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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.

EXECUTIVE ORDER—Providing for an orderly termination of the Economic Stabilization Program 15749

OUTER CONTINENTIAL SHELF OIL AND GAS OPERATIONS—Interior Department notices concerning production rates and safety requirements (2 documents); effective 5–1–74, comments by 6–1–74 ..... 15884, 15885

SPECIAL FOOD SERVICE PROGRAM FOR CHILDREN—USDA regulations on rates of reimbursement, administrative costs, meal requirements and audit programs; effective 5–6–74 15756

RICE—USDA rules on reserve acreage and acreage allotments for 1974 crop; effective 5–3–74 15758

UPLAND COTTON—USDA extends closing dates effecting transfers, release and reapportionment of 1974 acreage allotments; effective 5–3–74 15759

FARMER LOANS—USDA/FmHA revises loan subsidy provisions and clarifies existing procedures; effective 5–6–74 15868

TAXES—
IRS revokes rule authorizing inspection of income tax returns 15754
IRS proposal on estate taxation; comments by 6–5–74 .. 15878

ANTIBIOTIC DRUGS—
FDA approves use of certain drugs; effective 5–6–74 15753
FDA proposes recodification and updating of benzathine phenoxymethyl penicillin monographs; comments by 7–5–74 15879

PICLORAM—FDA/EPA proposes interim tolerances (2 documents); comments by 6–5–74 ..... 15879, 15880

(Continued inside)

PART II:

FINANCIAL ASSISTANCE—HEW proposal on mandatory and discretionary assistance for community service and continuing education programs 15951

PART III:

ENERGY—FEO revises mandatory petroleum allocation regulations; effective 5–1–74 15959

May 6, 1974—Pages 15743–15983

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

Commerce Department/Patent Office—rules of practice in patent and trademark cases 12247; 4–4–74

Commerce/Patent Office—Use of metric system of measurements in paper submitted to the Patent Office. 12247; 4–6–74

DoT/FAA-airworthiness directives; Bell model 47 series helicopters.... 12244; 4–4–74

DoT/FAA-airworthiness directives; Bell model 212 helicopters 12245; 4–4–74

DOT/NHTSA—Defect Information Report and Vehicle Identification Numbers 4578; 2–5–74

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DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE—FCC new procedures on petitions to deny applications 15910

GOVERNMENT OWNED CARGOES—FMC clarifies requirements concerning reduced terminal rates 15911

FEDERAL HOME LOAN BANK BOARD—FHLBB proposal relating to scheduled items; comments by 6–6–74 15881

SECURITIES—
SEC rules on fees for nonmember brokers and dealers; effective 6–1–74 15755
SEC announces receipt of revised plan 15921

PROCUREMENT—GSA rescinds price certification requirements; effectvie 4–30–74 15920

MEETINGS—
DoD: Army Department, Junior Science and Humanities Symposia Advisory Committee, 5–17–74 15883
Armed Forces Institute of Pathology Scientific Advisory Board, 5–30 and 5–31–74 15883
USDA: National Meat and Poultry Inspection and Advisory Committee, 5–23–74 15893
CAB: United Air Lines, Inc., 5–16–74 15903
Air Transport Association of America, 5–17–74 15902
Interior Department: Independence National Historical Park Advisory Commission, 5–13–74 15889
National Science Foundation: Advisory Panel for Metabolic Biology, 5–23 and 5–24–74 15920
HEW: Consumer Ad Hoc Group, 5–22–74 15896
FEO: Retail Dealers Group, 5–6–74 15933

Contents

THE PRESIDENT

Executive Order

Providing for an orderly termination of the Economic Stabilization Program 15749

EXECUTIVE AGENCIES

AGRICULTURAL MARKETING SERVICE

Rules

Limitation of handling:
Oranges (Valencia) grown in Arizona and California 15761
Milk marketing orders:
Colorado region 15867
Georgia and certain other areas 15762

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

Rules

Rice; state reserve acreage, county acreage allotments and reserve acreages for 1974 15758
Upland cotton; extended closing dates effecting transfers, release and reapportionment of 1974 acreage allotments 15759

AGRICULTURE DEPARTMENT

See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Food and Nutrition Service; Soil Conservation Service.

Notices

National Meat and Poultry Inspection Advisory Committee; meeting 15893

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Rules

Cattle scabies; release of areas quarantined 15756

ARMY DEPARTMENT

Notices

Armed Forces Institute of Pathology Scientific Advisory Board; meeting 15883
Junior Science and Humanities Symposia Advisory Committee; meeting 15883

ATOMIC ENERGY COMMISSION

Notices

Antitrust matters; receipt of Attorney General's advice 15898
Duquesne Light Company et al; assignment of members of Atomic Safety and Licensing Appeal Board 15898
Georgia Power Co.; supplemental hearing 15902
Meetings; Advisory Committee on Reactor Safeguards (2 documents) 15901
New Jersey-Nuclear Energy Council; petition for rule 15900

CIVIL AERONAUTICS BOARD

Notices

Meetings:
Air Transport Association of America 15902
United Air Lines Inc 15903
Hearings, etc.:
Jet Air Freight; order of suspension and investigation 15902

COMMERCE DEPARTMENT

See Domestic and International Business Administration; National Oceanic and Atmospheric Administration.

COMMITTEE FOR PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED

Notices

Procurement list; proposed additions 15903

COUNCIL ON ENVIRONMENTAL QUALITY

Notices

Environmental impact statements; availability 15903

DEFENSE DEPARTMENT

See Army Department.

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Notices

Application for duty-free entry of scientific article:
Children's Hospital et al 15894
Ochsner Medical Foundation 15895

EDUCATION OFFICE

Proposed Rules

Community service and continuing education programs; financial assistance 15952

ENVIRONMENTAL PROTECTION AGENCY

Rules

Final construction grant regulations; correction 15760

Proposed Rules

Picloram; interim tolerances 15880

Notices

Crown Zellerbach Corporation; filing of chemical pesticide petition 15906
Receipt of applications for pesticide registration; data to be considered 15906

FARMERS HOME ADMINISTRATION

Rules

Farmer loans; revision of loan subsidy provisions and clarification of existing procedures 15868

(Continued on next page)

FEDERAL COMMUNICATIONS COMMISSION

Notices

Brindlee Broadcasting Corporation et al; order on application for construction permit 15908
Public land mobile radio service; procedures on petitions to deny applications 15910

FEDERAL CROP INSURANCE CORPORATION

Notices

Sugar beets; Idaho, Oregon, Utah and Washington; extension of filing date for applications for 1974 crop year 15910

FEDERAL ENERGY OFFICE

Rules

Mandatory petroleum allocation regulations; revised 15960

Notices

Retail Dealers Group; meeting 15933

FEDERAL HIGHWAY ADMINISTRATION

Notices

Keokuk bridge tolls; final order 15896

FEDERAL HOME LOAN BANK BOARD

Proposed Rules

Federal Savings and Loan Insurance Corp.; scheduled items 15881

FEDERAL INSURANCE ADMINISTRATION

Rules

National Flood Insurance Program:
Areas eligible for sale of insurance; status of participating communities (5 documents) 15870–15872
Identification of special hazard areas; list of communities (2 documents) 15873, 15874

FEDERAL MARITIME COMMISSION

Notices

Agreements filed:
Inter-American Freight Conference 15910
Pacific Coast-Australia Tariff Bureau 15911
Government owned or sponsored cargoes; reduced terminal rates 15911
North Atlantic United Kingdom Freight Conference; petition filed 15911

FEDERAL POWER COMMISSION

Notices

Hearings, etc.:
Alabama Power Co 15912
Algonquin Gas Transmission Co 15912
Arkansas Louisiana Gas Co 15912
Boston Edison Co 15913
Brown and Mckenzie, Inc 15913
Cascade Natural Gas Corp 15913
Chevron Oil Co 15913
Cities Service Gas Co 15914
Columbus and Southern Ohio Electric Co 15914
Florida Power and Light Co 15914
Horner and Smith 15919
J-W Operating Co 15914
Kansas-Nebraska Natural Gas Co 15915
Michigan Gas Storage Co 15915
Minnesota Power and Light Co 15916
Perry R. Bass 15918
Texas Eastern Transmission Corp 15916
Transcontinental Gas Pipe Line Corp 15916
Southwestern Power Administration 15917
Upper Peninsula Power Co 15916
Wisconsin Public Service Corp. (3 documents) 15917

FEDERAL RESERVE SYSTEM

Notices

Acquisition of banks:
Bank of Virginia Co 15919
Texas Commerce Bancshares, Inc 15920
Centran Bancshares Corp.; approval of acquisition 15919
National Detroit Corp.; proposed acquisition; correction 15919
Water Tower Financial Group, Inc.; formation of bank holding company 15919

FISH AND WILDLIFE SERVICE

Proposed Rules

Sherburne National Wildlife Refuge, Minnesota; opening to sport fishing 15879

FOOD AND DRUG ADMINISTRATION

Rules

Antibiotic drug; certification 15753
Octyltin stabilizers in vinyl chloride plastics; correction 15753

Proposed Rules

Benzathine phenoxymethyl penicillin; miscellaneous amendments 15879
Picloram; interim tolerances 15879

Notices

Changing Food Supply in America; meeting on 15896

FOOD AND NUTRITION SERVICE

Rules

Special Food Service Program for Children; rates of reimbursement, administrative costs, meal requirements, and audit programs 15756

GENERAL SERVICES ADMINISTRATION

Notices

Economic Stabilization Program; price certification requirements rescinded 15920

GEOLOGICAL SURVEY

Notices

Hydrogen Sulfide; proposal to minimize dangers in drilling operations 15884
Oil and gas production; approval of order to prevent waste and protect correlative rights 15885

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See Education Office; Food and Drug Administration.

HEARINGS AND APPEALS OFFICE

Notices

Petition for modification of mandatory safety standard:
Blackwood Fuel Company 15890
Canterbury Coal Company 15891
Dixie Pine Coal Company, Inc 15891
Helen Mining Company 15891
Island Creek Coal Company 15892
Pine Branch Coal Sales, Inc 15893
Princess Susan Coal Company 15893

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Insurance Administration.

INTERIOR DEPARTMENT

See Fish and Wildlife Service; Geological Survey; Hearings and Appeals Office; Land Management Bureau; National Park Service.

INTERNAL REVENUE SERVICE

Rules

Income tax returns; revocation of rule authorizing inspection by USDA 15754
Statement of procedural rules; comments submitted in response to proposed rule 15754

Proposed Rules

Estate taxation; certain debt obligations 15878

INTERSTATE COMMERCE COMMISSION

Notices

Assignment of hearings 15921
Burlington Northern, Inc.; abandonment 15932
Environmental Threshold Assessment Survey; processing of railroad abandonment applications 15922
Motor Carrier Board transfer proceedings 15922
Motor carrier temporary authority applications (2 doucments) 15922, 15929
Southern Pacific Transportation Co.; abandonment 15932

JUSTICE DEPARTMENT

Rules

Structure and organizational relationships within the department; production or disclosure of material or information 15875

LAND MANAGEMENT BUREAU

Notices

New Mexico; notice of applications (3 documents) 15883

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of reports, list of requests 15933

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Notices

Marine mammals; issuance of permit (2 documents) 15896

NATIONAL PARK SERVICE

Notices

Independence National Historical Park Advisory Commission; meeting ---------- 15889

NATIONAL SCIENCE FOUNDATION

Notices

Advisory Panel for Metabolic Biology; meeting---------- 15920

SECURITIES AND EXCHANGE COMMISSION

Rules

Revised initial fee and 1974 annual assessment for nonmember broker-dealers ---------- 15755

Notices

Revised plan; available for public inspection ---------- 15921

Hearings, etc.:

Oppenheimer Fund, Inc., et al-- 15920

Westgate California Corp------ 15921

SOIL CONSERVATION SERVICE

Notices

Poplar River Watershed Project; availability of environmental impact statement---------- 15893

TRANSPORTATION DEPARTMENT

See Federal Highway Administration.

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.

3 CFR

EXECUTIVE ORDERS:

11588 (see EO 11781) 15749
11615 (see EO 11781) 15749
11627 (see EO 11781) 15749
11695 (superseded in part by EO 11781) 15749
11723 (superseded in part by EO 11781) 15749
11730 (superseded in part by EO 11781) 15749
11748 (see EO 11781) 15749
11781 15749

7 CFR

225 15756
730 15758
731 15759
908 15761
1007 15762
1071 15775
1073 15786
1090 15798
1094 15807
1096 15817
1097 15826
1098 15836
1102 15847
1108 15855
1137 15867
1843 15868

9 CFR

73 15756

10 CFR

211 15960

12 CFR

PROPOSED RULES:

561 15881

17 CFR

249 15755

21 CFR

121 15753
148i 15753

PROPOSED RULES:

121 15879
141a 15879
146a 15879
149h 15879

24 CFR

1914 (5 documents) 15870–15872
1915 (2 documents) 15873, 15874

26 CFR

301 15754
601 15754

PROPOSED RULES:

20 15878

28 CFR

0 15875
16 15875

40 CFR

35 15760

PROPOSED RULES:

180 15880

45 CFR

PROPOSED RULES:

173 15952

50 CFR

PROPOSED RULES:

33 15879

Presidential Documents

Title 3—The President

EXECUTIVE ORDER 11781

Providing for an Orderly Termination of the Economic Stabilization Program

To provide for an orderly transition from mandatory controls, for the continuation of enforcement procedures under the Economic Stabilization Act of 1970, as amended, with respect to acts committed prior to May 1, 1974, and for the continuation of monitoring and other functions of the Cost of Living Council, I am issuing this Executive Order to be effective only from May 1, 1974, through June 30, 1974. At midnight on April 30, 1974, the authority contained in the Economic Stabilization Act of 1970, as amended, to impose a system of mandatory controls expired.

The expiration of continuing mandatory controls authority does not preclude the Cost of Living Council from continuing to consider matters properly before it that relate to wages paid for work performed prior to May 1, 1974, and prices charged prior to May 1, 1974. The Council shall continue to receive and consider requests for approval of wage and salary increases or for exceptions from applicable wage and salary guidelines with respect to pay adjustments for work performed prior to May 1, 1974, and shall continue to challenge and review wages and salaries paid for work performed prior to May 1, 1974, as appropriate, and to the extent permitted by law. The Council shall continue to receive and consider requests for exceptions from price regulations and orders with respect to prices in effect prior to May 1, 1974, and shall continue to review price adjustments made prior to May 1, 1974, as appropriate and to the extent permitted by law.

The Cost of Living Council will be terminating its work, and its staff will be redeployed over the next two months. Given the extraordinary sacrifice, contribution, and outstanding work this staff has provided the American people, it is incumbent upon us to make a substantial effort to recognize and retain those Cost of Living Council people who desire to stay within the Federal Government. Council staff have skills which are in continuous demand in all Federal agencies and represent a broad spectrum of highly competent professional and clerical talent. It is my desire that departments and agencies receive returning career employees with re-employment rights at the same salary and grade obtained while serving at the Council, to the maximum extent possible. This also applies to Internal Revenue Service employees who have served in the Economic Stabilization Program. In addition to returning career Civil Service Cost of Living Council employees with Federal re-employment rights, we must provide an opportunity for those Council employees who are serving under Emergency Indefinite status to remain in the Federal Government if they so desire. These employees will also need favorable consideration for available vacancies in the next two months, and should, to the maximum extent possible, be given salaries commensurate with those attained while serving at the Council.

I am directing each Federal agency to participate in this placement effort by giving the highest attention to filling agency vacancies quickly with qualified Cost of Living Council employees who will be referred by the Council or the Civil Service Commission. To assure the fullest

cooperation in this important effort, I have designated the Chairman of the Civil Service Commission to be directly responsible to me for this placement effort. He will ensure that every effort is made to identify and refer qualified Cost of Living Council employees to fill existing vacancies, and will report to me monthly concerning this placement process.

In order to accomplish these purposes, and by virtue of the authority vested in me by the Constitution and statutes of the United States, including the Economic Stabilization Act of 1970, as amended, it is hereby ordered as follows:

SECTION 1. (a) The Cost of Living Council (hereinafter referred to as the "Council"), as established by section 2 of Executive Order No. 11615 of August 15, 1971, and continued by Executive Order No. 11695 of January 11, 1973, and Executive Order No. 11730 of July 18, 1973, is hereby continued through June 30, 1974. The Secretary of the Treasury serving on April 30, 1974, shall continue to serve as Chairman of the Council so long as he shall serve as Secretary of the Treasury. The Director of the Cost of Living Council shall thereafter serve as Chairman of the Council. The Chairman of the Council of Economic Advisers shall continue to serve as Vice Chairman of the Council.

(b) All the powers and duties conferred upon the President by the Economic Stabilization Act of 1970, as amended, and delegated to the Chairman of the Cost of Living Council by Executive Order No. 11695, including the powers necessary to take appropriate actions with respect to any action or pending proceedings, civil or criminal, not finally determined on April 30, 1974, or with respect to any act committed prior to May 1, 1974, are, to the extent necessary, hereby continued through June 30, 1974.

SEC. 2. The Chairman of the Cost of Living Council shall provide for the orderly conclusion of the Council's activities through June 30, 1974. To this end the Chairman shall make appropriate provision for completion of any reports required by the Economic Stabilization Act of 1970, as amended; for an appropriate compilation of the records, data and any other material in the possession of the Council; and for the establishment of an archive for Economic Stabilization Program documents.

SEC. 3. The Chairman of the Cost of Living Council shall provide for the continuation of any action or pending proceedings, civil or criminal, not finally determined prior to May 1, 1974, as appropriate. The Chairman shall continue to receive reports and review pay adjustments with respect to work performed prior to May 1, 1974, and price adjustments with respect to prices charged prior to May 1, 1974, and take appropriate remedial action where he finds such adjustments were in violation of applicable Economic Stabilization Regulations.

SEC. 4. The Chairman of the Cost of Living Council shall, through June 30, 1974, monitor the decontrol commitments entered into by various firms at the time controls were eliminated and shall take all appropriate action to ensure that the commitments are honored.

SEC. 5. The Chairman of the Cost of Living Council is hereby authorized, for the period May 1, 1974, through June 30, 1974, to continue to:

(a) Review the programs and activities of Federal departments and agencies and the private sector which may have adverse effects on supply and cause increases in prices, and make recommendations for changes in such programs and activities to increase supply and restrain prices;

(b) Review industrial capacity, demand, and supply in various sectors of the economy, working with the industrial groups concerned and appropriate governmental agencies to encourage price restraint;

(c) Establish procedures to work with labor and management in the various sectors of the economy having special economic problems as well as with appropriate Government agencies, to improve the structure of collective bargaining and the performance of those sectors in restraining prices;

(d) Develop plans and procedures to improve wage and price data bases for various sectors of the economy in order to improve the factual basis for collective bargaining and to encourage price restraint;

(e) Focus attention on the need to increase productivity in both the public and private sectors of the economy;

(f) Monitor the economy as a whole, including such matters as wages, costs, productivity, prices, sales, profits, imports, and exports.

SEC. 6. Nothing in this order shall be construed as authorizing the imposition or reimposition of any mandatory economic controls with respect to prices, rents, wages, salaries, corporate dividends, interest rates, or any similar transfer other than on the basis of the authority provided in sections 2 and 3 of this order with respect to enforcement activity related to the period prior to May 1, 1974.

