income tax consequences of the plan.

(b) Furnish an opinion of the applicant's tax advisor or a ruling from the appropriate state taxing authority as to any tax consequences of the plan of conversion under the laws of the State in which the applicant will be chartered upon conversion. Such opinion should relate to the applicant and to eligible account holders.

Exhibit 5. *Appraisal Materials.* Furnish the materials required by § 563b.7 regarding appraisal of the applicant.

Exhibit 6. *Notice to Members Prior to Filing.* Furnish the notice to the applicant's members required by § 563b.4(a)(2).

Exhibit 7. *Other Materials.* (a) If information required by an appropriate form is not given for the reasons specified in § 563b.8(h), furnish the statement required for each such Commission by § 563b.8(h)(2).

(b) Furnish all consents required to be filed by § 563b.8(n) and (o).

(c) If applicable, furnish the statement required by the Instruction to Item 5(e) of Form PS regarding events which occurred within the last ten years to directors of the applicant.

(d) If information required by Item 15(h) of Form PS relating to historical financial information is omitted, furnish the statement required by Item 15(h)(1) of Form PS.

(e) Furnish any powers of attorney employed pursuant to § 563.8(c)(3).

(f) Furnish the cross reference sheet referred to in § 563b.8(e).

(g) If the applicant wishes to request a waiver of compliance in accordance with § 563b.1(c), furnish the materials required by § 563b.1(c)(2).

FORM PS

[Facing Sheet]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Washington, D.C. 20552

Proxy Statement

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

Proxy Statement Form

Index to Items

Item 1. Notice of Meeting
Item 2. Revocability of Proxy
Item 3. Persons Making Solicitation
Item 4. Voting Rights and Vote Required for Approval
Item 5. Directors and Executive Officers
Item 6. Remuneration and Other Transactions with Management and Others
Item 7. Business of the Applicant
Item 8. Description of the Applicant's Plan of Conversion
Item 9. Description of Capital Stock
Item 10. Capitalization
Item 11. Use of New Capital
Item 12. Qualified Stock Options
Item 13. New Charter, Bylaws or Other Documents
Item 14. Other Matters
Item 15. Financial Statements
Item 16. Consents of Experts and Reports
Item 17. Attachments

FORM PS

INFORMATION REQUIRED IN CONVERSION PROXY STATEMENT

NOTE: Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

Item 1. Notice of Meeting. The cover page of the proxy statement shall give notice of the meeting of the association members called by the board of directors to act upon the conversion. The cover page shall include the date, time, and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for association members entitled to vote at the meeting, the date of the statement, and the full address, zip code and telephone number of the applicant.

Item 2. Revocability of Proxy. State that the person giving the proxy has the power to revoke it before the proxy is exercised at the meeting. If the right of revocation is subject to compliance with any formal procedure, briefly describe such procedure. Briefly describe any charter or State law requirement otherwise restricting voting by proxy. State that the proxy is solicited for that meeting, and any adjournment thereof, and will not be used for any other meeting. (See also § 563b.5(d)(3)).

Item 3. Persons Making the Solicitation. (a) State whether the solicitation is made by the management of the applicant. Give the name of any director of the applicant who has informed the management in writing that he intends to oppose any action intended to be taken by the management and indicate the action which he intends to oppose.

(b) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state the material features of any contract or arrangement for such solicitation and identify the parties.

(c) If the solicitation is made otherwise than by the management of the applicant, so state and give the names of the persons by whom and on whose behalf it is made. Any such solicitation normally need not respond to Items 5 through 17, but must include such information as to make such solicitations comply with section 563b.5(g)(1).

Item 4. Voting Rights and Vote Required for Approval. (a) Describe briefly the voting rights of each class of association members. State the approximate total number of votes entitled to be cast at the meeting, and the approximate number of votes to which each class is entitled.

(b) As part of the description give the date of record for association members entitled to vote at the meeting.

(c) As to each matter which will be submitted to a vote of association members, state the vote required for its approval.

Item 5. Directors and Executive Officers. (a) List the names and ages of all directors of the applicant, indicate all positions and offices held with the applicant by each such person, state his term of office as director and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as a director.

(b) List the names and ages of all executive officers of the applicant and indicate all positions and offices held with the applicant by each such person.

Instruction. The term "executive officer" means the president, vice-president, secretary, treasurer, controller, principal accounting officer, any officer in charge of a principal lending or savings function and any other officer or person who performs similar policy making functions for the applicant.

(c) State the nature of any family relationship between any director or executive officer and any other director or executive officer.

Instruction. The term "family relationship" means any relationship, by blood, marriage or adoption, not more remote than first cousin.

(d) Give a brief account of the business experience during the past five years of each director and each executive officer, including his principal occupations and employments during that period and the name and principal business of any corporation or other organization in which such occupations and employments were carried on.

(e) Describe any of the following events which occurred during the past 10 years and which are material to an evaluation of the ability and integrity of any director of the applicant:

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of, such person, or any partnership in which he was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within 2 years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is the subject of a criminal proceeding which is presently pending (excluding proceedings for traffic violations and other minor offenses); or

(3) Such person was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining him from acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank or insurance company, or removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of an insured institution, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, or was the subject of any order of a Federal or State authority barring or suspending, for more than 60 days, the right of such person to be engaged in any such activity, which order has not been reversed or suspended.

Instruction. If any event specified in paragraph (e) has occurred but information in regard thereto is omitted on the ground that it is not material, the applicant shall furnish, as supplemental information and not as a part of the statement the reasons for the omission of information in regard thereto.

(f) State whether control of the applicant has been exercised through the use of proxies and the nature of such control.

Item 6. Remuneration and Other Transactions with Management and Others. (See the Note at the beginning of this Form.) (a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the applicant and its subsidiaries during the applicant's last fiscal year to the following persons for services in all capacities:

(1) Each director of the applicant whose aggregate direct remuneration exceeded $40,000, and each of the three highest paid officers of the applicant whose aggregate direct remuneration exceeded that amount, naming each such director and officer.

(2) All directors and officers of the applicant as a group, stating the number of persons in the group without naming them.