SEC. 7. The Chairman of the Cost of Living Council, in carrying out the provisions of this order, may provide for the establishment of committees, action groups, and other comparable groups, and may take such other actions as he determines to be necessary or appropriate, through June 30, 1974.

SEC. 8. The Construction Industry Stabilization Committee (hereinafter referred to as the CISC) established by section 2 of Executive Order 11588, of March 29, 1971, and continued by Executive Order 11695, of January 11, 1973, is hereby continued through June 30, 1974, and shall continue to act as an agency of the United States. The CISC shall continue to perform such functions with respect to the stabilization of wages and salaries in the construction industry as the Chairman of the Council may delegate to it, for purposes of accomplishing the orderly conclusion of the activities of the CISC through June 30, 1974. The craft dispute boards (hereinafter referred to as "boards") established by associations of contractors and national and international unions under section 2 of Executive Order 11588 and continued by Executive Order 11695 are hereby continued through June 30, 1974. Each board shall be composed of appropriate labor and management representatives. The boards shall continue to perform such functions with respect to the stabilization of wages and salaries in the construction industry as the Chairman of the Council may prescribe for purposes of accomplishing the orderly conclusion of the activities of the CISC through June 30, 1974.

SEC. 9. The Cost of Living Council Committee on Health established by section 6 of Executive Order 11695, of January 11, 1973, is hereby continued through June 30, 1974. The Committee on Health shall be composed of the Director of the Council, who shall be its Chairman, the Vice Chairman of the Council, the Secretary of the Treasury, the Secretary of Health, Education, and Welfare, the Director of the Office of Management and Budget, and such others as the President may, from time to time, designate. The Committee shall continue to review

Government activities significantly influencing health care expenses and make recommendations to the Chairman of the Council concerning these matters.

SEC. 10. The Cost of Living Council Committee on Food established by section 7 of Executive Order 11695, of January 11, 1973, is hereby continued through June 30, 1974. The Cost of Living Council Committee on Food shall be composed of the Director of the Council, the Vice Chairman of the Council, the Secretary of the Treasury, the Secretary of Agriculture, the Director of the Office of Management and Budget, and such others as the President may, from time to time designate. The Committee shall continue to review Government activities significantly affecting food costs and prices and make recommendations to the Chairman of the Council concerning these matters.

SEC. 11. The Labor-Management Advisory Committee established by section 8 of Executive Order 11695, of January 11, 1973, is hereby continued through June 30, 1974. The Labor-Management Advisory Committee shall be composed of such members as the President may, from time to time, designate. The Committee shall continue to provide advice for improving the collective bargaining process and for assuring wage and salary settlements consistent with gains in productivity and the goal of stemming the rate of inflation.

SEC. 12. The following committees are hereby abolished:

Effective May 31, 1974:

(a) The Health Industry Advisory Committee established by section 6 of Executive Order 11695, of January 11, 1973;

Effective immediately:

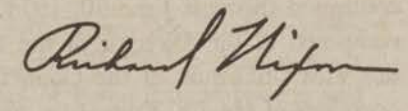
(b) (1) The Food Industry Advisory Committee established by section 7 of Executive Order 11695;

(2) The Committee on Interest and Dividends established by section 9 of Executive Order 11627 and continued by section 9 of Executive Order 11695.

The Chairman of the Council shall make appropriate provision for the disposition of the records, property, personnel, and funds relating to the committees abolished by this section.

SEC. 13. This order does not affect any authority exercised by the Federal Energy Office with respect to pricing and allocation of crude oil, residual fuel oil, and refined petroleum products (as defined in the Emergency Petroleum Allocation Act of 1973), pursuant to the Economic Stabilization Act of 1970, as amended, the Emergency Petroleum Allocation Act of 1973, Executive Order 11748 of December 4, 1973, or Cost of Living Council Order No. 47, as amended.

SEC. 14. Executive Order 11695, of January 11, 1973, Executive Order 11723, of June 13, 1973, and Executive Order 11730, of July 18, 1973, are hereby superseded except to the extent necessary to carry out the functions and duties provided by this order.



THE WHITE HOUSE,
May 1, 1974.

[FR Doc.74-10508 Filed 5-3-74;10:56 am]

Rules and Regulations

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

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

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

OCTYLTIN STABILIZERS IN VINYL CHLORIDE PLASTICS; CORRECTION

In FR Doc. 74-2410 appearing at page 3821 in the FEDERAL REGISTER of January 30, 1974, the following corrections are made in § 121.2602(a)(1) (21 CFR 121.2602(a)(1)):

1. In line 7 the words "tn oxide" are corrected to read "tin oxide".

2. In line 16 the words "dialkyl tin chlorides" are corrected to read "alkyl tin chlorides".

3. In line 20 the words "total higher and" are deleted.

4. In line 26 the words "and/or" are added immediately before the words "mono n-octyltin oxide" and immediately after the word "oxide".

Dated: April 29, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-10302 Filed 5-3-74;8:45 am]

SUBCHAPTER C—DRUGS

PART 148i—NEOMYCIN SULFATE

Neomycin Sulfate-Polymyxin B Sulfate Ophthalmic Ointment and Solution

The Commissioner of Food and Drugs has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act, as amended, with respect to approval of two antibiotic drug products, neomycin sulfate-polymyxin B sulfate ophthalmic ointment, and neomycin sulfate-polymyxin B sulfate ophthalmic solution.

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

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; (21 U.S.C. 357)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 148i is amended by adding thereto the following two new sections to provide for the certification of the antibiotic drug products, neomycin sulfate-polymyxin B sulfate ophthalmic ointment, and neomycin sulfate-polymyxin B sulfate ophthalmic solution:

§ 148i.51 Neomycin sulfate-polymyxin B sulfate ophthalmic ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Neomycin sulfate-polymyxin B sulfate ophthalmic ointment contains in each gram neomycin sulfate equivalent to 3.5 milligrams of neomycin and polymyxin B sulfate equivalent to 6,000 units of polymyxin B with suitable preservatives in a suitable and harmless ointment base. Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of units of polymyxin B that it is represented to contain. It is sterile. Its moisture content is not more than 0.5 percent. It passes the test for metal particles. The neomycin sulfate used conforms to the standards prescribed by § 148i.1(a)(1) except sterility and pyrogens. The polymyxin B sulfate used conforms to the standards prescribed by § 148p.1(a)(1) of this chapter except sterility, pyrogens, and heavy metals.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

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

(i) Results of tests and assays on:

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

(*b*) The polymyxin B sulfate used in making the batch for potency, safety, loss on drying, pH, residue on ignition, and identity.

(*c*) The batch for neomycin content, polymyxin B content, sterility, moisture, and metal particles.

(ii) Samples required:

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

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*c*) The batch:

(*1*) For all tests except sterility: A minimum of 16 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Neomycin content.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the sample and ether until homogeneous. Add 20 to 25 milliliters of 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), and shake well. Allow the layers to separate. Remove the buffer layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of solution 3. Combine the buffer extractives in a suitable volumetric flask and dilute to volume with solution 3. Remove an aliquot and further dilute with solution 3 to the reference concentration of 1.0 microgram of neomycin per milliliter (estimated).

(ii) *Polymyxin B content.* Proceed as directed in § 141.110 of this chapter, except add to each concentration of the polymyxin B standard response line a quantity of neomycin to yield the same concentration of neomycin as that present when the sample is diluted to contain 10 units of polymyxin B per milliliter. Prepare the sample for assay as follows: Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the sample and ether until homogeneous. Add 20 to 25 milliliters of 10 percent potassium phosphate buffer, pH 6.0 (solution 6), and shake well. Allow the layers to separate. Remove the buffer layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of solution 6. Combine the buffer extractives in a suitable volumetric flask and dilute to volume with solution 6. Remove an aliquot and further dilute with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(3) of that section.

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

(4) *Metal particles.* Proceed as directed in § 141.508 of this chapter.

§ 148i.52 Neomycin sulfate-polymyxin B sulfate ophthalmic solution.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Neomycin sulfate-polymyxin B sulfate ophthalmic solution contains in each milliliter neomycin sulfate equivalent to 3.5 milligrams of neomycin and polymyxin B sulfate equivalent to 16,250 units of polymyxin B in a suitable and harmless aqueous vehicle. It may contain one or more suitable and harmless irrigants, dispersants, buffers, and preservatives. Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of units of polymyxin B that it is represented to contain. It is sterile. Its pH is not less than 5.0 and not more than 7.0. The neomycin sulfate used conforms to the standards prescribed by § 1481.1(a)(1) except sterility and pyrogens. The polymyxin B sulfate used conforms to the standards prescribed by § 148p.1(a)(1) of this chapter except sterility, pyrogens, and heavy metals.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

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

(i) Results of tests and assays on:

(*a*) The neomycin sulfate used in making the batch for potency, safety, moisture, pH, and identity.

(*b*) The polymyxin B sulfate used in making the batch for potency, safety, moisture, pH, residue on ignition, and identity.

(*c*) The batch for neomycin content, polymyxin B content, sterility, and pH.

(ii) Samples required:

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

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*c*) The batch:

(*1*) For all tests except sterility: A minimum of 6 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Neomycin content.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Place an accurately measured representative portion of the sample into an appropriate-sized volumetric flask with sufficient 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to give a stock solution of convenient concentration. Remove an aliquot and further dilute with solution 3 to the reference concentration of 1.0 microgram of neomycin per milliliter (estimated).

(ii) *Polymyxin B content.* Proceed as directed in § 141.110 of this chapter, except add to each concentration of the polymyxin B standard response line a quantity of neomycin to yield the same concentration of neomycin as that present when the sample is diluted to contain 10 units of polymyxin B per milliliter. Prepare the sample for assay as follows: Place an accurately measured representative portion of the sample into an appropriate-sized volumetric flask with sufficient 10 percent potassium phosphate buffer, pH 6.0 (solution 6), to give a stock solution of convenient concentration. Remove an aliquot and further dilute with solution 6 to the reference concentration of 10.0 units of polymyxin B per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *pH.* Proceed as directed in § 141.503 of this chapter, using the undi-

(3) *pH.* Proceed as directed in § 141.503 of this chapter, using the undiluted sample.

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

Effective date. This order shall be effective May, 1974.

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

Dated: April 30, 1974.

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

[FR Doc.74-10303 Filed 5-3-74;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

(T.D. 7313)

PART 301—PROCEDURE AND ADMINISTRATION

Inspection by Department of Agriculture of Income Tax Returns

Inspection by the Department of Agriculture of certain income tax returns was authorized by Executive Order 11697 (38 FR 1723), signed by the President on January 17, 1973, as modified by Executive Order 11709 (38 FR 8131), signed by the President on March 27, 1973. Executive Orders 11697 and 11709 in effect provided that such inspection shall be in accordance and upon compliance with § 301.5103(a)—108 of the regulations on procedure and administration (26 CFR Part 301) prescribed by the Secretary of the Treasury in Treasury Decision 7255 (38 FR 2332), as amended by Treasury Decision 7267 (38 FR 8152), and approved by the President on January 17, 1973, and March 27, 1973.

Executive Order 11773 (39 FR 10881), signed by the President on March 21, 1974, revoked Executive Orders 11697 and 11709 and the authority conferred upon the Department of Agriculture by those Orders to inspect income tax returns. Accordingly, since § 301.6103(a)-108 no longer has any force or effect, this document deletes that section from the regulations on procedure and administration.

§ 301.6103(a)-108 [Deleted]

1. *Deletion of regulations.* Section 301.6103(a)-108 of the regulations on procedure and administration (26 CFR Part 301) is hereby deleted.

Because this Treasury decision relates to a general statement of policy and merely deletes a section which no longer has force or effect, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

[SEAL] GEORGE P. SHULTZ,
Secretary of the Treasury.

APRIL 30, 1974.

[FR Doc.74-10309 Filed 5-3-74;8:45 am]

SUBCHAPTER H—INTERNAL REVENUE PRACTICE

PART 601—STATEMENT OF PROCEDURAL RULES

Comments Submitted in Response to Notices of Proposed Rule Making

This document contains amendments to paragraphs (a)(3)(ii) and (b) of § 601.601 of the Statement of Procedural Rules (26 CFR Part 601) and paragraph (d)(9) of § 601.702 of such rules. The amended provisions relate to comments submitted in response to notices of proposed rule making of the Internal Revenue Service.

As amended by this document, § 601.601(b) provides that designations of material as confidential or not to be disclosed, contained in comments submitted in response to notices of proposed rule making, will not be accepted. Further, § 601.601(b), as amended, provides that it will be presumed by the Internal Revenue Service that every comment submitted in response to a notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying.

Paragraph (a)(3)(ii) of 26 CFR 601.601 and paragraph (d)(9) of 26 CFR 601.702 are amended to accommodate paragraph (b) of 26 CFR 601.601, as amended.

The amendment of § 601.601(b) set forth below is effective with respect to comments received in response to notices of proposed rule making of the Internal Revenue Service published in the FEDERAL REGISTER after June 5, 1974.

Adoption of amendment. This document contains amendments to the statement of procedural rules (26 CFR Part 601) which was last amended on March 7, 1974.

The effective dates of the amended paragraph (b) of 26 CFR 601.601 and paragraph (d)(9) of 26 CFR 601.702, as set forth below, are indicated in such sections as set forth below.

The following amendments are made to 26 CFR Part 601:

Paragraph 1. Section 601.601 is amended by revising the fifth sentence of paragraph (a)(3)(ii) and by revising paragraph (b). These amended provisions read as follows:

§ 601.601 **Rules and regulations.**

(a) *Formulation.* * * *

(3) * * *

(ii) * * * In order to be assured of the availability of copies of such written comments or outlines on or before the beginning of such hearing, any person who desires such copies should make such a request within the time prescribed in the notice of hearing and shall agree to pay reasonable costs for copying. * * *

* * * * *

(b) *Comments on proposed rules*—(1) *In general.* Interested persons are privileged to submit any data, views, or arguments in response to a notice of proposed rule making published pursuant to 5 U.S.C. 553. Further, procedures are provided in paragraph (d)(9) of § 601.702 for members of the public to inspect and to obtain copies of written comments submitted in response to such notices. Designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments in response to a notice of proposed rule making should not include therein material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to a notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of paragraph (d)(9) of § 601.702. The name of any person requesting a public hearing and hearing outlines described in paragraph (a)(3)(iii) of this section are not exempt from disclosure.

(2) *Effective date.* This paragraph (b) applies only to comments submitted in response to notices of proposed rule making of the Internal Revenue Service published in the FEDERAL REGISTER after June 5, 1974.

* * * * *

Par. 2. Section 601.702 is amended by revising paragraph (d)(9) thereof to read as follows:

§ 601.702 **Publication and public inspection.**

* * * * *

(d) *Rules for disclosure of certain specific matters.* * * *

(9) *Comments received in response to a notice of proposed rule making.* Written comments received in response to a notice of proposed rule making may be inspected by any person upon compliance with the provisions of this paragraph (d)(9). Comments which may be inspected are located in the Office of the Chief Counsel, Legislation and Regulations Division, Technical Section, Room 4317, 1111 Constitution Avenue, Washington, D.C. 20224. The request to inspect comments must be in writing and signed by the person making the request and should be addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224. Upon delivery of such a written request to the place where the comments are located during the regular business hours of that office, the person making the request may inspect those comments that are the subject of the request. Copies of comments may be obtained by a written request addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224. The person making the request for copies should allow a reasonable time for processing the request. The provisions of paragraph (c)(5) of this section, relating to fees, shall apply with respect to requests made in accordance with this subparagraph. The provisions of this subparagraph shall apply only in the case of requests for the inspection of, or copies of, comments that are submitted in response to notices of proposed rule making of the Internal Revenue Service published in the FEDERAL REGISTER after June 5, 1974. For inspection of, or copies of, comments submitted in response to notices of proposed rule making of the Internal Revenue Service published in the FEDERAL REGISTER on or before such date, see paragraph (d)(9) of 26 CFR 601.702 (revised as of April 1, 1973).

* * * * *

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

[FR Doc.74-10310 Filed 5-3-74;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-10759]

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Revised Initial Fee and 1974 Annual Assessment for Nonmember (SECO) Broker-Dealers

On March 13, 1974 the Commission announced in Securities Exchange Act (the "Act") Release No. 10678 which was published in the FEDERAL REGISTER for March 21, 1974 at 39 FR 10607 a proposal to adopt Form SECO-4-74 (17 CFR 249.504b) pursuant to Rule 15b9-2 (17 CFR 240.15b9-2) under the Act, which sets forth the annual fee schedule under which registered broker-dealers who are not members of the National Association of Securities Dealers, Inc. ("nonmember" or "SECO" broker-dealers) will be assessed for fiscal year 1974 and the amendment of Form SECO-5 (17 CFR 249.505) pursuant to Rule 15b9-1, (17 CFR 240.15b9-1) which sets forth the initial fee schedule for SECO broker-dealers. The Commission has considered the comments received regarding the proposals and has adopted them as proposed.

Sections 15(b)(8) and 15(b)(9) under the Act authorize the Commission to collect such reasonable fees and charges as may be necessary to defray the costs of the additional regulatory duties required for nonmember broker-dealers. Pursuant to these sections, the Commission adopted Rules 15b9-1, to establish initial fees, and 15b9-2 to provide for annual assessments. Rule 15b9-2 provides for the annual assessments to be set forth on Form SECO-4 and Rule 15b9-1 provides for initial fees to be set forth on Form SECO-5 and Form SECO-2. The initial fee now in effect for each new associated person is $35 and will remain unchanged.

This year's assessments, as set forth on new Form SECO-4-74, includes a base fee of $250 and a fee of $12 for each associated person. Form SECO-4-74 will become effective June 1, 1974, and fees are due on or before that date.

Form SECO-5 will be amended so as to increase the initial assessment fee for a new SECO broker-dealer to $500. The amended Form SECO-5 will become effective June 1, 1974.

These increases have been necessitated by the increased costs to the Commission in administering the SECO program.

Copies of Form SECO-4-74 will be forwarded to nonmember broker-dealers, however, since it is the responsibility of each nonmember broker-dealer to comply with the requirements of Rule 15b9-2, any such broker-dealer which does not receive copies of Form SECO-4-74 should contact the Division of Market Regulation at the address and telephone number noted below, to obtain the necessary Forms. The completed Form SECO-4-74 and appropriate remittances should be mailed to the Office of the Comptroller, Securities and Exchange Commission, Washington, D.C. 20549 on or before June 1, 1974.

Commission Action. The Securities and Exchange Commission, acting pursuant to the Securities Exchange Act of 1934, and particularly sections 15(b) and 23(a) thereof, hereby amends Part 249 of Title 17 of the Code of Federal Regulations by adopting § 249.504h as set forth below, and amends Form SECO-5 (§ 249.505) by amending the fee specified therein to read "$500", as indicated above.

§ 249.504h **Form SECO-4-74; 1974 assessment and information form for registered brokers and dealers not members of a registered national securities association.**

This form shall be filed on or before June 1, 1974, pursuant to § 240.15b9-2 of this chapter, accompanied by the annual assessment fee required thereunder and as specified in this form, for the fiscal year ended June 30, 1974, by every registered broker and dealer not a member of a registered national securities association.

(Sec. 15(b), 48 Stat. 895, as amended 78 Stat. 565, 15 U.S.C. 78o; Sec. 23(a), 48 Stat. 901, as amended, 49 Stat. 1379, Sec. 8 (15 U.S.C. 78w))

Copies of Forms SECO–4–74 and SECO–5 have been filed with the Office of the Federal Register. Additional copies of both Forms, as well as copies of Rules 15b9–1 and 15b9–2, may be obtained by contacting the Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 or telephone (202) 755–1382. The foregoing action will become effective on June 1, 1974.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 26, 1974.

[FR Doc.74–10336 Filed 5–3–74;8:45 am]

Title 9—Animals and Animal Products

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

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS; EXTRAORDINARY EMERGENCY REGULATION OF INTRASTATE ACTIVITIES

PART 73—SCABIES IN CATTLE

Release of Areas Quarantined

This amendment releases portions of Otoe County in Nebraska from the areas quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the excluded areas, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said Part 73 will apply to the excluded areas.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies is hereby amended as follows:

In § 73.1a, in paragraph (b) relating to the State of Nebraska, paragraphs (2) and (3) relating to Otoe County are deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

Effective date. The foregoing amendment shall become effective May 1, 1974.

The amendment relieves restrictions no longer deemed necessary to prevent the spread of cattle scabies and should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 1st day of May 1974.

PIERRE A. CHALOUX,
Acting Deputy Administrator, Veterinary Services Animal and Plant Health Inspection Service.

[FR Doc.74–10316 Filed 5–3–74;8:45 am]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

PART 225—SPECIAL FOOD SERVICE PROGRAM FOR CHILDREN

Administration

On February 26, 1974, there was published in the FEDERAL REGISTER (39 FR 7430), a notice of proposed rulemaking with a proposed amendment to the regulations governing the operations of the Special Food Service Program for Children.

The proposed amendment would: (1) Define administrative costs; (2) remove the butter or fortified margarine requirement in the meal patterns; (3) eliminate the summer meal and prohibit the service of supplemental food if the service institution also participates in the Special Milk Program for Children; (4) increase the rates of reimbursement, and in regard to the special summer program, set aside a per meal amount for administrative costs; (5) establish a deadline for the submission of "Reimbursement Vouchers"; and (6) require those States electing to conduct audits to submit an updated audit plan every three years for approval by the Department. All comments submitted with respect to the proposed amendment were given due consideration.

The comments and the changes made as a result are discussed below:

Section 225.2 *Definitions.* Five respondents suggested that the definition of "administrative costs" be expanded. The Department feels that the present definition is adequate for the administration of the special summer program, and therefore the definition has not been expanded. For the purpose of clarification, the definition of "operating costs" was reworded to include "administrative costs."

Four respondents requested that the rental of office space be an allowable in-kind contribution to the program. The Department does not feel justified in altering this position based on the historical exclusion of the value of buildings and land for matching and other purposes in all child nutrition programs.

Section 225.7a(d) *Responsibilities of State agencies.* Three respondents suggested that the date for first consideration for approval of applications for the special summer program be moved forward. As a result of the date of final publication of these changes and in view of the impending expiration of the legislative authority for the program this paragraph has been deleted.

Section 225.7(b)(7) *Requirements for participation.* Several respondents expressed concern about the IRS nonprofit certification in regard to sponsors of summer programs. The legislation authorizing the program requires private service institutions to be nonprofit, and the Department has determined that the best indication of nonprofit status is conformance with IRS standards. This policy is used by the Department in administering all its food programs.

Section 225.9(a)(4) *Requirements for meals.* Several respondents took exception to the provision that service institutions participating in the Special Milk Program shall not be approved for supplemental food. The Department feels that because of the similarity of meal service, service institutions should not be approved for both.

Section 225.9 *Requirements for meals.* Three respondents objected to or questioned the elimination of butter or fortified margarine from the meal patterns. One respondent supported the suggestion for the summer program meals, but objected to it as a proposal for the year-round program meals. Six respondents supported the proposed change. Butter or fortified margarine has, therefore, been eliminated as a requirement. However, the Department recommends the use of butter or fortified margarine in food preparation or as a spread in meals, when appropriate, to enhance flavor and acceptability as well as to provide additional calories and Vitamin A.

Section 225.10(b) *Reimbursement payments.* Eleven respondents felt that the maximum regular rates of reimbursement were insufficient. The proposed rates represented an increase of 13 percent over the current rates. Based on the continued rise in the Food Away from Home Consumer Price Index the maximum regular rates have been increased by 22 percent to more nearly reflect the current cost of food.

Section 225.10(e) *Reimbursement payments.* Seventeen respondents felt that the maximum special assistance rates were insufficient. Therefore, in view of the continued increase in costs, a similar 22 percent adjustment in rates has been made for programs eligible for special assistance up to 80 percent of operating costs.

Several respondents felt that the per meal maximums for administrative costs and for costs other than for administration should be more flexible within the overall maximum special assistance rates. It was the intent of the Department when proposing this concept, that there be a limitation on costs other than for administration as well as on administrative costs in order to assure appropriate budgeting for both types of ex-

penses. There has been no change in the wording of this concept.

Several respondents suggested advance funding for administrative costs and an escalator clause for rates similar to that in the National School Lunch Program. There is no legislative authority for advance funding, and since the Special Food Service Program, under present legislation will expire on June 30, 1975, no escalator provision was included.

Section 225.12 *Reimbursement procedure.* Two respondents pointed out that the proposed deadline for submission of reimbursement vouchers would allow sponsors of summer programs up to fifteen months to claim reimbursement. This period was determined to be excessive and a deadline of 90 days after the close of the program has been established for this purpose.

Section 225.18 (c) and (f) *Special responsibilities of State agencies.* Because of a reorganization within the Department the references to OIG in paragraph (c) have been changed to Office of Investigation, and the references in paragraph (f) have been changed to Office of Audit.

Accordingly, the Special Food Service Program for Children program regulations are amended as follows:

1. In § 225.2, paragraphs (a–1) and (a–2) are redesignated (a–2) and (a–3), respectively, paragraph (1) is revised, and paragraphs (a–1) and (1–1) are added as follows:

§ 225.2 Definitions.

* * * * *

(a–1) "Administrative costs" means those operating costs directly related to planning, organizing, and supervising the program.

* * * * *

(1) "OA" means the Office of Audit of the Department.

(1–1) "Operating costs" means costs of obtaining, preparing, and serving food (including administrative costs and the fair evaluation of in-kind contributions but excluding the rental or purchase of land, buildings, or office space).

* * * * *

2. In § 225.7a, the first sentence of paragraph (a) is revised to read as follows:

§ 225.7a Responsibilities of State agencies.

(a) The State agency, or FNSRO where applicable, shall use the following minimum criteria for the approval of service institutions.

* * * * *

3. In § 225.7a, paragraph (d) is deleted and paragraphs (e), (f), and (g) are redesignated (d), (e), and (f), respectively.

4. In § 225.7b, paragraph (d) is deleted and paragraphs (b) and (b–1) are revised to read as follows:

§ 225.7b Requirements for participation.

* * * * *

(b) At a minimum, applications of service institutions applying for program assistance shall contain the following information: (1) Name and address of service institution; (2) name and title of administrator; (3) estimated total number of children to be served; (4) if it is a special summer program not planning to use school food service facilities, the reasons why such use is not feasible; (5) estimated food service budget including, but not limited to: (i) estimated cash expenditures for food, (ii) estimated cash expenditures for food service operations at the site(s), (iii) estimated cash expenditures for administration, (iv) estimated value of in-kind goods and services, (v) funds available to the service institution at the beginning of food service operations, (vi) estimated food service income other than Special Food Service Program reimbursement including children's payments and adult's payments for meals; (6) sponsor personnel information including: (i) title of each position, (ii) number of personnel in each position, (iii) number of hours per day spent on food service, (iv) specific food service duty, (v) salary per hour or if volunteer, estimated value per hour; (7) if a private service institution, Internal Revenue Service nonprofit certification shall be attached to the service institution application.

(b–1) Each service institution shall attach to its application an information sheet on each food service site. Such information sheet shall include, as a minimum, the following: (1) Name and address of food service site; (2) name and title of supervisor at food service site if known; (3) period of operation including: (i) beginning date, (ii) closing date, (iii) total days of operation, (iv) hours of operation; (4) estimated number of children to be served; (5) estimated percentage of attending children from low income families; (6) estimated percentage of attending children with working mothers; (7) type of meal(s) to be served and hour of meal service; (8) meal charges to children for full price and reduced price meals; (9) method by which meals will be provided; (10) data to document that the site will serve children from areas where poor economic conditions exist or data to demonstrate that the site will serve children from areas of high concentrations of working mothers; (11) a description of organized activities and the location of such activities if other than at food service site; (12) a description of the food service area to include: (i) feeding capacity, (ii) food holding and storage facilities, including arrangements for storage of excess meals delivered to sites, (iii) if an outdoor site, arrangements for food service in inclement weather; (13) a description of the means of communication between the site supervisor and the service institution; (14) site personnel information including: (i) title of each position, (ii) number of personnel in each position, (iii) number of hours per day spent on food service, (iv) specific food service duty, (v) salary per hour or if volunteer, estimated value per hour.

* * * * *

5. In § 225.8, paragraph (b) is revised to read as follows:

§ 225.8 Free and reduced price meals.

* * * * *

(b) Each approved service institution shall make available to the informational media in the area from which the service institution draws its attendance, a public release announcing the availability of free and reduced price meals to children meeting the approved eligibility criteria, regardless of race, color or national origin.

* * * * *

6. § 225.9 is amended by deleting the word "½ teaspoon of butter or fortified margarine" and "1 teaspoon of butter or fortified margarine" wherever they appear, paragraph (b)(2)(v) and (b–2)(2), are deleted, (b–2)(3) is redesignated (b–2)(2), paragraph (b–3) is amended by deleting the words "(1), (2), and (3)" and inserting in lieu thereof "(1) and (2)", and paragraphs (a)(4) and (b–1) are revised to read as follows:

§ 225.9 Requirements for meals.

(a) * * *

(4) Supplemental food served between such other meals, *except that* supplemental food shall not be approved if the service institution also participates in the Special Milk Program for Children (7 CFR Part 215).

* * * * *

(b–1) Each service institution participating in the special summer program shall serve one or more of the following meals as provided in its approved application (1) a regular meal, (2) supplemental food, *except that* supplemental food shall not be approved if the service institution also participates in the Special Milk Program for Children (7 CFR Part 215).

* * * * *

7. In § 225.10, paragraphs (b), (b–1) and (e), are revised to read as follows:

§ 225.10 Reimbursement payments.

* * * * *

(b) The maximum rates of reimbursement for meals served in year-round programs shall be 36 cents for a lunch or supper, 18 cents for a breakfast, and 12 cents for supplemental food.

(b–1) Reimbursement shall be paid to service institutions participating in the special summer program only in connection with types of meals specified in approved applications, and meeting the

requirements of § 225.9(b–2). The maximum rates of reimbursement for meals served in special summer programs shall be 36 cents for a regular meal, and 12 cents for supplemental food.

* * * * *

(e) Notwithstanding any other provision of this section, where all or nearly all the attending children are in need of free meals and the service institution is financially unable to meet this need, the State agency, or FNSRO where applicable, may authorize financial assistance to such service institution, in lieu of reimbursement for meals, in an amount not to exceed 80 per centum of the operating cost of its food service, or 100 per centum of the cash expenditure for such operating cost, less cash income to the program, whichever is the lesser: *Provided, however,* That (1) for meals served in the year-round program, such financial assistance shall not exceed 73 cents for a lunch or supper, 24 cents for a breakfast, and 19 cents for supplemental food, and (2) for meals served in the summer program, such financial assistance shall not exceed 73 cents for a regular meal, of which 6 cents may be used only for administrative costs, and shall not exceed 19 cents for supplemental food, of which 1.5 cents may be used only for administrative costs. In no event may administrative costs in the summer program exceed 6 cents for the regular meal or 1.5 cents for supplemental food or be claimed for more than one meal service in a multiple meal service operation.

8. In § 225.12, paragraph (a) is amended by adding a sentence at the end thereof, as follows:

§ 225.12 Reimbursement procedure.

(a) * * *. Any claim for reimbursement for the year-round program for any fiscal year not received by the State agency, or FNSRO where applicable, within 90 days after the closing date of the fiscal year, and with respect to the summer program 90 days after the close of the program may be disqualified from payment, except where the State agency, or FNSRO where applicable, considers that a Reimbursement Voucher has been filed late because of circumstances beyond the control of the service institution.

* * * * *

9. In § 225.18, the word "monitor" in the first sentence in paragraph (e–1) is deleted and the word "review" is inserted in lieu thereof, and paragraphs (c) and (f) are revised to read as follows:

§ 225.18 Special responsibilities of State agencies.

* * * * *

(c) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file evidence of such investigations and actions. FNS or the Office of Investigation of the Department shall make investigations at the request of the State agency or where FNS or the Office of Investsigation determines investigations by it are appropriate.

* * * * *

(f) *State-conducted audit programs.* (1) A State agency may submit for approval by the Department a plan whereby it will provide for the conduct of audits of the Program. State agencies shall request OA Regional Offices (32 FR 8822, as amended, 34 FR 2139) to assist in the development of these plans, which shall incorporate provisions for organization, financing, direction and coordination of the State audit functions. Audits performed under the plan may be conducted by the State agencies; by the State Auditor, Office of State Controller, or comparable State audit staff; or by Certified Public Accountants or State licensed public accountants. All approved State audit plans shall be updated and be resubmitted for approval by the Department every third year from the anniversary date of the last such approval, except that any State agency plan approved prior to July 1, 1974, must be resubmitted for approval by the Department in accordance with this paragraph prior to July 1, 1975.

(2) An audit guide furnished by OA, and as amended by OA from time to time, shall be used in the State agency-sponsored audits of service institutions. The audits shall be performed in accordance with audit standards, guidelines and procedures prescribed by OA in the audit guide, and shall be reviewed by OA to the extent necessary to determine compliance therewith.

(3) While OA shall rely to the fullest extent feasible on State-conducted audits, it shall have the right, whenever considered necessary, to (i) make audits on a statewide basis, (ii) perform on-site test audits, and (iii) review audit reports and related working papers of audits performed by or for the State agencies. With respect to State-conducted audits, OA shall also have the rights available to it under the provision of § 225.20.

* * * * *

10. In § 225.20, the word "OIG" is deleted wherever it appears and the word "OA" is inserted in lieu thereof.

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

(Catalog of Federal Domestic Assistance Program No. 10.552, National Archives Reference Services.)

Effective Date. This amendment shall become effective May 6, 1974, for the special summer programs and July 1, 1974, for the year-round programs.

Dated: May 1, 1974.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.74–10319 Filed 5–3–74;8:45 am]

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 730—RICE

Subpart—1974–75 Marketing Year

STATE RESERVE ACREAGE, COUNTY ACREAGE ALLOTMENTS AND RESERVE ACREAGES, 1974 CROP RICE

The provisions of §§ 730.1504 and 730.1505 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1281 et seq.) (referred to as the "act") with respect to the 1974 crop of rice. The purpose of these provisions is to establish (1) State reserve acreages and (2) county acreage allotments and reserve acreages in farm States. The regulations for determination of acreage allotments for 1974 and subsequent crops of rice (§§ 730.61 to 730.87, 39 FR 9186) (referred to as the "allotment regulations") contain the designation of farm States and producer States and govern allocations of allotments and reserves established by these provisions.

Notice that the Secretary was preparing to make determinations with respect to these provisions was published in the FEDERAL REGISTER on September 28, 1973, (38 FR 27068) in accordance with the provisions of 5 U.S.C. 553. Data, views and recommendations were submitted pursuant to such notice and consideration given thereto to the extent permitted by law.

Since farmers are now planning their 1974 rice operations and it is essential that they know about these provisions before completing their plans, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest and §§ 730.1504 and 730.1505 shall be effective upon filing this document with the Director, Office of the Federal Register.

§ 730.1504 State reserve acreages.

The State reserve acreages set forth in the table in this section were established on the basis of recommendations by the State committees. The State reserve for new farms or new producers, if any, and the State reserve in producer States for appeals and corrections, missed producers and adjustments in factored allotments were established in accordance with section 353 of the act.

State	State reserve acreage for new farms or new producers	State reserve acreages for appeals, etc. in producer States [1]
Arizona	6.0	0
Arkansas	0	----------
California	0	50
Florida	28.0	47
Illinois	0	----------
Louisiana:		
Farm administrative area	0	----------
Producer administrative area	0	0
Mississippi	0	----------
Missouri	0	----------
North Carolina	0	----------
Oklahoma	0	----------
South Carolina	0	0
Tennessee	0	0
Texas	0	50

[1] For appeals and corrections, missed producers, and adjustments in factored allotments in producer States and the "Producer administrative area" in Louisiana.

§ 730.1505 County acreage allotments and reserve acreages.

The farm acreage allotments for the 1974 crop of rice in the producer States will be established primarily on the basis of past production of rice by the producer on the farm in lieu of past production of rice on the farm. Therefore, the 1974 State acreage allotments of rice for producer States will be apportioned directly to farms and county acreage allotments and reserve acreage will not be determined for producer States. The county reserve acreages were established on the basis of recommendations by the State and county committees in the farm States. Such county reserves are available for appeals and corrections, missed farms and adjustments in factored allotments. The county acreage allotments in farm States were established by apportioning the State acreage allotment less any State reserve for new farms and less any State productivity pool among the counties in the State in the same proportion that they shared in the total acreage allotted in 1956, as provided by section 353(c)(1) and (6) of the act, except that in the farm administrative area of Louisiana, prior to apportionment among counties, 21.6 acres were reserved from the State allotment to adjust the county allotment for Rapides Parish for an upward trend in acreage pursuant to section 353(c)(1) of the act. The following table sets forth the county acreage allotments and reserve acreages and State productivity pool in the farm States for the 1974 crop of rice.