(A)	(B)	(C)
Name of individual or number of persons in group	Capacities in which remuneration was received	Aggregate direct remuneration

Instructions. (1) The information is to be given on an accrual basis if practicable. The tables required by this paragraph (a) and paragraph (b) below may be combined if the applicant so desires.

(2) Do not include remuneration paid to a partnership to which any director or officer was a partner, but see paragraph (e) below.

(b) Furnish the following information in substantially the tabular form indicated as to all annuity, pension or retirement benefits proposed to be paid to the following persons in the event of retirement at their normal retirement dates pursuant to any existing plan provided or contributed to by the applicant or any of its subsidiaries:

(1) Each director or officer named in answer to paragraph (a)(1), naming each such person.

(2) All directors and officers of the applicant who are eligible for such benefits, as a group, stating the number of persons in the group without naming them.

(A)	(B)	(C)
Name of individual or number of persons in group	Amount set aside or accrued during applicant's last fiscal year	Estimated annual benefits upon retirement

Instructions. (1) The term "plan" in this paragraph and in paragraph (c) includes all plans, contracts, authorizations or arrangements, whether or not set forth in any formal document.

(2) Column (B) need not be answered with respect to payments computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified number of years of service. In such case, Columns (A) and (C) need not be answered with respect to directors and officers as a group.

(3) The information called for by Column (C) may be given in the form of a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

(4) In the case of any plan (other than those specified in Instruction (2) where the amount set aside each year depends upon the amount of earnings of the applicant or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated benefits upon retirement, there shall be set forth, in lieu of the information called for by Column (C), the aggregate amount set aside or accrued to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

(c) Describe briefly all remuneration payments (other than payments reported in (a) or (b) of this Item) proposed to be made in the future, directly or indirectly, by the applicant or any of its subsidiaries pursuant to any existing plan or arrangement to (i) each director or officer named in answer to paragraph (a)(1), naming each such person, and (ii) all directors and officers of the applicant as a group without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If, it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments shall be stated, together with an explanation of the basis for future payments.

(d) State as to each of the following persons who was indebted to the applicant or its subsidiaries at any time during the last three years, (i) the largest aggregate amount of indebtedness outstanding at any time during such period; (ii) the nature of the indebtedness and of the transaction in which it was incurred, (iii) the amount thereof outstanding as of the latest practicable date, and (iv) the annual percentage rate paid or charged thereon (as computed under 12 CFR Part 226);

(1) Each director or officer of the applicant; and

(2) Each associate of any such director or officer.

Instructions. (1) Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

(2) This paragraph does not apply to amounts due a person for ordinary travel and expense advances and similar transactions.

(3) If the loans to such persons (a) are secured by a first lien on a single-family dwelling owned and occupied by a director or officer of the applicant at the time of making the loan and such loan at such time did not exceed the amount then specified in section 5(c) of the Home Owners' Loan Act of 1933, as amended, with respect to single-family dwellings if applicable or (b) are fully secured by a savings account, and if the lender is the applicant, such disclosure may consist of a statement, if such is the case, that the loans to such persons (i) were made in the ordinary course of business, (ii) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (iii) did not involve more than normal risk of collectibility or present other unfavorable features.

(4) Computation of the annual percentage rate under paragraph (d)(iv) is to be done as though 12 CFR Part 226 was applicable to the transaction.

(e) Describe briefly any transactions during or since the applicant's last three fiscal years or any presently proposed transactions, to which the applicant or any of its subsidiaries or any borrower from the applicant or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the applicant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the applicant;

(2) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any subsidiary of the applicant.

Instructions. 1. No information need be given in response to this Item 6(e) as to any remuneration or other transaction reported in response to Item 6(a), (b), (c), or (d), or as to any transaction with respect to which information may be omitted pursuant to instructions relating to such Items.

2. No information need be given in answer to this Item 6(e) as to any transaction where—

(a) The transaction involves services as a bank depository of funds, transfer agent, registrar, or similar services;

(b) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $40,000, or $5,000 in the case of transactions giving rise to expenses of the type indicated in Item 9 of Form PA; or

(c) The interest of the specified person arises solely from the ownership of savings accounts of the applicant and the specified person receives no extra or special benefit not shared on a pro rata basis by all savings account holders as a class.

3. It should be noted that this Item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the applicant or its subsidiaries or with any borrower from the applicant or any of its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 6(e) where—

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) and (2) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in subparagraphs (1) and (2) above had an interest of less than ten percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the applicant or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the applicant, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

6. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering paragraph (e) of this Item. There may be situations where, although the foregoing instructions do not expressly authorize non-disclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this Item.

(f) Describe briefly any transactions during or since the applicant's last three fiscal years or any presently proposed transactions, to which any pension, retirement or similar

plan provided by the applicant or any of its subsidiaries, was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the applicant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the applicant;

(2) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any subsidiary of the applicant; or

(3) The applicant or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4, and 5 to Item 6(e) shall apply to this Item 6(f),

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this Item 6(f) any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to this paragraph (f) with respect to—

(a) Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(b) Payment of remuneration for services not in excess of 5 percent of the aggregate remuneration received by the specified person during the applicant's last fiscal year from the applicant and its subsidiaries; or

(c) Any interest of the applicant or any of its subsidiaries which arises solely from its general interest in the success of the plan.

Item 7. Business of the Applicant.—(a) *Organization.* State the year in which the applicant was organized and whether its present charter was issued by the State or Federal government. Describe briefly any previous conversion of the applicant.

(b) *Selected Statement of Financial Condition and Other Items.* As of the end of each of the periods covered by the statements of operations required by Item 15(b)(1) and as of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form the amounts of the following items: (1) total assets, (2) real estate loans outstanding, (3) savings accounts, (4) advances from the Federal Home Loan Bank, (5) other borrowed money, if material, (6) net worth and (7) number of offices indicating any which are less than full service. The applicant may use other substantially similar captions, and may include other items such as number of real estate loans outstanding and number of savings accounts.

(c) *Mergers and Acquisitions.* Indicate in tabular form, any mergers, bulk purchase of assets and similar acquisitions which have occurred in the periods covered by statements of operations required by Item 15(b). With respect to each such acquisition, give names of the association involved, its location, its total assets immediately prior to such acquisition, the number of offices acquired, the method of accounting for such acquisition, and any excess of cost over the net assets acquired (goodwill) included in the latest statement of financial condition. The information provided in this section should be referenced to any appropriate notes to the financial statements required by Item 15.