County	County acreage allotment	County reserve acreages [1]
ARKANSAS		
Arkansas	88,342.2	0
Ashley	7,696.4	0
Chicot	11,408.0	0
Clark	644.5	0
Clay	9,190.1	0
Conway	12.5	0
Craighead	20,184.7	0
Crittenden	8,280.5	0
Cross	41,231.2	0
Dallas	82.2	0
Desha	16,180.8	0
Drew	5,181.0	0
Faulkner	533.4	0
Grant	0	0
Greene	6,236.1	0
Hot Spring	550.0	0
Independence	1,012.9	0
Jackson	23,727.0	3.8
Jefferson	20,426.2	.4
Lafayette	1,019.0	0
Lawrence	9,951.2	0
Lee	9,503.6	0
Lincoln	10,368.7	0
Little River	474.2	0
Lonoke	45,359.7	0
Miller	871.4	0
Mississippi	1,718.7	0
Monroe	17,147.5	0
Perry	976.5	0
Phillips	5,934.8	0
Poinsett	44,776.2	0
Prairie	46,470.3	0
Pulaski	2,819.7	2.5
Randolph	2,431.5	0
St. Francis	21,289.9	0
White	1,375.3	0
Woodruff	23,330.9	0
Productivity Pool	263.0	----------
State Reserve	45.2	----------
State total	507,047.0	6.3
ILLINOIS		
Adams	26	0
State total	26	0
LOUISIANA, FARM ADMINISTRATIVE AREA		
Acadia	107,823.4	916.6
Allen	28,850.6	176.5
Avoyelles	3,497.0	174.8
Beauregard	5,363.2	0
Bossier	75.9	0
Calcasieu	77,598.3	3.8
Cameron	14,390.7	2.5
Evangeline	52,050.0	6.4
Grant	----------	0
Iberia	7,005.1	2.5
Jefferson Davis	111,975.0	582.2
Lafayette	11,610.9	12.7
Rapides	876.4	0
St. Landry	19,521.1	25.4
St. Martin	5,277.8	0
St. Mary	3,710.0	0
Vermillion	132,399.4	63.5
Productivity Pool	49.6	----------
State reserve	21.6	----------
State total, farm administrative area	582,066.0	1,966.9
MISSISSIPPI		
Bolivar	26,442.3	0
Coachoma	2,777.4	0
De Soto	911.5	0
Hancock	212.2	0
Humphreys	2,442.4	0
Issaquena	0	0
Leflore	4,301.3	0
Panola	184.3	0
Quitman	479.3	0
Sharkey	1,341.2	0
Sunflower	4,599.9	0
Tallahatchie	589.5	0
Tate	138.3	0
Tunica	4,167.8	0
Washington	10,703.5	0
Productivity Pool	19.1	
State total	59,310.0	0
MISSOURI		
Butler	1,993.2	0
Holt	2.5	0
Lewis	10.2	0
Lincoln	43.2	0
Marion	391.2	0
Mississippi	111.8	0
New Madrid	140.9	0
Pemiscot	753.4	0
Ripley	583.1	0
St. Charles	45.7	0
Scott	140.9	0
Stoddard	1,829.4	0
State total	6,045.6	0
NORTH CAROLINA		
Brunswick	11.1	0
Hyde	36.9	0
State total	48.0	0
OKLAHOMA		
McCurtain	189.0	0
State total	189.0	0

[1] County reserve acreage for appeals and corrections, missed farms, and adjustments.

(Secs. 353, 375, 52 Stat. 61, as amended, 52 Stat. 66, as amended, (7 U.S.C. 1353, 1375))

Effective date: May 3, 1974.

Signed at Washington, D.C. on April 29, 1974.

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

[FR Doc.74-10237 Filed 5-3-74;8:45 am]

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 2]

PART 731—CLOSING DATES FOR TRANSFER, AND FOR RELEASE AND REAPPORTIONMENT

Upland Cotton Acreage Allotments

This amendment is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.) for the following purposes:

1. To extend the 1974 closing date for transfer and for release and reapportionment of upland cotton acreage in certain States. A new section is added to accomplish this.

2. To amend the date as established for Kentucky for all commodities.

3. To correct an error appearing on page 7417 of the February 26 issue of the FEDERAL REGISTER in which some counties were incorrectly listed in Zones I and III for Texas.

Since farmers need to know the extended dates for effecting transfers, release, and reapportionment of 1974 upland cotton acreage allotments as soon as possible, it is hereby determined that compliance with the notice, procedure, and effective date provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest, and this document shall become effective upon the date of its filing with the Director, Office of the Federal Register.

The regulations for establishing closing dates for transfer and for release and reapportionment under Part 731 are amended as follows:

1. The table of contents is revised by adding new § 731.3 to read "Extended Closing Dates for Upland Cotton for 1974 for the Listed States".

2. Section 731.2 is amended by changing the closing date for Kentucky and to correct the Texas counties in Zones I and III.

§ 731.2 Closing Dates.

The closing dates are as follows:

* * * * *		
Kentucky	June 25	Do.
* * * * *		
Texas (zone I) [2]	Mar. 1	Do.
Texas (zone II)	Apr. 1	Do.
Texas (zone III) [3]	May 1	Do.
* * * * *		

[2] Counties: Aransas, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio, Starr, Willacy, and Zapata.

[3] Counties: Andrews, Archer, Armstrong, Bailey, Baylor, Borden, Briscoe, Carson, Castro, Childress, Cochran, Coke, Collingsworth, Cottle, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Gaines, Garza, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Howard, Hutchinson, Irion, Jones, Kent, King, Knox, Lamb, Lipscomb, Lubbock, Lynn, Martin, Midland, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Potter, Randall, Reagan, Roberts, Runnels, Scurry, Sherman, Sterling, Stonewall, Swisher, Taylor, Terry, Throckmorton, Upton, Wheeler, Wichita, Wilbargar, Yoakum, and Young.

3. The following new section is added:

§ 731.3 Extended closing dates for upland cotton for 1974 for the listed states.

State	Extended closing date for upland cotton transfer by lease, sale, or owner, release and reapportionment requests	Final date for reapportionment
(1)	(2)	(3)
Alabama	Apr. 15	1 mo. following applicable closing dates for transfer, release, and requesting reapportionment.
Arkansas	Apr. 19	Do.
Georgia	Apr. 15	Do.
Louisiana	do	Do.
Mississippi	do	Do.
New Mexico	Apr. 19	Do.
North Carolina	do	Do.
Oklahoma	Apr. 17	Do.
South Carolina	Apr. 12	Do.
Tennessee	Apr. 19	Do.
Texas (zone I) [1]	Apr. 15	Do.
Texas (zone II)	May 1	Do.

[1] Counties: Counties listed under sec. 731.2, footnote 2. Secs. 313, 316, 318, 319, 344, 344a, 347, 353, 358, 358a, 375, 378, 52 Stat. 47, as amended, 75 Stat. 469, as amended, 81 Stat. 120, as amended, 85 Stat. 23, 52 Stat. 57, as amended, 79 Stat. 1197, as amended, 52 Stat. 59, as amended, 61, as amended, 55 Stat. 88, as amended, 81 Stat. 856, as amended, 52 Stat. 66, as amended, 72 Stat. 995, as amended; 7 U.S.C. 1313, 1314b, 1314d. 1314e, 1344, 1344b, 1347, 1353, 1358, 1358a, 1375, 1378.

Effective date: May 3, 1974.

Signed at Washington, D.C., on April 30, 1974.

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

[FR Doc.74-10361 Filed 5-3-74;8:45 am]

(Title 7 continued on page 15761)

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER B—GRANTS

PART 35—STATE AND LOCAL ASSISTANCE

Final Construction Grant Regulations

Correction

In FR Doc. 74-3267, appearing at page 5252 of the issue of Monday, February 11, 1974, the following corrections should be made:

1. The allotment tables on pages 5256 and 5257 were published incorrectly and are reprinted in part below.

The table appearing in § 35.910-3(b) on page 5256 should read as follows:

State	Percentage	State	Percentage
Alabama	0.3612	North Carolina	.9229
Alaska	.2252	North Dakota	.0467
Arizona	.1346	Ohio	5.7737
Arkansas	.3536	Oklahoma	.4608
California	9.8176	Oregon	.8494
Colorado	.3166	Pennsylvania	5.4214
Connecticut	1.6810	Rhode Island	.4889
District of Columbia	.7114	South Carolina	.6455
Delaware	.6565	South Dakota	.0948
Florida	3.6264	Tennessee	1.1605
Georgia	.9730	Texas	2.7694
Hawaii	.3303	Utah	.1408
Idaho	.2177	Vermont	.2218
Illinois	6.2489	Virginia	2.9143
Indiana	3.3662	Washington	.8906
Iowa	1.1557	West Virginia	.4999
Kansas	.3742	Wisconsin	1.7415
Kentucky	.6599	Wyoming	.0263
Louisiana	.9428	Guam	.0872
Maine	0.9675	Puerto Rico	.8845
Maryland	4.2582	Virgin Islands	.0893
Massachusetts	3.7576	American Samoa	.0048
Michigan	7.9814	Trust Territory of Pacific Islands	.0378
Minnesota	2.0319		
Mississippi	.3935		
Missouri	1.6556		
Montana	.1662		
Nebraska	.3708		
Nevada	.2877		
New Hampshire	.8309		
New Jersey	7.7040		
New Mexico	.2108		
New York	11.0578		100.0000

The table appearing in § 35.910–3(c) on page 5257 should read as follows:

State	Fiscal year 1973	Fiscal year 1974
Alabama	$7,224,000	$10,836,000
Alaska	4,504,000	6,756,000
Arizona	2,692,000	4,038,000
Arkansas	7,072,000	10,608,000
California	196,352,000	294,528,000
Colorado	6,332,000	9,498,000
Connecticut	33,620,000	50,430,000
Delaware	13,130,000	19,695,000
District of Columbia	14,228,000	21,342,000
Florida	72,528,000	108,792,000
Georgia	19,460,000	29,190,000
Hawaii	6,606,000	9,909,000
Idaho	4,354,000	6,531,000
Illinois	124,978,000	187,467,000
Indiana	67,324,000	100,986,000
Iowa	23,114,000	34,671,000
Kansas	7,484,000	11,226,000
Kentucky	13,198,000	19,797,000
Louisiana	18,856,000	28,284,000
Maine	19,350,000	29,025,000
Maryland	85,164,000	127,746,000
Massachusetts	75,152,000	112,728,000
Michigan	159,628,000	239,442,000
Minnesota	40,638,000	60,957,000
Mississippi	7,870,000	11,805,000
Missouri	33,112,000	49,668,000
Montana	3,324,000	4,986,000
Nebraska	7,416,000	11,124,000
Nevada	5,754,000	8,631,000
New Hampshire	16,618,000	24,927,000
New Jersey	154,080,000	231,120,000
New Mexico	4,216,000	6,324,000
New York	221,156,000	331,734,000
North Carolina	18,458,000	27,687,000
North Dakota	934,000	1,401,000
Ohio	115,474,000	173,211,000
Oklahoma	9,216,000	13,824,000
Oregon	16,988,000	25,482,000
Pennsylvania	108,428,000	162,642,000
Rhode Island	9,778,000	14,667,000
South Carolina	12,910,000	19,365,000
South Dakota	1,896,000	2,844,000
Tennessee	23,210,000	34,815,000
Texas	55,388,000	83,082,000
Utah	2,816,000	4,224,000
Vermont	4,436,000	6,654,000
Virginia	58,286,000	87,429,000
Washington	17,812,000	26,718,000
West Virginia	9,998,000	14,997,000
Wisconsin	34,830,000	52,245,000
Wyoming	536,000	804,000
Guam	1,744,000	2,616,000
Puerto Rico	17,690,000	26,535,000
Virgin Islands	1,786,000	2,679,000
American Samoa	96,000	144,000
Trust Territory of Pacific Islands	756,000	1,134,000
Total	2,000,000,000	3,000,000,000

The first table in column 1 on page 5257 should read:

State	Percentage	State	Percentage
Illinois	6.4173	Pennsylvania	5.6652
Indiana	1.6196	Rhode Island	0.5306
Iowa	1.0012	South Carolina	1.4223
Kansas	1.0222	South Dakota	0.0907
Kentucky	1.6579	Tennessee	1.2303
Louisiana	0.7245	Texas	1.6534
Maine	0.6670	Utah	0.4217
Maryland	1.3767	Vermont	0.3001
Massachusetts	2.2945	Virginia	2.5096
Michigan	4.7978	Washington	1.6463
Minnesota	1.6341	West Virginia	0.9598
Mississippi	0.5355	Wisconsin	1.3317
Missouri	1.8960	Wyoming	0.0768
Montana	0.1421	Guam	0.0478
Nebraska	0.5314	Puerto Rico	1.0385
Nevada	0.4755	Virgin Islands	0.0796
New Hampshire	0.8920	American Samoa	0.0147
New Jersey	6.4769	Trust Territory of the Pacific Islands	0.0133
New Mexico	0.1869		
New York	12.4793		
North Carolina	1.7929		
North Dakota	0.0818		
Ohio	4.9184		
Oklahoma	1.1953		
Oregon	0.8682		

The second table in column 1 on page 5257 should read:

Alabama	$33,785,150
Alaska	15,059,100
Arizona	17,695,750
Arkansas	23,860,100
California	457,420,100
Colorado	30,930,900
Connecticut	69,542,900
Delaware	21,815,300
District of Columbia	38,233,800
Florida	164,496,400
Georgia	76,153,000
Hawaii	41,140,000
Idaho	7,898,400
Illinois	252,311,700
Indiana	63,678,100
Iowa	39,364,800
Kansas	40,192,500
Kentucky	65,183,600
Louisiana	35,551,850
Maine	26,227,000
Maryland	54,128,100
Massachusetts	90,215,900
Michigan	188,637,400
Minnesota	64,247,300
Mississippi	22,346,700
Missouri	74,546,400
Montana	7,534,600
Nebraska	20,894,000
Nevada	18,695,600
New Hampshire	35,072,950
New Jersey	254,656,200
New Mexico	10,670,500
New York	490,654,200
North Carolina	70,494,200
North Dakota	6,876,100
Ohio	193,378,700
Oklahoma	46,997,400
Oregon	34,136,700
Pennsylvania	222,744,100
Rhode Island	20,864,000
South Carolina	55,922,000
South Dakota	7,308,800
Tennessee	48,371,800
Texas	106,900,250
Utah	16,579,600
Vermont	11,800,800
Virginia	98,672,400
Washington	64,730,500

2. In the fifth line of the table in column 2 on page 5257, the figure now reading "40,892,900" should read "40,832,900".

3. In column 1 on page 5260, the first word in the second to last line of § 35.-917–7, now reading "agreement", should be replaced by the letters "agement".

4. In column 3 on page 5265, the first paragraph (a) should be preceded by the following section heading:

§ 35.935–12 Operation and maintenance.

5. In column 1 on page 5266, the last word in the fourth line, now reading "precise", should read "service".

6. In column 2 on page 5267, the first complete word in the second line of paragraph (g) should read "authorized".

(Title 7 continued from p. 15760)

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

[Valencia Orange Reg. 462, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period Apr. 26–May 2, 1974. The quantity that may be shipped is increased due to improved market conditions for California-Arizona Valencia oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) and upon the basis of the recommendation and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Valencia Orange Regulation 462 (39 FR 14597). The marketing picture now indicates that there is a greater demand for Valencia oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Valencia oranges to fill the current demand thereby making a greater quantity of Valencia oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i), (ii), and (iii) of § 908.762 (Valencia Orange Regulation 462 (39 FR 14597) are hereby amended to read as follows:

§ 908.762 Valencia Orange Regulation 462.

* * * * *

(i) District 1: 200,000 cartons;
(ii) District 2: 173,000 cartons;
(iii) District 3: 152,000 cartons.

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

Dated: May 1, 1974.

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

[FR Doc.74-10308 Filed 5-3-74;8:45 am]

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

[Docket No. AO-366-A8, etc.]

MILK IN GEORGIA AND CERTAIN OTHER MARKETING AREAS

Order Amending Orders

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 the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings upon the basis of the hearing record.* 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), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the respective marketing area.

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.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of this Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended;

(3) The issuance of this order amending each of the specified orders, except Fort Smith and Memphis, is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the respective marketing areas; and

(4) The issuance of the order amending the Fort Smith and Memphis orders is approved or favored by at least three-fourths of the producers who during the determined representative period were engaged in the production of milk for sale in the respective marketing areas.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the aforesaid marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the aforesaid orders, as amended, and as hereby further amended. The order set forth herein for the Nashville, Tennessee, marketing area incorporates amendments issued March 26, 1974 (39 FR 11526) for this order that resulted from a separate proceeding.

PART 1007—MILK IN GEORGIA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1007.1 General provisions.

DEFINITIONS

1007.2 Georgia marketing area.
1007.3 Route disposition.
1007.4 [Reserved]
1007.5 Distributing plant.
1007.6 Supply plant.
1007.7 Pool plant.
1007.8 Nonpool plant.
1007.9 Handler.
1007.10 Producer-handler.
1007.11 [Reserved]
1007.12 Producer.
1007.13 Producer milk.
1007.14 Other source milk.
1007.15 Fluid milk product.
1007.16 Fluid cream product.
1007.17 Filled milk.
1007.18 Cooperative association.
1007.19 Reload point.

HANDLER REPORTS

1007.30 Reports of receipts and utilization.
1007.31 Payroll reports.
1007.32 Other reports.

CLASSIFICATION OF MILK

1007.40 Classes of utilization.
1007.41 Shrinkage.
1007.42 Classification of transfers and diversions.
1007.43 General classification rules.
1007.44 Classification of producer milk.
1007.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1007.50 Class prices.
1007.51 Basic formula price.
1007.52 Plant location adjustments for handlers.
1007.53 Announcement of class prices.
1007.54 Equivalent price.

UNIFORM PRICES

1007.60 Handler's value of milk for computing uniform prices.
1007.61 Computation of uniform prices for base milk and excess milk.
1007.62 Announcement of uniform prices and butterfat differential.

PAYMENTS FOR MILK

1007.70 Producer-settlement fund.
1007.71 Payments to the producer-settlement fund.
1007.72 Payments from the producer-settlement fund.
1007.73 Payments to producers and to cooperative associations.
1007.74 Butterfat differential.
1007.75 Plant location adjustments for producers and on nonpool milk.
1007.76 Payments by handler operating a partially regulated distributing plant.
1007.77 Adjustment of accounts.
1007.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1007.85 Assessment for order administration.
1007.86 Deduction for marketing services.

CLASS I BASE PLAN

1007.90 Definition of terms relating to the Class I base plan.
1007.91 Computation of production history base.
1007.92 Updating of production history bases.
1007.93 New producers.
1007.94 Computation of Class I base or base milk for each producer.
1007.95 Transfer of bases.
1007.96 Miscellaneous base rules.
1007.97 Hardship provisions.

AUTHORITY: The provisions of this Part 1007 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1007.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1007.2 Georgia marketing area.

The "Georgia marketing area", hereinafter called the "marketing area", means all the territory, including all waterfront facilities connected therewith, geographically within the boundaries of the State of Georgia except the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Rabun, Walker, and Whitfield. The marketing area shall include all territory that is occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area.

§ 1007.3 **Route disposition.**

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1007.4 **[Reserved]**

§ 1007.5 **Distributing plant.**

"Distributing plant" means a plant in which milk approved by a duly constituted health authority for fluid consumption or filled milk is processed or packaged and which has route disposition in the marketing area during the month.

§ 1007.6 **Supply plant.**

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority for fluid consumption or filled milk is shipped during the month to a pool plant.

§ 1007.7 **Pool plant.**

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route disposition, except filled milk, during the month of not less than 50 percent of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of it total Class I disposition, except filled milk, during the month.

(b) A supply plant from which not less than 50 percent of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of August through February shall be a pool plant for the months of March through July unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

(c) For the purpose of qualifying a supply plant under paragraph (b) of this section, a cooperative association supplying pool distributing plants during the month at least two-thirds of the producer milk of its members (including both milk delivered directly from their farms and that transferred from the supply plant(s) of the cooperative) may count (irrespective of other requirements of § 1007.9(c)) as shipments from the plant to pool distributing plants the milk delivered to pool distributing plants under § 1007.9(c); in the event the cooperative operates more than one supply plant, all such deliveries shall be assigned, for this purpose, to the supply plant nearest Atlanta, Ga.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant; and

(3) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

§ 1007.8 **Nonpool plant.**

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

§ 1007.9 **Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1007.13 for the account of such cooperative association;

(c) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1007.10 **Producer-handler.**

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no Class I milk from sources other than his own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk;

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his personal enterprise and risk; and

(e) If such person had been a producer to whom a Class I base had been assigned pursuant to § 1007.94, has forfeited such Class I base in accordance with the requirement of § 1007.96(c).

§ 1007.11 **[Reserved]**

§ 1007.12 **Producer.**

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is physically received at a pool plant or diverted pursuant to § 1007.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act or the operator of an exempt distributing plant;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1007.44(a)(8)(iii) and the corresponding step of § 1007.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1007.13 **Producer milk.**

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer or from a handler described in § 1007.9(c); *Provided*, That if the milk received at a pool plant from a handler described in § 1007.9(c) is pur-

chased on a basis other than weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the volume by which the farm weights and butterfat as determined from the farm bulk tank samples of such milk exceed the weights and butterfat on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1007.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account only the milk of member producers: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk;

(5) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk; and

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1007.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1007.40(b) (1) from any source other than producers, handlers described in § 1007.9 (c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1007.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1007.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1007.40(b) (1)) for which the handler fails to establish a disposition.

§ 1007.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1007.40 (b) or (c) (1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1007.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1007.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1007.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing milk or milk products for, its members.

§ 1007.19 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload point shall not be considered a plant except that a reload operation on the premises of a plant shall be considered a part of the plant operation.

HANDLER REPORTS

§ 1007.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b) (1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1007.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1007.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) Each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator on or before the seventh day after the end of the month:

(1) The total pounds of base milk and the total pounds of excess milk; and

(2) The days for which milk was received from each producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1007.30 and 1007.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1007.40 Classes of utilization.

Except as provided in § 1007.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1007.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c) (1) (iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk in bulk, fluid form that is used to 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 § 1007.15; and

(6) In shrinkage assigned pursuant to § 1007.41(a) to the receipts specified in § 1007.41(a) (2) and in shrinkage specified in § 1007.41 (b) and (c).

§ 1007.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1007.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1007.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1007.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to §1007.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1007.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in an-

other class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a)(7) or the corresponding step of § 1007.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1007.44(a)(11) or (12) or the corresponding steps of § 1007.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1007.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt distributing plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1007.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis

of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1007.43 General classification rules.

In determining the classification of producer milk pursuant to § 1007.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1007.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1007.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1007.40, 1007.41, and 1007.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1007.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1007.9(a) for each of his pool plants separately and of each handler described in § 1007.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1007.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1007.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1007.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i), of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1007.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, 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) anc (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 exeeced the pounds of skim milk remaining in such slasses, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necesary 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 hnadler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1007.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler):

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be 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 paal plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1007.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1007.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1007.44 on the basis of such report, and, thereafter any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

Class Prices

§ 1007.50 Class prices.

Subject to the provisions of § 1007.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1007.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1007.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Northern Zone" means all the territory in the following Georgia counties:

Banks.	Hall.
Bartow.	Hart.
Catoosa.	Jackson.
Chattooga.	Lumpkin.
Cherokee.	Madison.
Dade.	Murray.
Dawson.	Pickens.
Elbert.	Rabun.
Fannin.	Stephens.
Floyd.	Towns.
Forsyth.	Union.
Franklin.	Walker.
Gilmer.	White.
Habersham.	Whitfield.
Gordon.	

(2) "Southern Zone" means all the territory in the State of Georgia that is not within the Northern Zone.

(b) The Class I price for producer milk at a plant in the Northern Zone shall be reduced 15 cents and at a plant that is outside Georgia, north of an east-west line extending from the city hall in Atlanta and more than 100 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the nearer of the city halls in Atlanta and Augusta, Ga., shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Atlanta and Augusta: *Provided*, That the location adjustment pursuant to this paragraph applicable at a plant in Alabama or South Carolina shall not be more than 15 cents.

(c) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee-plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1007.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1007.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1007.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1007.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1007.44(a) (14) and the corresponding step of § 1007.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1007.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1007.44(a) (9) and the corresponding step of § 1007.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a) (7) (i) through (iv) and the corresponding step of § 1007.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a) (7) (v) and (vi) and the corresponding step of § 1007.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a) (11) and the corresponding step of § 1007.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1007.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1007.61 Computation of uniform prices for base milk and excess milk.

(a) For each month, the market administrator shall compute a uniform price as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports pursuant to § 1007.30 for the month, except those in default of payments required pursuant to § 1007.71 for the preceding month;

(2) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1007.75;

(3) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1007.60 (f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the uniform price.

(b) The market administrator shall compute uniform prices per hundredweight for base milk and excess milk each month, each of 3.5 percent butterfat content, as follows:

(1) Determine the aggregate amount of producer milk in each class included in the computation pursuant to paragraph (a) of this section and the hun-

dredweight of such milk that is base milk and that is excess milk;

(2) Determine the value of the total hundredweight of milk of producers specified in § 1007.94 (c) and (d) to whom no base milk has been assigned by multiplying such volume by the Class III price;

(3) Determine the total value of excess milk by assigning such milk in series beginning with Class III to the hundredweight of milk in each class as determined pursuant to paragraph (b) (1) of this section, multiplying the quantities so assigned by the respective class prices and adding together the resulting amounts;

(4) Divide the total value of excess milk in paragraph (b) (3) of this section by the total hundredweight of such milk. The quotient, rounded to the nearest cent, shall be the uniform price for excess milk;

(5) Multiply the total hundredweight of excess milk by the uniform price for excess milk computed pursuant to paragraph (b) (4) of this section;

(6) Multiply the hundredweight of milk specified in paragraph (a) (4) (ii) of this section by the uniform price for the month;

(7) Subtract the total values arrived at in paragraph (b) (2), (5), and (6) of this section from the amount resulting from the computations pursuant to paragraph (a) (1) through (4) of this section; and

(8) Divide the amount obtained in paragraph (b) (7) of this section by the total hundredweight of base milk determined in paragraph (b) (1) of this section and subtract not less than 4 nor more than 5 cents per hundredweight. The resulting figure rounded to the nearest cent, shall be the uniform price for base milk.

§ 1007.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform prices for such month.

Payments for Milk

§ 1007.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1007.71 and 1007.76 and out of which he shall make all payments from such fund pursuant to § 1007.72: *Provided,* That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1007.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a) (1) of this section exceeds the amount specified in paragraph (a) (2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1007.60.

(2) The sum of:

(i) The value at the uniform prices pursuant to § 1007.61(b), as adjusted pursuant to § 1007.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price pursuant to § 1007.61(a) applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60 (f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b) (1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1007.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(a) (2) exceeds the amount computed pursuant to § 1007.71(a) (1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month less proper deductions authorized in writing by such producer;

(2) On or before the 15th day of each month at not less than the applicable uniform prices for the quantities of base milk and excess milk received adjusted by the butterfat differential computed pursuant to § 1007.74, and in the case of base milk by the location adjustment computed pursuant to § 1007.75, subject to the following:

(i) Less payments made pursuant to paragraph (a) (1) of this section;

(ii) Less proper deductions authorized by such producer;

(iii) Less deductions for marketing services made pursuant to § 1007.86; and

(iv) If by such date such handler has not received full payment from the market administrator pursuant to § 1007.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator; and

(3) On or before the 15th day of the month at not less than the Class III price adjusted by the butterfat differential computed pursuant to § 1007.74 for the quantity of milk received from producers described in § 1007.94 (c) and (d) for whom no base milk has been computed.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the day prior to the date on which payments are due individual producers shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members, shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification

claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1007.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices for base and excess milk shall be increased, or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1007.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be reduced according to the location of the pool plant at the rates set forth in § 1007.52(b); and

(b) The uniform price applicable to other source milk shall be adjusted at the rates set forth in § 1007.52(b) applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1007.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1007.30(b) and 1007.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price pursuant to § 1007.61(a), both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1007.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1007.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1007.60 for such handler shall include, in lieu of the value of other source milk specified in § 1007.60(f) less the value of such other source milk specified in § 1007.71(a)(2)(ii), a value of milk determined pursuant to § 1007.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1007.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1007.30(b) and 1007.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1007.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1007.77 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in moneys due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1007.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1007.71, 1007.77, 1007.85, and 1007.86 shall be increased one-half of 1 percent for each month or portion thereof that such obligation is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1007.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end

of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1007.44(a)(7) and (11) and the corresponding steps of § 1007.44(b), except such other source milk that is excluded from the computations pursuant to § 1007.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1007.76(a)(2).

§ 1007.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) If the Secretary determines that a cooperative association is performing for its members the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such members and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

CLASS I BASE PLAN

§ 1007.90 Definition of terms relating to the Class I base plan.

For purposes of determination and assignment of the Class I base of each producer the following terms are defined:

(a) "Production history" means the average daily marketings of a producer during the production history period used for the determination of bases or the future updating of bases.

(b) "Production history base" means a quantity of milk in pounds per day as computed pursuant to § 1007.91.

(c) "Production history period" means the days or months to be used for the computation of the production history base of a producer.

(d) "Average daily producer milk deliveries" of any producer in any specified period used for computing a production history base means the total pounds of producer milk delivered by the producer divided by the number of days' production represented by such deliveries: *Provided,* That for any September–January period, the divisor shall be the actual days of production, or 145 whichever is greater.

(e) "Class I base" means a quantity of milk in pounds per day computed pursuant to § 1007.94 for which a producer may receive the base milk price.

(f) "Base milk" means:

(1) Milk received from a producer which is not in excess of his Class I base multiplied by the number of days of production of producer milk delivered during the month; and

(2) Milk received from a producer to whom no Class I base has been issued in the amount determined for such producer pursuant to § 1007.94 (c) and (d).

(g) "Excess milk" means milk received in excess of base milk from a producer who is delivering base milk during such month.

§ 1007.91 Computation of production history base.

A "production history base" shall be determined by the market administrator for each producer eligible for such base on the effective date of this provision and on March 1 of each year thereafter. The computation of production history base shall be subject to adjustments due to acquisition or disposition by transfer of Class I base or other modifications of Class I base due to hardship or loss of Class I base because of underdelivery of base. For purposes of computation of his production history base, a producer shall be considered as having been on the market during any specified period if: As a producer he delivered milk of his own production during the designated period without interruption sufficient to cause forfeiture of base pursuant to § 1007.96(a); and during such period (after the effective date of this provision) did not dispose of all his Class I base by transfer. The production history base for each producer on the effective date of this provision shall be determined by the market administrator as follows:

(a) The market administrator shall determine a production history base for each producer who delivered at least 100 days' production during the immediately preceding period of September–January by computing his average daily producer milk deliveries as defined in § 1007.90 (d) during such period.

(b) For producers who delivered milk on less than 100 days during the immediately preceding period of September–January, but at least 90 days prior to March 1, the market administrator shall determine a production history base by multiplying such producer's average daily producer milk deliveries during the months in which milk was delivered prior to March 1, by .80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September–January period by the average daily producer milk deliveries during the same months used for such producer.

(c) Producers who have delivered milk for less than 90 days prior to March 1 shall have no initial production history base but shall be assigned a history of production in accordance with the provisions applicable for new producers.

(d) For each producer not subject to § 1007.94(d) who became a producer for this market subsequent to September 1, 1971, because the plant to which he regularly delivered milk became a fully regulated plant pursuant to this order, a production history base shall be determined, if possible pursuant to paragraph (a) or (b) of this section based on his deliveries of milk as if the nonpool plant to which he delivered had been a pool plant during the representative period.

(e) A producer not described pursuant to paragraph (d) of this section who delivered milk to a nonpool plant(s) prior to becoming a producer and who is not subject to the provisions of § 1007.94(c) shall have a production history base effective on the first day of the second month following the month in which he began deliveries of producer milk to a pool plant if a production history base can be computed pursuant to paragraph (a) or (b) of this section based on deliveries of milk from the same farm on which he is now a producer as if the plant(s) to which he delivered had been a pool plant(s) during the preceding 12 months.

(f) For a producer who held producer-handler status at any time subsequent to September 1, 1971, a production history base shall be calculated as prescribed in paragraph (a) of this section as if the milk of his own production received at his producer-handler plant had been received at a pool plant.

(g) With respect to the computation of production history base pursuant to this section, the following rules shall apply:

(1) If a producer operated more than one farm at the same time, a separate computation shall be made with respect to the average daily producer milk deliveries from each farm except that only one computation shall be made with respect to milk production resources and facilities of a producer-handler.

(2) Only one production history base shall be allowed with respect to milk produced by one or more persons where the land, buildings, and equipment are jointly used, owned or operated.

§ 1007.92 Updating of production history bases.

The production history base for each producer who has neither disposed of his entire base by transfer nor forfeited his base pursuant to § 1007.96(a) or after having disposed of his entire base by transfer or forfeiture, has met the delivery requirements prescribed in § 1007.93 shall be determined by the market administrator on March 1 of each year as follows:

(a) Effective March 1, 1973, the market administrator shall update the production history base for each producer as follows:

(1) Subject to the provisions of paragraph (a)(1)(i) and (ii) of this section for a producer who is assigned an initial history of production pursuant to § 1007.91 (a) or (b) on the effective date of this order, add the average daily milk deliveries of such producer during the period September 1972 through January

1973 to the production history bases computed for such producer on the effective date of this order and divide the result by 2. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period but in no event, shall such producer's production history base be reduced by more than 25 percent.

(2) For producers who had not previously been assigned a production history base, a history of production shall be determined by calculating such producer's average daily producer milk deliveries during the period September 1972 through January 1973 and multiplying the result by 0.80.

(b) Effective March 1, 1974, the market administrator shall update the production history base for each producer as follows:

(1) Subject to the provisions of paragraph (b)(1) (i) and (ii) of this section for a producer who had a production history base for the 2 most recent years, determine the average daily producer milk deliveries during the immediately preceding period September through January. Add the resulting amount to the production history base determined for each of the 2 most recent years and divide the result by 3: (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(2) Subject to the provisions of paragraph (b)(2) (i) and (ii) of this section for a producer who had a production history base for 1 year, the market administrator shall determine his average daily producer milk deliveries during the immediately preceding period of September through January and add such amount to the producer's previous production history base and divide the result by 2: (i) If during the immediately preceding period of September through January a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base, then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(3) For producers who have not previously been assigned a production history base, the market administrator shall assign a production history equal to such producer's average daily producer milk deliveries during the immediately preceding period of September through January and multiply the result by 0.80.

(c) Effective March 1, 1975, and on March 1 of each year thereafter the market administrator shall update the history of production for each producer as follows:

(1) Subject to the provisions of paragraph (c)(1) (i) and (ii) of this section for producers who have a production history base covering 3 or more years, the market administrator shall compute the average daily producer milk deliveries for such producer during the immediately preceding period of September through January and shall add such figure to the average daily producer milk deliveries of the preceding two years and divide the result by 3. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding September through January period the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(2) Subject to the provisions of paragraph (c)(2) (i) and (ii) of this section for a producer who had a production history base for the two most recent periods, determine the average producer milk deliveries during the immediately preceding period September through January. Add the resulting amount to the production history base determined for each of the two most recent periods and divide the result by 3. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(3) Subject to the provisions of paragraph (c)(3) (i) and (ii) of this section for a producer who had a production history base for 1 year, the market administrator shall determine his average daily producer milk deliveries during the immediately preceding period of September through January and add such amount to the producer's previous production history base and divide the result by 2. (i) If during the immediately preceding period of September through January a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(4) For producers who have not previously been assigned a production history base, the market administrator shall assign a production history equal to such producer's average daily producer milk deliveries during the immediately preceding period of September through January and multiply the result by 0.80.

(5) On March 1 of each year of which this plan is in effect, the market administrator shall determine a production history base for producers who delivered milk for less than 100 days in the immediately preceding period of September through January but who delivered milk for at least 90 days prior to March 1 by determining such producers average daily producer milk deliveries during the first 3 months in which the producer delivered milk to the market, multiplying the result by 0.80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September–January period by the average daily deliveries per producer during the same months used for such producer.

§ 1007.93 New producers.

The market administrator shall determine a history of production for each producer for whom a production history base was not determined pursuant to § 1007.91 as follows:

(a) Any producer who during the immediately preceding September through January period delivered his milk to a nonpool plant which became a pool plant shall be assigned a history of production on the same basis as other producers under the order as though the deliveries to the nonpool plant had been deliveries to a pool plant.

(b) Effective on the first day of the second month following the month in which he began deliveries of producer milk to a pool plant a producer who delivered milk to a nonpool plant prior to becoming a producer as defined in this order shall be assigned a production history base on the same basis as if he had been a producer under the order and his deliveries to the nonpool plant had been deliveries to a pool plant provided that in no event shall the production history base exceed the amount of milk actually delivered by such producer under this order.

(c) A producer who delivered no milk to a nonpool plant or who delivered milk to a pool plant for less than 90 days prior to March 1 of any year and who has not acquired a history of production by transfer shall be assigned Class I base milk pursuant to the provisions of § 1007.94(c).

§ 1007.94 Computation of Class I base or base milk for each producer.

On the effective date of this provision and on March 1 of each subsequent year the market administrator shall assign a Class I base to each producer who has a production history base. Class I bases shall be assigned to producers described in § 1007.93 when they are issued production history bases. Class I bases shall be computed as follows:

(a) Compute a "Class I base percentage" as follows:

(1) Determine the sum of Class I dispositions during the preceding period of September through January:

(i) Class I producer milk pursuant to § 1007.44(c);

(ii) The Class I disposition of plants during the period when they were nonpool plants, if such plants were pool plants in the preceding January; and

(iii) The Class I disposition of his own production of a person who was a producer-handler during a portion of the year and who held producer status in the preceding January.

Multiply the sum by 1.15 and divide the result by 153:

(2) Divide the quantity computed pursuant to paragraph (a)(1) of this section by a quantity which is the total of production history bases computed pursuant to § 1007.91 or § 1007.92, whichever is applicable. The result shall be converted to a percentage by multiplying by 100 and rounding to the third decimal place. Such percentage shall be known as the "Class I base percentage."

(b) The Class I base of each producer with a production history base shall be determined by multiplying his production history base by the "Class I base percentage." For each of the months of June, July, and August the Class I base so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the preceding months of September through May.

(c) A producer, other than a producer pursuant to paragraph (d) of this section, who has no production history base shall be assigned base milk each month until the first March 1 on which he is eligible for a Class I base in an amount equal to 50 percent of his average daily deliveries of producer milk in such month multiplied by the number of days' production delivered by such producer during the month (1) effective with his first delivery of producer milk if he begins deliveries in the months of September through January, and (2) effective on the first day of the second month following the month in which he began delivery if he begins deliveries in the months of February through August. For each of the months of June, July, and August the base milk so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the immediately preceding months of September through May.

(d)(1) A producer who, after having forfeited or disposed of all of his Class I base, either continues as a producer on the market or discontinues deliveries to the market and returns to the market as a producer, shall be assigned base milk equal to 50 percent of his average daily deliveries of producer milk in such month multiplied by the number of days' production delivered by such producer during the month, such assignment to be effective on the later of the following dates: The first day of the third month following the month in which he recommences deliveries of producer milk on the market, or the first day of the twelfth month following the month in which a producer who forfeits his base ceases deliveries or a producer disposes of his Class I base. For each of the months of June, July, and August the base milk so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the immediately preceding months of September through May. The production history period of such producer shall begin on the later of the following dates: The date on which he first received payment for base milk or the first day of the first month eligible for use in a production history period pursuant to § 1007.93.