(d) *Lending Activities.* (1) Describe briefly applicable regulations (both State and Federal) on the lending activities of the applicant including any applicable state usury laws or any other Federal or state laws affecting mortgage loan interest rates. Describe the applicant's general policy concerning loan to value ratios. Describe briefly the applicant's customary methods of obtaining loan originations such as the use of loan consultants and approval of security properties and use of a loan committee, if any. Describe briefly the applicant's policies as to requiring title insurance and fire and casualty insurance on security properties.

(2) As of the end of the periods covered by the statements of operations required by Item 15(b)(1) and as of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form the amount and percentage of the loan portfolio of the applicant (i) by type of loan and (ii) by type of security.

Instructions. 1. For the classification required by subparagraph (2)(i), separate types of loans into real estate loans and loans for other purposes. Also, separate real estate loans into conventional loans and FHA–VA loans, and conventional loans shall be separated into loans for construction, loans on existing property, and loans refinanced.

2. For the classification required by subparagraph (2)(ii), type of security shall be separated into residential and other types. Residential loans shall be separated into single-family dwellings, two-to-four family dwellings, and other dwelling units. Also, indicate any material classification of other loans such as mobile home loans, home improvement loans, home equipping loans, passbook loans, commercial or industrial loans, and undeveloped land loans.

(3) For each of the periods covered by the statements of operations required by Item 15(b), set forth in tabular form the amount for each period of (i) loans originated, (ii) loans purchased, (iii) loans sold, and (iv) total net loan activity. Also describe briefly the applicant's total activity as of the date of the latest statement of financial condition required by Item 15(a), and briefly indicate the applicant's general future intentions with respect to activities in secondary mortgage markets including transactions with the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or mortgage bankers. If significant, indicate loan service fee income as a percentage of gross income for the year ended as of the latest statement of financial condition required by Item 15(a).

Instructions. 1. For the classification required by subparagraph (3)(i), loans originated shall be separated into real estate loans, loans for other purposes, and total loans originated. Real estate loans shall be further separated into conventional loans and FHA–VA loans, and conventional loans shall be separated into loans for construction, loans on existing property, and loans refinanced.

2. For the classification required by subparagraph (3)(ii), loans purchased shall be separated into real estate loans, loans for other purposes, and total loans purchased. Real estate loans shall be further separated into conventional loans and FHA–VA loans.

3. For the classification required by subparagraph (3)(iii), loans sold shall be separated into whole loans, participation loans, and total loans sold.

4. For the classification required by subparagraph (3)(iv), total net loan activity shall be equal to total loans originated plus total loans purchased minus total loans sold.

(4) As to the lending area of the applicant, describe briefly (i) the lending area restrictions applicable to the applicant, (ii) the areas in which the applicant normally lends, and (iii) any material loan concentration areas of the applicant. Such descriptions may include a map illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the applicant's loan concentrations are located, if practicable.

(5) Describe briefly the general long term nature of investment in mortgage loans and the consequent effect upon the earnings spread of savings and loan associations. State the normal maturity of loans made by the applicant on the security of single-family dwellings and furnish an estimate as to the average length of time such loans are outstanding.

(6) As of the end of each of the periods covered by the statements of operations required by Item 15(b)(1) and as of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form, excluding origination fees, discounts and premiums on real estate loans originated, the following: (i) weighted average of return on loans orginated and purchased during each period, (ii) weighted average rate of return on loans held at the end of each period, (iii) weighted average interest cost of savings at the end of each period, (iv) weighted average interest cost of Federal Home Loan Bank advances and other borrowings during the period, (v) total weighted average interest cost of savings and borrowings for the period (the total of (iii) and (iv)), and (v) the gross margin ((ii) minus (v)).

Instruction. As an example of the calculation of the weighted average rate, the following method should be used to calculate the weighted average interest rate on savings:

1. Determine the percentage of total savings represented by each type of savings instrument.

2. Multiply these percentages by the contractual interest rate the applicant is committed to pay on such instruments.

3. The resulting percentages are then totalled, giving the weighted rate.

(7) As of the end of each of the periods covered by the statements of operations required by Item 15(b)(1) and as of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form loan origination fees charged to borrowers expressed as a percentage of the total amount of loans originated.

(8) Describe briefly the applicant's method of loan origination fee and discount amortization and the total of such balances deferred by the applicant as of the date of the latest statement of financial condition required by Item 15(a). Describe briefly the normally volatile nature of loan fee income.

(9) Describe briefly the regulatory classifications of scheduled items and the applicant's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operations required by Item 15(b)(1) and as of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form the amounts and categories (slow loans, real estate owned, loans to facilitate, and others) of scheduled items and the ratio of such scheduled items to specified assets and to total assets. Where real estate owned is a significant portion of scheduled items, include a brief description of the major properties included therein and a statement as to the applicant's probable loss, if any, upon disposition of such properties.

(e) *Savings Activities.* (1) As of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form the amounts and percentages of savings accounts by categories of interest rate. As to certificates of deposit, indicate the term and minimum balances required for each. As of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form the amounts of such certificates maturing by quarter during the three years following such date and

the total maturing thereafter, the percentage of such amounts to total savings.

(2) Describe the applicant's methods of computing and paying interest for both passbook savings accounts and certificates of deposit. State that the maximum rate of interest which the applicant may pay is established by the Board. State that in the event of liquidation of the applicant after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to shareholders. Also, indicate the percentage of total savings accounts which are from out-of-state sources, if such total is significant.

(f) *Insurance of Accounts.* (1) Describe briefly insurance of accounts and the general regulatory authority of the Corporation.

(2) Describe briefly the Federal insurance reserve requirements, the results of failure to meet those requirements, and the applicant's Federal insurance reserve account position in relation to those requirements. Also describe the annual insurance premium payment and prepayment requirements.