(2) In the application of this provision, use of the same production facilities by another person (or the same person under a different name) to produce milk after the above described forfeiture or transfer of base shall be considered as a continuation of the operation by the previous operator if the new operator is a member of the immediate family of the previous operator. It shall be applied also to any production facility to which a Class I base has not been assigned, wherever located, operated by a person in which the producer who forfeited or transferred his base has a financial interest if such facility commences production on or after the effective date of the transfer or forfeiture, or such producer acquired his financial interest in such person later than 3 months prior to the effective date of the base transfer or forfeiture.

§ 1007.95 Transfer of bases.

Production history and Class I base may be transferred pursuant to the following rules and conditions:

(a) A transfer of base means the transfer of both the production history base and the Class I base associated with it at the time of transfer. The percentage of Class I base transferred shall be applied to the total production history base held at the time of transfer to determine the corresponding amount of production history transferred.

(b) The market administrator must be notified in writing by the holder of Class I base of the name of the person to whom the Class I base is to be transferred, the effective date of the transfer, and the amount of base to be transferred. Application for transfer must be made to the market administrator on forms approved by the market administrator and signed by the base holder(s), his heirs, executor, or trustees and by the person to whom such base is to be transferred.

(c) A transfer of an entire base may be made effective on any day of the month if application for such transfer is filed with the market administrator within 5 days thereafter. Otherwise, such transfer shall be effective on the first day of the month following that in which application is made.

(d) A transfer of a portion of a base shall be effective the first day of the month following that in which application for which such transfer is made to the market administrator, except that a portion of a base may be transferred to be effective on March 1 of any year if application for such transfer is filed with the market administrator no later than March 15.

(e) A producer who has received base by transfer on or after March 1 of any year may not transfer any portion of the base for 3 full months following the effective date of such transfer.

(f) A producer who has transferred base on or after March 1 of any year may not receive additional base by transfer for 3 full months from the effective date of such transfer.

(g) A base which is jointly held or in a partnership may be transferred in part or in its entirety only upon application signed by each joint holder or partner, his heirs, executors, or trustee and by the person to whom such base is to be transferred.

(h) A base which has been established by two or more persons operating a dairy farm jointly or as a partnership may be divided among the joint holders or partners if written notification of the agreed division of base signed by each joint holder or partner, his heirs, executor, or trustee, is received by the market administrator prior to the first day of the month on which such division is to be effective.

(i) It must be established to the satisfaction of the market administrator that the conveyance of such base is bona fide and not for the purpose of evading any provision of this order, and comes within the remaining provisions of this section.

(j) A transfer may be made only to a producer (a person who is currently a producer on the market or who will become a producer under the terms of the order by the last day of the month of transfer).

(k) In the case of an intrafamily transfer (including transfers to an estate and from an estate to a member of the immediate family) all restrictions on transferring base applicable to the transferor producer shall also apply to the transferee.

(l) A producer who receives a base pursuant to § 1007.91 (c) or (d) may not transfer such base, other than pursuant to paragraph (k) of this section, for 1 year from the date of receipt.

(m) A producer-handler who becomes a producer and receives a base may not transfer that base for a period of 1 year from the date of receipt, except to a member of the immediate family pursuant to paragraph (k) of this section.

(n) A base which has been computed from less than a full production history period may not be transferred, except as an intrafamily transfer pursuant to paragraph (k) of this section.

(o) If a base is held by a corporation, a change in ownership of the stock which transfers control to a new person or persons other than a member of the immediate family of the person transferring such stock will require a transfer of bases and compliance with all base rules therein.

§ 1007.96 Miscellaneous base rules.

The following base rules shall be observed in the determination of bases:

(a) A person who discontinues delivery of producer milk for a period of 90 consecutive days after a Class I base is issued to him shall forfeit his production history, together with any Class I base and production history base held pursuant to the provisions of this order, except that a person entering the military service may retain them until 1 year after being released from active military service.

(b) As soon as production history bases and Class I bases are computed by the market administrator, notice of the amount of each producer's production history base and Class I base shall be given by the market administrator to the producer, to the handler receiving such producer's milk, and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place in his plant a list or lists showing the Class I base of each producer whose milk is received at such plant.

(c) As a condition for designation as a producer-handler pursuant to § 1007.10, any person (including any member of the immediate family of such a person, any affiliate of such a person, or any business of which such a person is a part) who has held Class I base any time during the 12-month period prior to such designation shall forfeit the maximum amount of Class I and production history base held at any time during such 12-month period.

§ 1007.97 Hardship provisions.

Requests of producers for relief from hardship or inequity arising under the provisions of §§ 1007.91 through 1007.96 will be subject to the following:

(a) After bases are first issued under this plan and after bases are issued on each succeeding March 1, a producer may request review of the following circumstances because of alleged hardship or inequity:

(1) He was not issued a Class I base;

(2) His production history base is not appropriate because of unusual conditions during the base-earning period such as loss of buildings, herds, or other facilities by fire, flood, or storms, official quarantine, disease, pesticide residue, condemnation of milk, or military service of the producer or his son;

(3) Loss or potential loss of Class I base pursuant to § 1007.96(a);

(4) Loss or potential loss of Class I base because of underdeliveries pursuant to § 1007.92; and

(5) Inability to transfer base due to the provisions of § 1007.95 (l), (m), and (n).

(b) The producer shall file with the market administrator a request in writing for review of hardship or inequity not later than 45 days after notice pursuant to § 1007.96 with respect to requests pursuant to paragraph (a) (1) or (2) of this section, or not later than 45 days after the occurrence with respect to requests pursuant to paragraph (a) (3), (4), or (5) of this section, setting forth:

(1) Conditions that caused the alleged hardship or inequity;

(2) The extent of the relief or adjustment requested;

(3) The basis upon which the amount of adjustment requested was determined; and

(4) Reasons why the relief or adjustment should be granted.

(c) One or more Producer Base Committees shall be established and function as follows:

(1) Each Producer Base Committee shall consist of five producers appointed by the market administrator.

(2) Each committee shall review the requests for relief from hardship or inequity referred to it by the market administrator at a meeting in which the market administrator or his representative serves as recording secretary and at which the applicant may appear in person if he so requests.

(3) Recommendations with respect to each such request shall be endorsed at the meeting by at least three committee members and shall:

(i) With respect to requests pursuant to paragraph (a) (1), (3), (4), or (5) of this section, grant or adjust production history bases and average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of Class I base, restore forfeited base or reduced average daily producer milk deliveries where appropriate, and permit transfer of base not otherwise possible under the order provisions.

(ii) With respect to requests pursuant to paragraph (a) (2) of this section, either reject the request or provide adjustment in the form of additional production history base and average daily producer milk deliveries for prior years where it appears appropriate and the effective date thereof of such adjustment. In considering such requests the loss of milk production due to the following shall not be considered a basis for hardship adjustment:

(*a*) Loss of milk due to mechanical failure of farm tank or other farm equipment; and

(*b*) Inability to obtain adequate labor to maintain milk production, except that hardship adjustment may be granted in the case of a producer or the son of a producer who entered into military service directly from employment in milk production.

(4) Recommendation of the Producer Base Committee shall:

(i) If to deny the request, be final upon notification to the producer, subject only to appeal by the producer to the Director, Dairy Division, within 45 days after such notification; or

(ii) If to grant the request in whole or in part, be transmitted to the Director, Dairy Division, and shall become final unless vetoed by such Director within 15 days after transmitted.

(5) Committee members shall be reimbursed by the market administrator from the funds collected under § 1007.85 for their services at $30 per day or portion thereof, plus necessary travel and subsistence expenses incurred in the performance of their duties as committee members.

(d) The market administrator shall maintain files of all requests for alleviation of hardship and the disposition of such requests. These files shall be open to the inspection of any interested person during the regular office hours of the market administrator.

PART 1071—MILK IN NEOSHO VALLEY MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1071.1 General provisions.

DEFINITIONS

1071.2 Neosho Valley marketing area.
1071.3 Route disposition.
1071.4 [Reserved]
1071.5 [Reserved]
1071.6 [Reserved]

Sec.
1071.7 Pool plant.
1071.8 Nonpool plant.
1071.9 Handler.
1071.10 Producer-handler.
1071.11 [Reserved]
1071.12 Producer.
1071.13 Producer milk.
1071.14 Other source milk.
1071.15 Fluid milk product.
1071.16 Fluid cream product.
1071.17 Filled milk.
1071.18 Cooperative association.
1071.19 Delivery period.

HANDLER REPORTS

1071.30 Reports of receipts and utilization.
1071.31 Payroll reports.
1071.32 Other reports.

CLASSIFICATION OF MILK

1071.40 Classes of utilization.
1071.41 Shrinkage.
1071.42 Classification of transfers and diversions.
1071.43 General classification rules.
1071.44 Classification of producer milk.
1071.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1071.50 Class prices.
1071.51 Basic formula price.
1071.52 Plant location adjustments for handlers.
1071.53 Announcement of class prices.
1071.54 Equivalent price.

UNIFORM PRICE

1071.60 Handler's value of milk for computing uniform price.
1071.61 Computation of uniform price.
1071.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1071.70 Producer-settlement fund.
1071.71 Payments to the producer-settlement fund.
1071.72 Payments from the producer-settlement fund.
1071.73 Payments to producers and to cooperative associations.
1071.74 Butterfat differential.
1071.75 Plant location adjustments for producers and on nonpool milk.
1071.76 Payments by handler operating a partially regulated distributing plant.
1071.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1071.85 Assessment for order administration.
1071.86 Deduction for marketing services.

ADVERTISING AND PROMOTION PROGRAM

1071.110 Agency.
1071.111 Composition of Agency.
1071.112 Term of office.
1071.113 Selection of Agency members.
1071.114 Agency operating procedure.
1071.115 Powers of the Agency.
1071.116 Duties of the Agency.
1071.117 Advertising, Research, Education and Promotion Program.
1071.118 Limitation of expenditures by the Agency.
1071.119 Personal liability.
1071.120 Procedure for requesting refunds.
1071.121 Duties of the market administrator.
1071.122 Liquidation.

AUTHORITY: The provisions of this Part 1071 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1071.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1071.2 Neosho Valley marketing area.

"Neosho Valley marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Allen, Bourbon, Chautauqua, Cherokee, Crawford, Labette, Montgomery, Neosho, and Wilson, all in the State of Kansas, and the counties of Barton, Jasper, Newton, and Vernon, all in the State of Missouri.

§ 1071.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or sale from a plant or plant store) to a retail or wholesale outlet, other than a plant, of any fluid milk product classified as Class I milk.

§ 1071.4 [Reserved]

§ 1071.5 [Reserved]

§ 1071.6 [Reserved]

§ 1071.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means any milk plant described in paragraph (a) or (b) of this section, which is approved by the appropriate health authority having jurisdiction in the marketing area.

(a) Any plant, hereinafter referred to as a "distributing pool plant," from which:

(1) During the current delivery period there is route disposition, except filled milk, in the marketing area equal to 10 percent or more of such plant's Grade A receipts from dairy farmers as specified in paragraph (a)(2) of this section; and

(i) During the current delivery period there is disposed of as Class I milk, except filled milk, an amount not less than an applicable percentage of such plant's Grade A receipts as specified in paragraph (a)(2) of this section as follows: (*a*) April through August, 30 percent; and (*b*) September through March, 45 percent; or

(ii) During five of the six immediately preceding delivery periods, such plant was a pool plant by virtue of meeting the specifications pursuant to paragraph (a)(1)(i) of this section; and

(2) The Grade A receipts from dairy farmers to be used in calculating the percentages specified in paragraph (a)(1) of this section, for each plant shall include all receipts of Grade A milk from dairy farmers and handlers described in § 1071.9(c) subject to the following provisions:

(i) Milk diverted to another plant for the account of the operator of the plant from which the milk was diverted shall be included in the receipts of the plant from which diverted for the purposes of this section, if the milk is claimed as diverted on the report of the diverting handler filed for the month pursuant to § 1071.30 (if such claim is made by the diverting handler, milk so diverted shall be excluded from the receipts of the plant to which diverted); and

(ii) Milk received at a plant operated by a cooperative association from a handler described in § 1071.9(c)(2) shall be excluded from the cooperative association's plant receipts for the purposes of this section.

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the delivery period no less than 50 percent of the Grade A milk received from dairy farmers is shipped to a plant(s) described in paragraph (a) of this section: *Provided*, That if such plant is a pool plant during each of the months of September through March it shall be designated as a pool plant in the next succeeding months of April through August, unless the market administrator is requested by means of written application on or before the 7th day after the end of the month that the plant should not be a pool plant. All plants described in this paragraph which are operated by one handler may be considered as a unit, upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice, and the notice of any change in designation, shall be furnished on or before the 7th day following the month to which the notice applies. In any of the months of April through August a unit shall not contain plants which were not qualified as pool plants either individually or as members of another unit, during each of the previous months of September through March.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant that either the Secretary determines disposed of a greater portion of its milk as Class I milk, except filled milk, in another marketing area regulated by another milk marketing agreement or order issued pursuant to the Act or is otherwise determined pursuant to the provisions of another milk marketing agreement or order to be subject to the pricing and payment provisions of such agreement or order.

§ 1071.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1071.7 and which is neither an other order plant nor a producer-handler plant.

§ 1071.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association, with respect to milk of its member producers which it causes to be diverted pursuant to § 1071.13 for the account of such association;

(c) Any cooperative association, with respect to milk of its member producers:

(1) For which it elects to report as a handler and which is delivered to the pool plant(s) of another handler in a tank truck owned, operated, or controlled, by such association; or

(2) Delivered for its account to the pool plant of another cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1071.7(c).

§ 1071.10 Producer-handler.

"Producer-handler" means any person who, with the approval of any health authority having jurisdiction in the marketing area, processes milk from his own farm production and disposes of all or a portion of such milk as Class I milk within the marketing area, who receives no milk from producers, and who disposes of no fluid milk products in excess of those (a) received from a pool plant, (b) received from an other order plant that are classified and priced as Class I milk under the other order, and (c) from milk of his own production.

§ 1071.11 [Reserved]

§ 1071.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk under a dairy farm permit or rating issued by the appropriate health authority having jurisdiction in the marketing area over the production of milk disposed of for consumption as Grade A milk whose milk is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1071.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1071.44(a)(8)(iii) and the corresponding step of § 1071.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1071.13 Producer milk.

"Producer milk" shall be that skim milk and butterfat for each handler's account in milk received from producers pursuant to paragraphs (a) and (b) of this section as follows:

(a) For a handler operating a pool plant, producer milk shall include:

(1) Milk received directly from producers' farms (including such handler's own farm production) at such pool plant, except milk received from a handler described in § 1071.9(c); and

(2) Milk diverted by such pool plant operator pursuant to paragraph (c) of this section.

(b) For a handler described in § 1071.9 (b) or (c), producer milk shall include:

(1) Milk received directly from producers' farms for its account at pool plants (such milk shall be considered as having been received by the handler at the plant to which it is delivered and then transferred to the plant operator); and

(2) Milk diverted for its account pursuant to paragraph (c) of this section.

(c) Milk diverted for the account of a pool plant operator or the account of a cooperative association from producers' farms to a nonpool plant that is not a producer-handler plant shall be considered as diverted by the handler for whose account it was diverted, if the diverting handler claimed the diversion on his report for the month filed pursuant to § 1071.30. Milk diverted shall be considered as received at the pool plant from which it was diverted for the purpose of determining applicable location adjustments.

§ 1071.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1071.40 (b)(1) from any source other than producers, handlers described in § 1071.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1071.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1071.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined, with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1071.40(b)(1)) for which the handler fails to establish a disposition.

§ 1071.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1071.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9-percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1071.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1071.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1071.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and,

(b) Is authorized by its members to make collective sales or to market milk or its products for its members.

§ 1071.19 Delivery period.

"Delivery period" means a calendar month, or any portion thereof during which this part is in effect.

Handler Reports

§ 1071.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1071.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1071.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1071.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1071.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1071.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1071.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1071.32 Other reports.

(a) Each handler who causes milk to be diverted shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1071.30 and 1071.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1071.40 Classes of utilization.

Except as provided in § 1071.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1071.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1071.15; and

(6) In shrinkage assigned pursuant to § 1071.41(a) to the receipts specified in § 107.41(a)(2) and in shrinkage specified in § 1071.41(b) and (c).

§ 1071.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1071.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent (5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in milk received from a handler described in §1071.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent (5 percent

with respect to skim milk during the months of April, May, and June);

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1071.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1071.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1071.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1071.44(a)(12) and the corresponding step of § 1071.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1071.44(a)(7) or the corresponding step of § 1071.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1071.44(a) (11) or (12) or the corresponding steps of § 1071.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1071.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i)(*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1071.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1071.43 General classification rules.

In determining the classification of producer milk pursuant to § 1071.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1071.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1071.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1071.40, 1071.41, and 1071.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1071.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1071.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1071.9(a) for each of his pool plants separately and of each handler described in § 1071.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1071.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1071.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1071.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1071.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1071.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1071.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handlers; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from 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 § 1071.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class 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 § 1071.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1071.9(c) according to the classification of such products pursuant to § 1071.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the

pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1071.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1071.44(a)(12) and the corresponding step of § 1071.44 (b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1071.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each delivery period, report to each cooperative association which so requests, the amount and class utilization of the milk caused to be delivered to each handler by such cooperative association, either directly or from producers who are members of such cooperative association. For purposes of this report, the milk so delivered by a cooperative association shall be prorated to each class in the proportion that the total quantity of producer milk received by such handler was to the quantity of milk in each class.

CLASS PRICES

§ 1071.50 Class prices.

Subject to the provisions of §1071.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.54: *Provided,* That the price so determined shall be further adjusted by subtracting any amount by which such price exceeds the higher of, or adding any amount by which such price is less than, the lower of the following:

(1) The price for Class I milk of 3.5 percent butterfat content established for the same month or delivery period pursuant to Part 1106 of this chapter regulating the handling of milk in the Oklahoma Metropolitan marketing area less 33 cents; or

(2) The price for Class I milk of 3.5 percent butterfat content established for the same month or delivery period for Zone 1 under Part 1062 of this chapter regulating the handling of milk in the St. Louis-Ozarks marketing area, plus 15 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1071.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1071.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 50 miles by shortest highway distance as measured by the market administrator, from the nearest of the city halls in Joplin or Nevada, Mo., or Chanute or Independence, Kans., and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1071.50(a) shall be reduced by 10 cents if such plant is located more than 50 miles but not more than 60 miles from such city hall and by an additional 2 cents for each 15 miles or fraction thereof that such distance exceeds 60 miles;

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant in a volume not in excess of that by which 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1071.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply; and

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1071.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1071.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1071.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1071.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1071.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1071.44(a)(14) and the corresponding step of § 1071.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1071.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1071.44(a)(9) and the corresponding step of § 1071.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1071.44(a)(7) (i) through (iv) and the corresponding step of § 1071.44 (b), excluding receipts of bulk fluid

cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1071.44(a)(7) (v) and (vi) and the corresponding step of § 1071.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1071.44(a) (11) and the corresponding step of § 1071.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1071.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1071.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1071.60 for all handlers who filed the reports prescribed by § 1071.30 for the month and who made the payments pursuant to §§ 1071.71 and 1071.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1071.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1071.60 (f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1071.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments For Milk

§ 1071.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit payments made by handlers pursuant to §§ 1071.71, 1071.76, and 1071.77 and out of which he shall make payments to handlers pursuant to §§ 1071.72 and 1071.77: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

§ 1071.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1071.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1071.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1071.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1071.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1071.71(a)(2) exceeds the amount computed pursuant to § 1071.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1071.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the last day of each delivery period to each producer for milk received from him during the first 15 days of such delivery period at not less than the Class III price for the preceding delivery period: *Provided*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payments for such milk, the handler shall, if the cooperative association so requests, pay such cooperative association at least 2 days before the end of the delivery period, an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this paragraph.

(b) On or before the 17th day after the end of each delivery period, for all milk received during such delivery period from such producer at not less than the uniform price for such delivery period computed pursuant to § 1071.61 subject to the following adjustments: (1) The butterfat and location differentials pursuant to §§ 1071.74 and 1071.75; (2) payment made pursuant to paragraph (a) of this section; (3) deductions for marketing services pursuant to § 1071.86, (4) deductions authorized by the producer; and (5) any error in payments to such producer for past delivery periods: *Provided*, That if by such date such handler has not received full payment for milk for such delivery period pursuant to § 1071.72, he may reduce uniformly per hundredweight, for all producers his payments pursuant to this paragraph, by an amount not in excess of the per hundredweight reduction in payments from the market administrator: *Provided further*, That the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments, pursuant to this paragraph, next following that on which such balance of payment is received from the market administrator: *And provided further*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk, the handler shall, if the cooperative association so requests, pay such cooperative association, on or before the 15th day after the end of each delivery period an amount equal to the sum of the individual payments other-

wise payable to such producer in accordance with this paragraph; and

(c) On or before the 17th day after the end of each delivery period, to each handler described in § 1071.9(c) for milk received from such handler, not less than the value of such milk as is classified pursuant to § 1071.42(a) at the class prices, as adjusted by the butterfat differential specified in § 1071.74, that are applicable at the location of the handler's pool plant.

§ 1071.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1-percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1071.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1071.52.

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1071.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1071.30(b) and 1071.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1071.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1071.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1071.60 for such handler shall include, in lieu of the value of other source milk specified in § 1071.60(f) less the value of such other source milk specified in § 1071.71(a)(2)(ii), a value of milk determined pursuant to § 1071.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during this month equivalent to the requirements of § 1071.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1071.30(b) and 1071.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1071.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1071.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1071.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1071.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1071.85 Assessment for order administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 16th day after the end of

the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk received by a pool plant operator (including such handler's own production);

(b) Milk received from a handler described in § 1071.9(c);

(c) Producer milk of a handler described in § 1071.9(b);

(d) Other source milk allocated to Class I pursuant to § 1071.44(a) (7) and (11) and the corresponding step of § 1071.44(b), except such other source milk that is excluded from the computations pursuant to § 1071.60 (d) and (f); and

(e) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1071.76(a)(2).

§ 1071.86 Deduction for marketing services.

(a) *Deduction for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1071.73 shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the delivery period, and shall pay such deductions to the market administrator on or before the 15th day after the end of such delivery period. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received from producers and to provide producers with market information.

(b) *Deductions with respect to members of a cooperative association.* In the case of producers who are members of a cooperative association, or who have given written authorization for the rendering of marketing services and the taking of deductions therefor by a cooperative association, and for whom the Secretary determines such a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by such producers and on or before the 15th day after the end of such delivery period pay over such deduction to the cooperative association rendering such services.

ADVERTISING AND PROMOTION PROGRAM

§ 1071.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1071.121 (b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1071.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1071.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1071.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1071.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1071.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1071.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1071.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmembers producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1071.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1071.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1071.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1071.110 and 1071.117.

§ 1071.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1071.110 and 1071.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1071.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1071.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1071.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1071.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1071.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1071.121 Duties of the market administrator.

Except as specified in § 1071.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1071.113(c).

(b) Set aside the amounts subtracted under § 1071.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1071.61(d).

(3) After the end of each calendar quarter make a refund to each producer who has made application for such refund pursuant to § 1071.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1071.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1071.110 through 1071.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1071.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1071.70.

PART 1073—MILK IN WICHITA, KANS., MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1073.1 General provisions.

DEFINITIONS

1073.2 Wichita, Kans., marketing area.
1073.3 Route disposition.
1073.4 [Reserved]
1073.5 Distributing plant.
1073.6 Supply plant.
1073.7 Pool plant.
1073.8 Nonpool plant.
1073.9 Handler.
1073.10 Producer-handler.
1073.11 [Reserved]
1073.12 Producer.
1073.13 Producer milk.
1073.14 Other source milk.
1073.15 Fluid milk product.
1073.16 Fluid cream product.
1073.17 Filled milk.
1073.18 Cooperative association.

HANDLER REPORTS

1073.30 Reports of receipts and utilization.
1073.31 Payroll reports.
1073.32 Other reports.

CLASSIFICATION OF MILK

1073.40 Classes of utilization.
1073.41 Shrinkage.
1073.42 Classification of transfers and diversions.
1073.43 General classification rules.
1073.44 Classification of producer milk.
1073.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

Sec.
1073.50 Class prices.
1073.51 Basic formula price.
1073.52 Plant location adjustments for handlers.
1073.53 Announcement of class prices.
1073.54 Equivalent price.

UNIFORM PRICE

1073.60 Handler's value of milk for computing uniform price.
1073.61 Computation of uniform price.
1073.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1073.70 Producer-settlement fund.
1073.71 Payments to the producer-settlement fund.
1073.72 Payments from the producer-settlement fund.
1073.73 Payments to producers and to cooperative associations.
1073.74 Butterfat differential.
1073.75 Plant location adjustments for producers and on nonpool milk.
1073.76 Payments by handler operating a partially regulated distributing plant.
1073.77 Adjustment of accounts.
1073.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1073.85 Assessment for order administration.
1073.86 Deduction for marketing services.

ADVERTISING AND PROMOTION PROGRAM

1073.110 Agency.
1073.111 Composition of Agency.
1073.112 Term of office.
1073.113 Selection of Agency members.
1073.114 Agency operating procedure.
1073.115 Powers of the Agency.
1073.116 Duties of the Agency.
1073.117 Advertising, Research, Education and Promotion Program.
1073.118 Limitation of expenditures by the Agency.
1073.119 Personal liability.
1073.120 Procedure for requesting refunds.
1073.121 Duties of the market administrator.
1073.122 Liquidation.

AUTHORITY: The provisions of this Part 1073 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1073.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1073.2 Wichita, Kans., marketing area.

"Wichita, Kans., marketing area", hereinafter called the marketing area, means all the territory within the counties enumerated below, all within the State of Kansas, together with all territory within the boundaries so designated which is occupied by government (municipal, State or Federal) reservations or installations:

ZONE I

Barber.	Marion.
Barton.	McPherson.
Butler.	Pawnee.
Comanche.	Pratt.
Cowley.	Reno.
Edwards.	Rice.
Ellis.	Rush.
Harper.	Russell.
Harvey.	Sedgwick.
Kingman.	Stafford.
Kiowa.	Sumner.

ZONE II

Clark.	Lane.
Finney.	Meade.
Ford.	Morton.
Gove.	Ness.
Grant.	Scott.
Gray.	Seward.
Greeley.	Stanton.
Hamilton.	Stevens.
Haskell.	Trego.
Hodgeman.	Wichita.
Kearny.	

§ 1073.3 Route disposition.

"Route disposition" means a delivery from a distributing plant (including a delivery by a vendor, from a plant store or through a vending machine) to a retail or wholesale outlet, other than a plant, of any fluid milk product classified as Class I milk.

§ 1073.4 [Reserved]

§ 1073.5 Distributing plant.

"Distributing plant" means a plant approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month route disposition is made in the marketing area.

§ 1073.6 Supply plant.

"Supply plant" means a plant from which fluid milk products, acceptable to and approved by a duly constituted regulatory agency for distribution under a Grade A label, are shipped during the month to and physically received at a distributing plant.

§ 1073.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has:

(1) Route disposition, except filled milk, during the month of not less than 35 percent (25 percent for each month of March through July) of the fluid milk products, except filled milk, that are approved by a duly constituted regulatory agency for distribution under a Grade A label and are physically received at such plant, or diverted therefrom by the plant operator or a cooperative association to a nonpool plant as producer milk pursuant to § 1073.13, and route disposition, except filled milk, in the marketing area during the month is not less than 10 percent of such fluid milk products. If the entire quantity of fluid milk products, except filled milk, disposed of in packages in a particular size and form is received in such packages from other plants, all such disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate disposition of the receiving plant; or

(2) Qualified as a pool plant in the immediately preceding month on the basis of the performance standards described in paragraph (a)(1) of this section;

(b) A supply plant from which during the month not less than 50 percent of the total quantity of Grade A milk approved by a duly constituted regulatory agency that was physically received at such plant from dairy farmers and handlers described in § 1073.9(c), or diverted therefrom by the plant operator or a cooperative association as producer milk to a nonpool plant pursuant to § 1073.13, is shipped to a plant(s) described in paragraph (a) of this section. A supply plant that was a pool plant pursuant to this paragraph in each of the months of September through December shall be a pool plant in each of the following months of January through August unless the plant operator requests the market administrator in writing that such plant not be a pool plant. Such nonpool status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments; and

(c) A plant that is approved by a duly constituted regulatory agency to handle milk for fluid consumption, that is operated by a cooperative association, and from which during the month not less than 50 percent of the milk of producer members of such association is delivered directly or is transferred by the association to pool plants described in paragraph (a) of this section, unless such plant qualifies for the month as a pool plant under another order issued pursuant to the Act by delivering 50 percent or more of its Grade A receipts from dairy farmers to plants qualified as pool distributing plants under such other order.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in such other Federal order marketing area is greater than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the

month in this marketing area is greater than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) A supply plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August, if such plant retains automatic pooling status under this part.

§ 1073.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant which has route disposition in consumer-type packages or dispenser units in the marketing area during the month; and

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped to a pool plant.

§ 1073.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of producers it diverts pursuant to § 1073.13 from a pool plant to a nonpool plant;

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

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1073.7(d).

§ 1073.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets the qualifications specified in paragraphs (a) and (b) of this section:

(a) His disposition of fluid milk products does not exceed his own farm production, receipts of fluid milk products from pool plants and receipts of packaged fluid milk products from other order plants; and

(b) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk are the personal enterprise and the personal risk of such person.

§ 1073.11 [Reserved]

§ 1073.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency, which milk is received at a pool plant, diverted to a nonpool plant pursuant to § 1073.13, or accounted for by a cooperative association pursuant to § 1073.13(c).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1073.44(a)(8)(iii) and the corresponding step of § 1073.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1073.13 Producer milk.

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

(a) Received at a pool plant directly from a producer or a handler described in § 1073.9(c);

(b) Diverted by the operator of a pool plant or by a cooperative association to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (d) of this section; or

(c) The difference between the quantity of milk as received by a handler described in § 1073.9(c) from producers' farms and the quantity of such milk delivered to pool plants. For the purposes of §§ 1073.52 and 1073.75, such milk shall be deemed to have been received by such handler at the pool plant to which all other producer milk in the same tank truck was delivered.

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

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

(2) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of total milk of such person as a producer is received at a pool plant;

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

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

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

(6) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk.

§ 1073.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1073.40(b)(1) from any source other than producers, handlers described in § 1073.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1073.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1073.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1073.40(b)(1)) for which the handler fails to establish a disposition.

§ 1073.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1073.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged

in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1073.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1073.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1073.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

HANDLER REPORTS

§ 1073.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1073.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1073.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1073.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1073.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1073.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1073.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1073.32 Other reports.

In addition to the reports required pursuant to §§ 1073.30 and 1073.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1073.40 Classes of utilization.

Except as provided in § 1073.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1073.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1073.15; and

(6) In shrinkage assigned pursuant to § 1073.41(a) to the receipts specified in § 1073.41(a)(2) and in shrinkage specified in § 1073.41 (b) and (c).

§ 1073.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1073.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1073.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1073.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1073.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1073.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1073.44(a)(12) and the corresponding step of § 1073.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1073.44(a)(7) or the corresponding step of § 1073.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1073.44(a)(11) or (12) or the corresponding steps of § 1073.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section;

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1073.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification

in his report of receipts and utilization filed pursuant to § 1073.30 for the month within which such transaction occurred; and

(b) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1073.43 General classification rules.

In determining the classification of producer milk pursuant to § 1073.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1073.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1073.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1073.40, 1073.41, and 1073.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1073.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1073.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1073.9(a) for each of his pool plants separately and of each handler described in § 1073.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1073.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1073.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1073.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1073.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1073.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii)(*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1073.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from 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 § 1073.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each

class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1073.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1073.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1073.44(a)(12) and the corresponding step of § 1073.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1073.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 13th day of each month report to each cooperative association, which so requests, the percentage utilization of milk received from producers or from a handler described in § 1073.9(c) in each class by each handler who in the previous month received milk from members of such cooperative association.

CLASS PRICES

§ 1073.50 Class prices.

Subject to the provisions of § 1073.52, the class prices for the month per hundredweight of milk containing 3.5-percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.80. Such price shall not be less than the Class I price established for the same month pursuant to Part 1064 (Greater Kansas City) of this chapter, nor more than the Greater Kansas City Class I price plus 60 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1073.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest 0.1 cent) per 0.1-percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1073.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1073.9(c) at a plant and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (a)(4) of this section, the price at such plant when located:

(1) In Zone I of the marketing area, shall be that computed pursuant to § 1073.50(a);

(2) In Zone II of the marketing area, shall be 5 cents more than the Zone I price;

(3) Outside the marketing area, shall be the Class I price applicable at the nearest of the city halls in Garden City, Hays, Pratt, or Wichita, Kan., subject to a reduction of 12 cents if the distance to such city hall is 70 miles or more, but less than 80 miles, plus an additional 1.5 cents for each 10 miles or fraction thereof in excess of 79 miles (all distances to be by shortest hard-surfaced highway, as determined by the market administrator); and

(4) For purposes of calculating such location adjustments, transfers of fluid milk products between pool plants shall be assigned Class I milk disposition at the receiving plant, in excess of the sum of receipts at such plant from producers (including receipts from a handler described in § 1073.9(c)) and the pounds assigned as Class I milk to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to shipping plants priced at the same zone price, next to plants priced at the other zone price, and then in sequence beginning with the plant at which the least location adjustment credit would apply.

(b) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1073.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1073.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1073.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1073.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1073.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1073.44(a)(14) and the corresponding step of § 1073.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1073.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(9) and the corresponding step of § 1073.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1073.44(a)(9) and the corresponding step of § 1073.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1073.44 (a)(12) and the corresponding step of § 1073.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(7) (i) through (iv) and the corresponding step of § 1073.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(7) (v) and (vi) and the corresponding step of § 1073.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(11) and the corresponding step of § 1073.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1073.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1073.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5-percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1073.60 for all handlers who filed the reports prescribed by § 1073.30 for the month and who made the payments pursuant to § 1073.71 for the preceding month;

(b) Deduct the amount of the plus adjustments and add the amount of the minus adjustments, which are applicable pursuant to § 1073.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1073.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1073.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1073.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1073.71, 1073.76, and 1073.77, and out of which he shall make all payments to handlers pursuant to §§ 1073.72 and 1073.77.

§ 1073.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1073.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1073.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1073.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1073.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any (for each pool plant, if applicable), by which the amount computed pursuant to § 1073.71(a)(2) exceeds the amount computed pursuant to § 1073.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1073.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the second working day following the 12th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price computed pursuant to § 1073.61 for such producer's deliveries of milk, adjusted by the butterfat differential and location adjustments computed pursuant to §§ 1073.74 and 1073.75, and less the amount of the payment made pursuant to paragraph (b) of this section. If by such date such handler has not received full payment pursuant to § 1073.72, he may reduce his total payments uniformly to all producers by not more than the amount of the reduction in payment by the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator;

(b) On or before the 27th day of each month, to each producer:

(1) To whom payment is not made pursuant to paragraph (c) of this section; and

(2) Who is still delivering Grade A milk to such handler, a partial payment with respect to milk received from him during the first 15 days of such month computed at not less than 110 percent of the Class III price for 3.5 percent milk for the preceding month, without deduction for hauling;

(c) On or before the 14th day after the end of each month and on or before the 24th day of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, for milk which it caused to be delivered to such handler from producers, and for which such association is determined by the market administrator to be authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payments due on or before the 14th day after the end of the month shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1073.31, and payments due on or before the 24th day of the month shall be accompanied by a statement of the amount of money for each producer; and

(d) Each handler who receives milk from a handler described in § 1073.9(c), including the milk of producers who are not members of the cooperative association, and who the market administrator determines have authorized such cooperative association to collect for their milk, shall, on or before the second day prior to the date payments are due individual producers, pay such handler for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the amount prescribed in paragraph (b)(2) of this section; and

(2) In making final settlement, the value of such milk at the uniform price, adjusted pursuant to §§ 1073.74 and 1073.75, less payment made pursuant to paragraph (d)(1) of this section.

§ 1073.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1073.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at plants located outside Zone 1, there shall be added or deducted, as the case may be, an adjustment for each such plant for all milk at the rates specified in § 1073.52(a).

(b) For purposes of computations pursuant to §§ 1073.71(a)(2)(ii) and 1073.72, the uniform price shall be adjusted at the rates set forth in § 1073.52, applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1073.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1073.30(b) and 1073.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1073.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1073.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1073.60 for such handler shall include, in lieu of the value of other source milk specified in § 1073.30(f) less the value of such other source milk specified in § 1073.71(a)(2)(ii), a value of milk determined pursuant to § 1073.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1073.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1073.30(b) and 1073.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1073.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1073.74, for milk received at the plant during the month that

would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1073.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1073.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments of any handler discloses error in payments to the producer-settlement fund made pursuant to § 1073.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed;

(b) Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1073.72, the market administrator shall, within 5 days, make payment to such handler;

(c) Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this part, the handler shall make up such payment to the producer not later than the time of making payment to producers next following the disclosure; and

(d) Whenever verification by the market administrator of the payment by a handler to any producer discloses that solely through error in computation, payment to such producer was in an amount more than was required to be paid pursuant to § 1073.73, no handler shall be deemed to be in violation of § 1073.73 if he reduces his next payment to such producer following discovery of such error by not more than such overpayment.

§ 1073.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1073.71, § 1073.77(a), or § 1073.85 shall be increased one-half of 1 percent on the first day of the month following after the date such obligation is due and on the first day of each succeeding month until such obligation is paid. Any remittance received by the market administrator postmarked prior to the first of the month shall be considered to have been received when postmarked.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1073.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1073.13(a)(3)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1073.44(a) (7) and (11) and the corresponding steps of § 1073.44(b), except such other source milk that is excluded from the computations pursuant to § 1073.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1073.76(a)(2).

§ 1073.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 1073.73(a) with respect to all milk of such producer received by such handler during the month and shall pay such deductions to the market administrator on or before the 14th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples and tests of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services; and

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make such deductions from the payments to be made directly to producers pursuant to § 1073.73(a) as are authorized by such producers, and on or before the 14th day after the end of each month, pay over such deductions to the association of which such producers are members. When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and, unless otherwise previously provided, the butterfat test.