(g) *Federal Home Loan Bank System.* (1) Describe briefly the Federal Home Loan Bank System and state that the applicant is a member. Such description shall include (i) limitations on borrowings, (ii) recent loan policies of the applicant's Federal Home Loan Bank and current interest rates, and (iii) Federal Home Loan Bank stock purchase requirements and the applicant's position with respect to those requirements.

(2) Describe briefly applicable liquidity requirements under section 5A of the Federal Home Loan Bank Act, as amended, the regulations thereunder, and State law. State the applicant's position with respect to those requirements.

(h) *State Savings and Loan Association Law.* Describe briefly applicable provisions of State law which have a material effect on the business of the applicant.

(i) *Federal and State Taxation.* Describe briefly the Federal income tax laws applicable to the applicant including (1) permissible bad debt reserves, (2) the applicant's position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under Item 15(a), (3) future increases in the effective income tax rate, (4) the date through which the applicant's Federal income tax returns have been audited by the Internal Revenue Service, and (5) the tax effect to the applicant of the payment of cash dividends on capital stock of the applicant after conversion. Also describe briefly the State taxation of the applicant.

(j) *Competition.* Describe the material sources of competition for savings and loan associations generally and indicate to the extent practicable the applicant's position in its principal lending and savings markets.

(k) *Office and Other Material Properties.* (1) Furnish the location of the applicant's home office and each existing and approved branch office and other office facilities (such as mobile or satellite offices). State the total net book value of all such offices as of the date of the latest statement of financial condition required by Item 15(a). If any such office is leased, state the expiration dates of such leases.

(2) Describe briefly undeveloped land owned by the applicant, including location, net book value, and prospective use and holding period. If the applicant or a subsidiary owns or leases electronic data processing equipment principally for its own use, describe briefly such equipment indicating net book value if owned or the principal lease terms if leased.

(l) *Employees.* State the number of persons employed fulltime by the applicant including executive officers listed under Item 5. State whether employees are represented by a collective bargaining group and whether the applicant's relations with its employees is satisfactory. Summarize briefly any loans, profit sharing, retirement, medical, hospitalization or other remuneration plans provided for employees not already included pursuant to Item 6.

(m) *Service Corporations.* Describe briefly the applicant's investment in any subsidiary and the major lines of business (including any joint ventures) of the subsidiary which are material to its operations.

(n) *Pending Legal Proceedings.* Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the applicant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underly the proceeding, the relief sought and counsel's opinion as to the merits of the applicant's position in each such matter. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

(o) *Additional Information.* The Corporation may, upon the request of the applicant, and where consistent with the protection of eligible account holders and others, permit the omission of any of the information required by this Item or the furnishing in substitution therefor of appropriate information of comparable character. The Corporation may also require the furnishing of other information in addition to, or in substitution for, the information required by this Item in any case where such information is necessary or appropriate for an adequate description of the applicant's business done or intended to be done.

Item 8. *Description of the Plan of Conversion.* (a) A statement to the following effect shall be inserted in the proxy statement immediately preceding the information required by this Item: The Federal Home Loan Bank Board has given preliminary approval to the plan of conversion. However, such preliminary approval does not constitute a recommendation or endorsement of the plan. Final approval of the plan will not be given by the Federal Home Loan Bank Board unless at least a majority of the outstanding votes of association members are cast in favor of the plan and certain other conditions are satisfied by the insured institution.

(b) The proxy statement shall contain a description of the plan of conversion. Such description shall contain the information required by paragraphs (c) through (j) of this Item and such additional information as may be necessary to accurately describe the material provisions of the plan.

(c) Briefly describe the effects of conversion from a mutual institution to a stock institution including the following information: (1) state that savings accounts of the applicant will not be affected by the conversion with respect to such matters as balances in the accounts and the extent of insurance of savings accounts by the Corporation; (2) state whether savings and borrowing members of the applicant will continue to have voting rights in the applicant after conversion, and describe any voting rights they will have; (3) state the present liquidation rights of account holders and describe the liquidation account to be established and maintained by the applicant, including the conditions under which such account will be paid, the interest of eligible account holders in such account and the formula by which such account will be adjusted; (4) state that the rights and obligations of borrowers from the applicant will not be changed in any manner; (5) state that capital stock to be sold by the applicant will not be insured by the Corporation; (6) state that none of the assets of the applicant will be distributed in order to effect the conversion other than to pay expenses incident thereto; and (7) state briefly the reasons why management is recommending the conversion, including any advantages to the community served by the applicant.

(d) With respect to the sale of capital stock of the applicant to eligible account holders and others, furnish the following information: (1) the formula to be used for determining the subscription rights of eligible account holders to purchase entitlement shares pursuant to § 563b.3(c)(2); (2) any minimum share purchase requirements pursuant to § 563b.3(d)(1); (3) with respect to eligible account holders, the percentage of any discount on the purchase of such entitlement shares and the conditions under which the discount is available, including the holding period, pursuant to § 563b.3(d)(2); (4) the rights and conditions for purchase by eligible account holders without any discount of shares remaining after (1) above, pursuant to § 563b.3(c)(3); (5) any provision pursuant to § 563b.3(d)(3) for purchase with or without a discount of unsubscribed shares by other account holders and borrowing members, including the conditions under which any discount is available and the method of allocating such shares among such classes of persons; (6) with respect to directors, officers and employees pursuant to § 563b.3(d)(4), the percentage of any discount on the purchase of shares of capital stock and the conditions under which the discount is available, including the holding period, the percentage of the total issue subject to such discount, the allocation of such shares among such classes of persons and the formula for such allocation; (7) the purchase priorities under the plan of conversion; and (8) the use and timing of the order forms with respect to the subscription rights.

(e)(1) Set forth on a per share basis the estimated public offering or other price or price range (before any discount) of the shares of capital stock to be sold pursuant to the plan of conversion; (2) state that the actual public offering or other price will be the pro forma market value of such shares based on an independent valuation, less any applicable discounts; (3) state that all of the shares are required to be sold; and (4) describe briefly the results of the appraisal of the association made by an independent appraiser for the purpose of determining the estimated purchase price or price range.

(f) Set forth in tabular form (1) the earnings per share on a pro forma basis of the capital stock to be sold as of the end of each of the periods covered by the statements of operation required by Item 15(b)(2) and as of the latest statement of financial condition required by Item 15(a); and (2) the book value per share on a pro forma basis as of the date of the latest statement of financial condition required by Item 15(a).

Instruction. Earnings and book value per share shall be furnished without giving effect to the estimated net proceeds from the sale of the capital stock, and then after giving effect to such proceeds with all assumptions used clearly stated.

(g) With respect to the subscription offering, state the proposed commencement and expiration dates of the subscription period and describe any provisions in the plan of conversion related to the timing of the subscription offering or extension of the subscription period. Also, state (1) that a maximum subscription price will be set forth in

the offering circular used for the subscription offering, (2) that the actual subscription price will be the public offering or other price less the specified discount but in no event more than such maximum subscription price, and (3) that any difference between the maximum and actual subscription prices will be refunded.

(h) Furnish the following information:

(1) State that the converted insured institution will enter into an agreement with the Corporation in accordance with § 563b.3 (i) and briefly describe the material terms of such agreement; (2) describe to the extent practicable the applicant's present intentions with respect to listing the capital stock on an exchange or otherwise providing a market for the purchase and sale of the capital stock in the future; (3) describe briefly the tax effect of the conversion both to the applicant and to eligible account holders; and (4) state that the plan of conversion is attached as an exhibit to the proxy statement and should be consulted for further information.

(i) State whether the plan of conversion provides for the capital stock not purchased in the subscription offering to be offered to the public through underwriters. If such is the case, provide the information to the extent known required by Items 6(b) and (c) of Form OC and indicate the proposed timing of the underwritten offering.

(j) Furnish the following information in tabular form regarding proposed purchases of capital stock involving directors and officers of the applicant:

(1) State the total number of shares proposed to be purchased by all directors and officers as a group without naming them.

(2) As to each officer and director named in Item 6(a)(1), name him, state his position, and the number of shares proposed to be purchased by him.

(3) As to any director and officer who proposes to purchase 1 percent or more of the total number of shares of capital stock of the applicant to be outstanding, name him, state his position, and the number of shares proposed to be purchased by him.

(4) With respect to the information required by (1), (2) and (3) above, indicate separately the number of shares proposed to be purchased with and without any discount and the number of shares proposed to be purchased as an eligible account holder and as a director or officer.

Item 9. Description of Capital Stock. Furnish the following information concerning the capital stock of the applicant to be sold upon conversion:

(a) Outline briefly (1) dividend rights and restrictions; (2) voting rights; (3) liquidation rights; (4) pre-emptive rights; (5) liability to further calls or to assessment by the applicant; and (6) other material provisions.

(b) If the rights of holders of such capital stock may be modified otherwise than by a vote of a majority or more of the capital stock outstanding, voting as a class, so state and explain briefly.

(c) Outline briefly any restrictions on the repurchase or redemption of, and payment of dividends on, capital stock, or any part thereof, by the applicant.

Instructions. 1. This Item requires only a brief summary of the provisions which are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct résumé is required.

2. If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include such information regarding such limitation or qualification as will evidenced by the capital stock.

Item 10. Capitalization. Set forth in substantially the tabular form indicated below the dollar amounts of the capitalization of the applicant:

	(A) Capitalization as of latest statement of condition date	(B) Adjustments as a result of conversion	(C) Pro-forma capitalization after giving effect to the conversion
1. Savings accounts	$	$	$
2. FHL bank advances			
3. Subordinated debt securities			
4. Other borrowings			
5. Capital stock			
6. Paid in capital			
7. Undivided profits			
8. Federal insurance reserve			
9. Other reserves			
10. Total			

Instructions. 1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized, the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

2. With respect to the funds to be received by the applicant from the sale of its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making such estimate. Such total amount and price per share shall be clearly identified as being estimates.

Item 11. Use of New Capital. State the principal purposes for which the net proceeds to the applicant from the capital stock to be sold are intended to be invested or otherwise used, and the approximate amount intended for each such purpose.

Instruction. Details of proposed investments are not to be given. There need be furnished, for example, only a brief statement of any investment or other activity of the applicant which will be affected materially by availability of the proceeds. Examples of such activities may include reserve support for future savings growth, expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. Qualified Stock Options.

If action is to be taken with respect to the granting to officers and employees of any "qualified" options to purchase capital stock of the applicant to take effect after conversion, furnish the following information:

(a) State (1) the title and number of shares to be called for by such options; (2) the prices, expiration dates and other material conditions upon which the options may be exercised; (3) the consideration to be received by the applicant for the granting of the options and (4) the Federal income tax consequences of the issuance and exercise of such options to the recipient and to the applicant.

(b) State separately the amount of options to be received by the following persons, naming each such person: (1) Each director or officer named in answer to Item 6(a); (2) each associate of such directors of officers; and (3) each other person who is to receive five percent or more of such options to be received by all directors and officers of the applicant as a group, without naming them.

(c) Furnish such information, in addition to that required by Item 6, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, deferred compensation or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to Item 6(a) who may participate in the qualified stock option plan to be acted upon; (ii) all directors and officers of the applicant as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

Instructions. 1. The term "qualified" refers to options meeting the requirements of Section 422 of the Internal Revenue Code of 1954, as amended.

2. The term "plan" as used in paragraph (c) of this Item means any plan as defined in Instruction 1 to Item 6(b).

Item 13. New Charter, Bylaws or Other Documents. Describe briefly any material differences between the provisions of existing charter, bylaws and any similar documents of the applicant and those which will take effect after conversion, including, if applicable, the optional charter provisions provided for in § 563b.3(i)(3).

Instruction. This Item requires only a brief summary of the provisions which are pertinent from both an investment standpoint and a voting standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions verbatim; only a succinct resume is required.

Item 14. Other Matters. State when the applicant will be required to register its capital stock under section 12(g) of the Securities Exchange Act of 1934, as amended, and that upon such registration the proxy rules, insider trading reporting and restrictions, annual and periodic reporting and other requirements of that Act will be applicable.

Item 15. Financial Statements. NOTES: 1. The following instructions specify the statements of financial condition, the statement of operations and statements of stockholders' equity required to be included in the proxy statement. Section 563c.1 governs the certification, form and content of such financial statements including the basis of consolidation.

2. If the applicant has previously used an audit period in connection with its certified financial statements which does not coincide with its fiscal year, such audit period may be used in place of any fiscal year requirement provided it covers a full twelve months' operations and is used consistently. The Board understands that this procedure is also acceptable to the Securities and Exchange Commission in fulfilling the requirements of the Commission's Form 10 for registration of the applicant's capital stock under section 12(g) of the Securities Exchange Act of 1934.

(a) *Statements of Financial Condition of the Applicant.* (1) Furnish certified statements of financial condition as of the close of the applicant's latest fiscal year and as of the close of the preceding fiscal year. (2) If the latest statement furnished under (1) is in excess of 120 days from the date of filing for preliminary approval, furnish an additional statement of financial condition as of

a date within 120 days of such filing. This additional statement need not be certified.

(b) *Statements of Operations and Statements of Stockholders' Equity.* Furnish in comparative columnar form statements of operations and statements of stockholders' equity of the applicant (1) for each of the five fiscal years preceding the date of the statement of financial condition as of the close of the applicant's latest fiscal year filed under paragraph (a) and (2) for the period, if any, between the close of the latest of such fiscal years and the date of the statement of financial condition filed under paragraph (a). Furnish a statement of operations for the period comparable to (b)(2) in the immediately preceding fiscal year. Statements for the three latest fiscal years under (b)(1) shall be certified.

Instructions. 1. Reflect information or explanation of material significance to investors in appraising the results shown, or refer to such information or explanation set forth elsewhere in the proxy statement. Include comparable data for any additional fiscal years necessary to keep the statements from being misleading. The statements shall reflect the retroactive adjustment of any material items affecting the comparability of the results.

2. In connection with capital stock sold pursuant to the plan of conversion, the statements shall reflect earnings that would have been applicable to such outstanding stock.

(c) *Statements of Changes in Financial Position.* Furnish certified statements of changes in financial position (1) for each of the three fiscal years preceding the date of the latest statement of financial condition filed under paragraph (a) and (2) for the period, if any, between the close of the latest of such fiscal years and the date of the latest statement of financial condition filed under paragraph (a).

(d) *Omission of Applicant's Statements in Certain Cases.* Notwithstanding paragraphs (a), (b), and (c), the individual financial statements of the applicant may be omitted if (1) the conditions specified in either of the following paragraphs are met, and (2) the Corporation is advised as to the reasons for such omission.

(1) The applicant is primarily an operating company and all subsidiaries included in the consolidated financial statements filed are totally-held subsidiaries; or

(2) The applicant's total assets, exclusive of investments in and advances to the consolidated subsidiaries, constitute 85% or more of the total assets shown by the consolidated statement of financial condition filed and the applicant's total gross revenues for the period for which its statements of operations would be filed, exclusive of interest and dividends received from the consolidated subsidiaries, constitute 85% or more of the total gross revenue shown by the consolidated statements of operations filed.

(e)(1) *Consolidated Statements.* Furnish consolidated statements for the same periods and as of the same dates as would be required for the applicant. These statements shall be certified as would be required for the applicant's statements. (Paragraphs (a), (b), and (c) above).

(2) *Unconsolidated Subsidiaries and Other Persons.* Subject to 563c.1(q)(2) regarding group statements of unconsolidated subsidiaries, there shall be set forth for each majority-owned subsidiary of the applicant not consolidated the financial statements which would be required if the subsidiary were itself an applicant. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the applicant.

(3) *Fifty-Percent-Owned Persons and Other Persons.* If the applicant owns directly or indirectly approximately 50 per cent of the voting securities of any person and approximately 50 per cent of the voting securities of such person is owned directly or indirectly by another single interest, or if the applicant takes up the equity in undistributed earnings of any other unconsolidated person, there shall be set forth for each such person the financial statements which would be required if it were an applicant, subject to 563c.1(q)(2) regarding group statements. The statements set forth for each person shall identify the other single interest, or other interests in any person operated jointly.

(4) *Omission of Statements Required by Paragraphs (2) and (3).* Notwithstanding paragraphs (2) and (3), there may be omitted from the proxy statement all financial statements of any one or more unconsolidated subsidiaries or 50-percent-owned persons or other persons: (1) if all such subsidiaries and 50-percent-owned and other persons for which statements are so omitted, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary; or (2) if the income from the subsidiary reported by the applicant does not exceed 10 per cent of the consolidated net income for the latest fiscal year for which income statements are filed.

(f) *Special Provisions*—(1) *Succession to Other Business.* (i) If during the period for which its statements of operations are required, the applicant has by merger, consolidation or otherwise succeeded to one or more businesses, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the statements of financial condition set forth. In addition, statements of operations for each constituent business, or combined statements if appropriate, shall be set forth for such period prior to the succession as may be necessary when added to the time, if any, for which statements of operations after the succession are set forth to cover the equivalent of the period specified in paragraphs (a), (b), and (c) above.

(ii) If the applicant by merger, consolidation or otherwise is about to succeed to one or more businesses, there shall be filed for the constituent businesses financial statements, combined, if appropriate, which would be required by these instructions. In addition, there shall be set forth a statement of financial condition of the applicant giving effect to the plan of succession. These statements of financial condition shall be set forth in such form, preferably columnar, as will show in related manner the statements of financial condition of the constituent business, the changes to be effected in the succession and the statement of financial condition of the applicant after giving effect to the plan of succession. By a footnote or otherwise, a brief explanation of the changes shall be given.

(iii) This subparagraph (1) shall not apply with respect to the applicant's succession to the business of any totally-held subsidiary, or to the acquisition of one or more businesses by purchase if such businesses, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

(2) *Acquisition of Other Businesses.* (i) There shall be set forth for any business directly or indirectly acquired by the applicant after the date of the statement of financial condition set forth pursuant to paragraph (a) and for any business to be directly or indirectly acquired by the applicant, the financial statements which would be required if such business were an applicant.

(ii) The acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control.

(iii) No financial statements need be set forth pursuant to this subparagraph (2), however, for any business acquired or to be acquired from a totally held subsidiary. In addition, the statements of any one or more businesses may be omitted if such businesses, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

(g) *Filing of Other Statements in Certain Cases.* The Corporation may, upon the request of the applicant, and where consistent with the protection of eligible account holders and others, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Corporation may also require the inclusion of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of eligible account holders and others.

(h) *Historical Financial Information.*—(1) *Applicability of Paragraph (h).* The information required by this paragraph (h) shall be included in the proxy statement if in the opinion of the applicant it is material to the understanding of its financial condition. If the applicant determines to omit the information required by this paragraph, it shall file with the appropriate form for preliminary approval a statement briefly explaining such omission.

(2) *Scope of Paragraph (h).* The information required by paragraph (h) shall be furnished for the seven-year period preceding the period for which statements of operations are set forth, as to the accounts of each person whose statement of financial condition is set forth. The information is to be given as to all of the accounts specified whether they are presently carried on the books or not. Paragraph (h) does not call for an audit, but only for a survey or review of the accounts specified. It should not be detailed beyond a point material to eligible account holders and others.

(3) *Revaluation of Property.* (i) If there were any material increases or decreases in investments, in property, plant and equipment, or in intangible assets, resulting from revaluing such assets, state (*a*) in what year or years such revaluations were made; (*b*) the amounts of such increases or decreases, and the accounts affected, including all related entries; and (*c*) if in connection with such revaluations any related adjustments were made in reserve accounts, state the accounts and amounts with explanations.

(ii) Information is not required as to adjustments made in the ordinary course of business, but only as to major revaluations made for the purpose of entering on the books current values, reproduction cost or any values other than original cost.

(iii) No information need be furnished with respect to any revaluation entry which was subsequently reversed or with respect to the reversal of a revaluation entry recorded prior to the period if a statement as to the reversal is made.

(4) *Other Changes in Surplus.* If there were any material increases or decreases in surplus, other than those resulting from transactions specified above, the closing of the profit and loss account or the declaration of payment of dividends, state (i) the year or years in which such increases or decreases were made; (ii) the nature and amounts thereof; and (iii) the accounts affected, in-

cluding all material related entries. Paragraph (3)(iii) shall also apply here.

(5) *Predecessors.* The information shall be furnished, to the extent it is material, as to any predecessor of the applicant from the beginning of the period to that date of succession, not only as to the entries made respectively in the books of the predecessor or the successor, but also as to the changes effected in the transfer of the assets from the predecessor. However, no information need be furnished as to any one or more predecessors which, considered in the aggregate, would not constitute a significant predecessor.

(6) *Omission of Certain Information.* (i) No information need be furnished as to any subsidiary, whether consolidated or unconsolidated, for the period prior to the date on which the subsidiary became a majority-owned subsidiary of the applicant or of the predecessor for which information is required above.

(ii) No information need be furnished to any one or more unconsolidated subsidiaries for which separate financial statements are filed if all subsidiaries for which the information is so omitted, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

(iii) Only the information specified in paragraph (3) need be given as to any predecessor or any subsidiary thereof if immediately prior to the date of succession thereto by a person for which information is required, the predecessor or subsidiary was in insolvency proceedings.

Item 16. Consents of Experts and Reports. (a) The proxy statement shall briefly describe all consents of experts filed pursuant to section 563b.8(n).

(b) The statement shall contain a report of the independent public accountants who have certified the financial statements and other matters in the statement.

Instruction. The instruction to Item 13 shall apply to paragraph (a) of this Item.

Item 17. Attachments. There shall be attached to the proxy statement distributed to association members and others a copy of the applicant's plan of conversion as preliminarily approved by the Corporation. There may also be attached to such statement a copy of any qualified stock option plan described under Item 12.

FORM OC

[FACING SHEET]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Washington, D.C. 20552

Offering Circular

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and ZIP Code)

OFFERING CIRCULAR FORM

Item 1. *Information Required by Form OC.* The offering circular shall be dated as of the date of its issuance. The offering circular shall contain substantially the same information required to be included in the proxy statement of the applicant distributed to association members to vote upon the plan of conversion. Information of the type required to be included in the proxy statement may be omitted from the offering circular only to the extent that it is clearly inapplicable. The offering circular may be in "wrap around" form with the proxy statement attached.

Instructions. 1. The term "offering circular" refers to both the offering circular for the subscription offering and the offering circular for the public or other offering of the unsubscribed shares, unless otherwise indicated.

2. An offering circular for the subscription offering in "wrap around" form distributed to association members and other persons who have previously been furnished a copy of the proxy statement need not contain the proxy statement as an attachment provided such offering circular states that a copy of the proxy statement has previously been furnished to such persons and that an additional copy thereof will be furnished promptly upon request to the applicant (with the telephone number and mailing address of the applicant stated).

Item 2. *Additional Current Information Required.* The final offering circular for the subscription offering, the preliminary offering circular for the public or other offering used during the subscription period and the final offering circular for the public or other offering shall as of their respective dates of issuance include the following additional current information to the extent that such information is not already included in the proxy statement:

(a) Information with respect to the vote of association members upon the plan of conversion and any qualified stock option plan;

(b) Information with respect to any recent material developments in the business or affairs of the applicant;

(c) Any other information necessary to make such offering circular current, including full financial statements of the applicant within six months prior to the date of issuance of such offering circular.

Item 3. *Statement Required in Offering Circulars.* There shall be set forth on the outside cover page of every offering circular the following statement in capital letters printed in bold-face Roman type at least as large as ten-point modern type and at least two points leaded:

THESE SHARES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE FEDERAL HOME LOAN BANK BOARD OR FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION NOR HAS SUCH BOARD OR CORPORATION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Item 4. *Preliminary Offering Circular.* The outside front cover page of any preliminary offering circular shall bear, in red ink, the caption "Preliminary Offering Circular", the date of its issuance, and the following statement printed in type as large as that used generally in the body of such offering circular.

This offering circular has been filed with the Federal Savings and Loan Insurance Corporation, but has not been authorized for use in final form. Information contained herein is subject to completion or amendment. The shares covered hereby may not be sold nor may offers to buy be accepted prior to the time the offering circular is authorized for use in final form. This offering circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these shares in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

Item 5. *Information with respect to Subscription Offering.* The offering circular used for the subscription offering shall describe all material terms of the subscription offering to the extent that such description is not already in the proxy statement. Such terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price or prices, possible reduction of subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions of the subscription offering.

Item 6. *Information With Respect to Public or Other Offering.* The offering circular for the subscription offering and the offering circular for the public or other offering shall both describe the material terms of the plan or plans of distribution for all unsubscribed shares of capital stock not purchased by eligible account holders or others pursuant to the subscription offering to the extent such description is not already in the proxy statement, including the following:

(a) If the shares are to be offered through underwriters, the outside front cover page of both offering circulars shall give the information called for by this paragraph. In the case of the offering circular for the public offering, such information shall be given in substantially the tabular form set forth below. In the case of the offering circular for the subscription offering, such information may be given in narrative form and, if not known at the time of the subscription offering, so state and estimate.

	Price to public	Underwriting discounts and commissions	Proceeds to applicant
Per share	$	$	$
Total			

(b) The outside front cover page of the offering circular for the public or other offering shall briefly summarize the results of the subscription offering including the number of shares sold to eligible account holders and others, the price or prices at which the shares were so sold, and the number of unsubscribed shares. Such offering circular may omit the description of the subscription offering required by Item 5.

(c) If the unsubscribed shares are to be offered through underwriters, the offering circular for the public offering shall state the names of the principal underwriters and the respective amounts underwritten by each. The names of the principal underwriters other than the managing underwriters and the respective amounts to be underwritten may be omitted from the offering circular for the subscription offering. Both offering circulars shall identify each principal underwriter having a material relationship to the applicant and state the nature of the relationship. Both underwriting circulars shall state briefly the nature of the underwriters' obligation to take the unsubscribed shares.

(d) The offering circular for the public offering shall state briefly the discounts and commissions to be allowed or paid to dealers in connection with the sale of the unsubscribed shares. Such information may be omitted from the offering circular for the subscription offering.

(e) If the unsubscribed shares are to be offered through underwriters, the offering circular for the public offering shall identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the number of shares so intended to be confirmed. Such information may be omitted from the offering circular for the subscription offering.

Instructions. 1. Commissions include all cash, securities, contracts, or anything else

of value, paid, to be set aside, disposed of, or understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. Only commissions paid by the applicant in cash are to be included in the table. Any other consideration to the underwriters shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

3. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such shares as they may sell to the public. Conditions precedent to the underwriters' taking the shares, including customary "market outs", need not be described. If a "best effort" arrangement is used, describe any standby commitment for shares not sold.

FORM FA

[Facing Sheet]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Washington, D.C. 20552

Application for Final Approval of Conversion

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and zip code)

(Date of Application)

Item 1. *Form of Application.* Set forth an application for final approval of the plan of conversion in the following form with the names and titles of the officers and directors signing the application indicated below their signatures:

The undersigned hereby makes application for final approval to convert into a stock association, and submits herewith the information and exhibits as required by Part 563b of the Rules and Regulations for Insurance of Accounts of the Federal Savings and Loan Insurance Corporation.

In submitting this application the applicant understands and agrees that, if any appraisals are required by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, they will be conducted by, or as approved by, the Board or the Corporation at the expense of the applicant; and applicant will pay the costs thereof as computed by the Board or the Corporation.

This application has been approved by at least two-thirds of the board of directors of the applicant. In accordance with section 563b.8(c)(4) of the Rules and Regulations for Insurance of Accounts, by the filing of this application, the applicant by its duly authorized representative, the undersigned officers and each member of the applicant's board of directors severally represent, except to the extent otherwise provided in said section, (1) that each such person has read this application; (2) that in the opinion of each such person, he has made such examination and investigation as is necessary to enable him to express an informed opinion that this application complies to the best of his knowledge and belief with the applicable requirements of Part 563b of the Rules and Regulations for Insurance of Accounts and forms thereunder; and (3) that each such person holds such informed opinion.

ATTEST:

Applicant

By ---

(Duly Authorized Representative)

(Principal Executive Officer)

(Principal Financial Officer)

(Principal Accounting Officer)

(Director)

(Director)

(Director)

(Director)

(Director)

(Signatures of at least two-thirds of the Board of Directors)

Item 2. *Vote of Association Members.* With respect to each matter voted upon at the meeting of association members to consider the plan of conversion and related to such plan, state the total number of votes eligible to be cast; the total number of votes cast in favor of each such matter; and the percentage of votes necessary to approve each such matter. The information required by this item may be prepared for the insured institution by an independent public accountant or by an independent transfer agent.

Item 3. *Price Information.* Pursuant to § 563b.7(d), state the maximum subscription price or prices and the estimated maximum public offering price which the applicant proposes to include in the order forms and the final offering circular for the subscription offering. The prices contained in the final approval of the Corporation shall be those included in the order forms and the final offering circular for the subscription offering. The final offering circular for the public offering of unsubscribed shares may contain a public offering price in excess of such estimated maximum public offering price.

Item 4. *Final Offering Circular for the Subscription Offering.* Furnish copies of the proposed final offering circular for the subscription offering. Such offering circular shall be prepared in accordance with Form OC.

Item 5. *Offering Circular for the Public Offering.* Furnish copies of the preliminary offering circular for the other offering which is intended to be used during the subscription period. Furnish by filing an amendment to this Form copies of the proposed final offering circular for the public or other offering. The offering circulars for the public or other offering required to be furnished by this Item shall be prepared in accordance with Form OC.

EXHIBITS

Exhibit 1. Attach an opinion of counsel to the effect that (1) the meeting of members was held in accordance with all requirements of applicable State and Federal law and regulation; and (2) all requirements of State law applicable to the conversion, including State and Canadian securities laws, have been complied with, except to the extent that the granting of final approval by the Corporation is such a requirement.

Exhibit 2. Attach a copy of the pricing materials required by section 563b.7(g) in support of the information contained in Item 2.

Exhibit 3. Attach a certified copy of each resolution adopted at the meeting of the members to consider the plan of conversion.

Exhibit 4. Attach copies of all exhibits and other information required by Form PA and Part 563b and not previously submitted.

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRING,
Assistant Secretary.

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