ADVERTISING AND PROMOTION PROGRAM

§ 1073.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1073.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1073.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1073.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1073.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1073.113(b), has a majority of the participating producers, 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.

§ 1073.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1073.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperative shall be eligible to select a representative(s) to the

Agency under the rules of § 1073.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1073.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1073.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1073.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1073.110 and 1073.117.

§ 1073.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following.

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1073.110 and 1073.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1073.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1073.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1073.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1073.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1073.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1073.121 Duties of the market administrator.

Except as specified in § 1073.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1073.113(c).

(b) Set aside the amounts subtracted under § 1073.61(d) into an advertising and promotion fund, separately accounted for from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1073.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1073.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1073.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1073.110 through 1073.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1073.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1073.70.

PART 1090—MILK IN THE CHATTANOOGA, TENN., MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1090.1 General provisions.

DEFINITIONS

1090.2 Chattanooga, Tenn., marketing area.
1090.3 Route disposition.
1090.4 [Reserved]
1090.5 [Reserved]
1090.6 [Reserved]
1090.7 Pool plant.
1090.8 Nonpool plant.
1090.9 Handler.
1090.10 Producer-handler.
1090.11 Approved dairy farmer.
1090.12 Producer.
1090.13 Producer milk.
1090.14 Other source milk.
1090.15 Fluid milk product.
1090.16 Fluid cream product.
1090.17 Filled milk.
1090.18 Cooperative association.

HANDLER REPORTS

1090.30 Reports of receipts and utilization.
1090.31 Payroll reports.
1090.32 Other reports.

CLASSIFICATION OF MILK

1090.40 Classes of utilization.
1090.41 Shrinkage.
1090.42 Classification of transfers and diversions.
1090.43 General classification rules.
1090.44 Classification of producer milk.
1090.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1090.50 Class prices.
1090.51 Basic formula price.
1090.52 Plant location adjustments for handlers.
1090.53 Announcement of class prices.
1090.54 Equivalent price.

UNIFORM PRICES

1090.60 Handler's value of milk for computing uniform price.
1090.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).
1090.62 Announcement of uniform prices and butterfat differential.

PAYMENTS FOR MILK

1090.70 Producer-settlement fund.
1090.71 Payments to the producer-settlement fund.
1090.72 Payments from the producer-settlement fund.
1090.73 Payments to producers and to cooperative associations.
1090.74 Butterfat differential.
1090.75 Plant location adjustments for producers and on nonpool milk.
1090.76 Payments by handler operating a partially regulated distributing plant.
1090.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1090.85 Assessment for order administration.
1090.86 Deduction for marketing services.

BASE-EXCESS PLAN

1090.90 Base milk.
1090.91 Excess milk.
1090.92 Computation of daily average base for each producer.
1090.93 Base rules.
1090.94 Announcement of established bases.

AUTHORITY: The provisions of this Part 1090 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1090.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1090.2 Chattanooga, Tenn., marketing area.

The Chattanooga, Tenn., marketing area, hereinafter called the "marketing area", means all the territory within the boundaries of the following counties:

IN TENNESSEE

Bradley.	Monroe.
Hamilton.	Polk.
Marion.	Rhea.
McMinn.	Sequatchie.
Meigs.	

IN GEORGIA

Catoosa.	Murray.
Chattooga.	Walker.
Dade.	Whitfield.
Fannin.	

§ 1090.3 Route disposition.

"Route disposition" means any delivery (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk other than a delivery to any milk or filled milk processing plant.

§ 1090.4 [Reserved]

§ 1090.5 [Reserved]

§ 1090.6 [Reserved]

§ 1090.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant approved or recognized by a duly constituted health authority for the receiving or processing of Grade A milk which during the month has route disposition, except filled milk, equal to not less than 50 percent of its receipts of milk from other pool plants and from approved dairy farmers and which has route disposition within the marketing area equal to at least 15 percent of its total Class I disposition.

(b) A supply plant which, during the month, ships fluid milk products, except filled milk, approved or recognized by a duly constituted health authority as eligible for distribution under a Grade A label in a volume equal to not less than 50 percent of its receipts of milk from approved dairy farmers to a plant specified in paragraph (a) of this section: *Provided,* That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July unless the operator of such plant files with the market administrator prior to the first day of any of the months of March–July a written request for withdrawal.

(c) A plant operated by a cooperative association if, during the month, the sum of the milk delivered to other pool plants by approved dairy farmers who are members of such cooperative association plus the milk which is transferred thereto from the plant operated by the cooperative association is equal to not less than 50 percent of the total volume of milk delivered to all plants by approved dairy farmers who are members of the association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; or

(2) Upon application to the market administrator for nonpool status and a subsequent determination by the Secretary, a plant specified in paragraph (d)(2) (i) or (ii) of this section:

(i) Any distributing plant which would otherwise be subject to the clas-

sification and pricing provisions of another order issued pursuant to the act, unless a greater volume of Class I milk, except filled milk, is disposed of from such plant to retail or wholesale outlets (except pool plants or nonpool plants) in the Chattanooga, Tenn., marketing area than in the marketing area regulated pursuant to such order; or

(ii) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless such plant qualified as a pool plant for each of the preceding months of August through February.

§ 1090.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1090.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to milk of producers diverted for the account of such association pursuant to § 1090.13;

(c) [Reserved]

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1090.7(d).

§ 1090.10 Producer-handler.

"Producer-handler" means an approved dairy farmer who:

(a) Operates a plant from which there is route disposition in the marketing area;

(b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

§ 1090.11 Approved dairy farmer.

"Approved dairy farmer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority.

§ 1090.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any approved dairy farmer whose milk is physically received at a pool plant or diverted pursuant to § 1090.13.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1090.44(a)(8)(iii) and the corresponding step of § 1090.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1090.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) Received at a pool plant directly from a producer; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant from which diverted;

(2) In any month of September through November that less than 4 days' production of a producer is delivered to pool plants, the quantity of milk of the producer diverted during the month that exceeds that delivered to pool plants shall not be deemed to have been received at a pool plant and shall not be producer milk;

(3) A cooperative association may divert for its account the milk of any member-producer: *Provided*, That in any month of September through November the total quantity of milk so diverted that exceeds 35 percent of the milk physically received from member-producers at all pool plants during the month shall not be deemed to have been received at a pool plant and shall not be producer milk;

(4) The operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association: *Provided*, That in any month of September through November the total quantity of milk so diverted that exceeds 35 percent of the milk physically received at such pool plant during the month from producers who are not members of a cooperative association shall not be deemed to have been received at a pool plant and shall not be producer milk; and

(5) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (3) and (4) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1090.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1090.40(b)(1) from any source other than producers or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1090.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1090.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1090.40(b)(1)) for which the handler fails to establish a disposition.

§ 1090.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1090.40(b) or (c)(1)(i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1090.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1090.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1090.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1090.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1090.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1090.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1090.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1090.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1090.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1090.32 Other reports.

(a) Each handler who receives milk from producers shall report to the market administrator:

(1) On or before the date prior to diverting producer milk pursuant to § 1090.13 his intention to divert such milk, the date or dates of such diversions, and the nonpool plant to which such milk is to be diverted.

(2) On or before the sixth day after the end of each of the months of March through July, the aggregate quantity of base milk received during the month at each of his pool plants, and on or before the 20th day after the end of each of the months of March through July the pounds of base milk received during the month from each producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1090.30 and 1090.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1090.40 Classes of utilization.

Except as provided in § 1090.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1090.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph(b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1090.15; and

(6) In shrinkage assigned pursuant to § 1090.41(a) to the receipts specified in § 1090.41(a)(2) and in shrinkage specified in § 1090.41 (b) and (c).

§ 1090.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1090.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1090.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests, determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1090.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1090.44(a)(12) and the corresponding step of § 1090.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1090.44(a)(7) or the corresponding step of § 1090.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1090.44(a)(11) or (12) or the corresponding steps of § 1090.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1090.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i)(*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1090.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from

the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under and 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.

§ 1090.43 General classification rules.

In determining the classification of producer milk pursuant to § 1090.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1090.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1090.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1090.40, 1090.41, and 1090.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1090.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1090.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1090.9(a) for each of his pool plants separately and of each handler described in § 1090.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1090.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1090.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1090.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1090.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1090.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classifica-

tion other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1090.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) and (8) (iii) of this section:

(i) Subject to the provisions of paragraph (a) (12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1090.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a) (12) (i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available:

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the

classification of such products pursuant to § 1090.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1090.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1090.44(a)(12) and the corresponding step of § 1090.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1090.44 or the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1090.50 Class prices.

Subject to the provisions of § 1090.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.15.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1090.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1090.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk (for which a location adjustment is applicable) at a plant that is north of either the southern boundary of the State of Tennessee or the northern boundary of the State of South Carolina and more than 65 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the city hall in Chattanooga shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 75 miles (by the shortest hard-surface highway distance as determined by the market administrator) that such plant is from the city hall in Chattanooga.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant, which is in excess of the sum of receipts at such plant from producers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1090.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1090.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1090.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1090.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1090.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1090.44(a)(14) and the corresponding step of § 1090.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1090.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1090.44(a)(9) and the corresponding step of § 1090.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(7)(i) through (iv) and the corresponding step of § 1090.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(7)(v) and (vi) and the corresponding step of § 1090.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(11) and the corresponding step of § 1090.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat

disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1090.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) For each month the market administrator shall compute the weighted average price and for each of the months of August through February, the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1090.60 for all handlers who filed the reports prescribed by § 1090.30 for the month and who made the payments pursuant to §§ 1090.71 and 1090.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1090.75;

(3) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included in paragraph (a) (1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to § 1090.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and shall be the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers in each of the months of August through February.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a) (1) of this section as follows:

(i) Multiply the hundredweight quantity of such milk which does not exceed the total quantity of producer milk assigned to Class III milk in the pool plants of such handlers by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk which does not exceed the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b) (1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(3) From the amount resulting from the computations pursuant to paragraph (a) (1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a) (4) (ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b) (2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b) (3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b) (4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b) (5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1090.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1090.61 for such month.

PAYMENTS FOR MILK

§ 1090.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1090.71, 1090.76, and 1090.77, and out of which he shall make all payments pursuant to §§ 1090.72 and 1090.77: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

§ 1090.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a) (1) of this section exceeds the amount specified in paragraph (a) (2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1090.60.

(2) The sum of:

(i) The value of the uniform prices, as adjusted pursuant to § 1090.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1090.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b) (1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1090.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1090.71(a) (2) exceeds the amount computed pursuant to § 1090.71(a) (1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1090.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s), as adjusted pursuant to §§ 1090.74 and 1090.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a) (1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1090.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1090.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section; and

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) for the months of March through July the total pounds of base milk received, (iii) the amount or rate and nature of any deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1090.77.

§ 1090.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1090.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices computed pursuant to § 1090.61 to be paid for producer milk received at a pool plant shall be reduced according to the location of the pool plant where such milk was received each at the rates set forth in § 1090.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1090.52 (a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1090.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1090.30(b) and 1090.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1090.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1090.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1090.60 for such handler shall include, in lieu of the value of other source milk specified in § 1090.60(f) less the value of such other source milk specified in § 1090.71(a)(2)(ii), a value of milk determined pursuant to § 1090.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1090.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1090.30 (b) and 1090.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1090.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential

specified in § 1090.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b) (1) (iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1090.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b) (1) (iii) of this section applies.

§ 1090.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1090.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1090.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1090.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1090.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to skim milk and butterfat contained in:

(a) Producer milk;

(b) Other source milk allocated to Class I pursuant to § 1090.44(a) (7) and (11) and the corresponding steps of § 1090.44(b), except such other source milk that is excluded from the computations pursuant to § 1090.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1090.76(a) (2).

§ 1090.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1090.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

BASE-EXCESS PLAN

§ 1090.90 Base milk.

"Base milk" means milk received at pool plants from a producer during any of the months of March through July which is not in excess of such producer's daily average base computed pursuant to § 1090.92, multiplied by the number of days in such month.

§ 1090.91 Excess milk.

"Excess milk" means milk received at pool plants from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk received during such months from a producer for whom no daily average base can be computed pursuant to § 1090.92.

§ 1090.92 Computation of daily average base for each producer.

Subject to the rules set forth in § 1090.-93, the daily average base for each producer shall be an amount calculated by dividing the total pounds of milk received from such producer at all pool plants during the months of September through January immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of January, inclusive, or by 120, whichever is more: *Provided,* That any producer who, during the preceding months of September through January, delivered his milk to a nonpool plant which became a pool plant after the beginning of such period shall be assigned a base in the same manner as if he had been a producer during such period, calculated from his deliveries during such September–January period to such plant.

§ 1090.93 Base rules.

The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base calculated pursuant to § 1090.92 to each person for whose account producer milk was delivered to pool plants during the months of September through January;

(b) A base which is assigned pursuant to the proviso of § 1090.92 shall be nontransferable. An entire base which is otherwise assigned shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to transferred: *Provided,* That if a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred; and

(c) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to in writing by the partners provided written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month on which such division is to be effective.

§ 1090.94 Announcement of established bases.

On or before March 1 of each year, the market administrator shall notify each producer, and the handler receiving milk from such producer, of the daily average base established by such producer, and shall notify a cooperative association of which such producer is a member of such daily average base if the cooperative association so requests.

PART 1094—MILK IN NEW ORLEANS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1094.1 General provisions.

DEFINITIONS

1094.2 New Orleans marketing area.
1094.3 Route disposition.
1094.4 [Reserved]
1094.5 Distributing plant.
1094.6 Supply plant.
1094.7 Pool plant.
1094.8 Nonpool plant.
1094.9 Handler.
1094.10 Producer-handler.
1094.11 [Reserved]
1094.12 Producer.
1094.13 Producer milk.
1094.14 Other source milk.
1094.15 Fluid milk product.
1094.16 Fluid cream product.

Sec.
1094.17 Filled milk.
1094.18 Cooperative association.

HANDLER REPORTS

1094.30 Reports of receipts and utilization.
1094.31 Payroll reports.
1094.32 Other reports.

CLASSIFICATION OF MILK

1094.40 Classes of utilization.
1094.41 Shrinkage.
1094.42 Classification of transfers and diversions.
1094.43 General classification rules.
1094.44 Classification of producer milk.
1094.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1094.50 Class prices.
1094.51 Basic formula price.
1094.52 Plant location adjustments for handlers.
1094.53 Announcement of class prices.
1094.54 Equivalent price.

UNIFORM PRICE

1094.60 Handler's value of milk for computing uniform price.
1094.61 Computation of uniform price.
1094.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1094.70 Producer-settlement fund.
1094.71 Payments to the producer-settlement fund.
1094.72 Payments from the producer-settlement fund.
1094.73 Payments to producers and to cooperative associations.
1094.74 Butterfat differential.
1094.75 Plant location adjustments for producers and on nonpool milk.
1094.76 Payments by handler operating a partially regulated distributing plant.
1094.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1094.85 Assessment for order administration.
1094.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1094 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674.)

GENERAL PROVISIONS

§ 1094.1 General provisions.

The terms, definitions, and provisions, in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1094.2 New Orleans marketing area.

New Orleans marketing area, hereinafter referred to as the marketing area, means all territory, including incorporated municipalities, within Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, and Terrebonne Parishes, all in the State of Louisiana.

§ 1094.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a milk processing plant to wholesale or retail outlets (including any delivery by a vendor and from a plant store or through a vending machine) other than a delivery to any milk or filled milk receiving and/or processing plant.

§ 1094.4 [Reserved]

§ 1094.5 Distributing plant.

Distributing plant means any plant at which fluid milk products, eligible for distribution in the marketing area under a Grade A label, are processed and packaged and from which there is route disposition of fluid milk products in the marketing area.

§ 1094.6 Supply plant.

Supply plant means any plant at which milk eligible for distribution in the marketing area under a Grade A label is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1094.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month:

(1) Route disposition in the marketing area of fluid milk products, except filled milk, is at least the lesser of a daily average of 1,500 pounds or 20 percent of receipts from dairy farmers, handlers described in § 1094.9(c), and supply plants; and

(2) Total route disposition of fluid milk products, except filled milk, is 50 percent or more of receipts from dairy farmers, handlers described in § 1094.9 (c), and supply plants.

(b) A supply plant from which not less than 45 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped to and received at plants qualifying for the month pursuant to paragraph (a) of this section. Any supply plant meeting such shipping standard for each of the months of August through November shall continue to be a pool plant the following months of December through July unless the operator notifies the market administrator in writing before the first day of any such month of his intent to withdraw such plant as a plant qualified under this paragraph, in which case such plant thereafter shall be a nonpool plant except in any month it meets the above 45 percent shipping standard.

(c) For the purpose of meeting the minimum 45 percent shipping standard of paragraph (b) of this section by a supply plant operated by a cooperative association, all member-dairy farmer milk delivered directly from farms pursuant to § 1094.9(c), to distributing plant(s) qualified under paragraph (a) of this section will be considered to have been first received at that supply plant of the cooperative located nearest New Orleans, La., and then shipped therefrom to such distributing plant(s). The cooperative association may withdraw such supply plant from qualification under this section:

(1) If the cooperative notifies the market administrator in writing prior to or during the month of its intention not to qualify the plant under this section during that month; and

(2) The milk actually shipped during the month from such plant to plant(s) qualified under paragraph (a) of this section is less than 45 percent of the Grade A milk actually received from dairy farmers at such supply plant during the month.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless there is greater route disposition, except filled milk, during the month in the New Orleans marketing area than in the marketing area defined in such other order; and

(3) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to paragraph (b) of this section.

§ 1094.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1094.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant(s);

(b) A cooperative association with respect to milk of producers diverted for the account of such association in accordance with § 1094.13;

(c) Any cooperative association with respect to the milk of producers which it causes to be delivered directly from the farm to the pool plant of another person in a tank truck owned and operated by, under contract to, or under the control of such association (unless the association and the person operating the pool plant both notify the market administrator, in writing, prior to the time of delivery that the pool plant operator is to be held responsible to the pool for such milk). For purposes of pricing, such milk shall be deemed to have been received by the association

from producers at the location of the pool plant at which such milk is physically received;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1094.7(d).

§ 1094.10 Producer-handler.

"Producer-handler" means a dairy farmer who operates a distributing plant at which no fluid milk or fluid milk products are received during the month except his own production or transfers from a pool plant(s) and which has no receipts of milk products other than fluid milk products disposed of as Class I milk.

§ 1094.11 [Reserved]

§ 1094.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which is received at a pool plant or by a handler described in § 1094.9(c) or is diverted pursuant to § 1094.13(d).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1094.44(a)(8)(iii) and the corresponding step of § 1094.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1094.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer;

(b) Received at a pool plant from a handler described in § 1094.9(c);

(c) Diverted from a pool plant to the pool plant of another handler. Milk so diverted shall be deemed to have been received at the location of the plant to which diverted; and

(d) Diverted by the operator of a pool plant or a cooperative association to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) During December through July such diversions may be made without limit;

(2) During August through November such diversions shall be limited to the amounts specified in paragraph (d)(2)(i), (ii), and (iii) of this section:

(i) A cooperative association may divert the milk of any eligible member-dairy farmer without limit during the month if the total volume of milk so diverted does not exceed 35 percent of the cooperative's total member producer milk during that month;

(ii) The operator of a pool plant may divert from such plant the milk of any eligible nonmember dairy farmer without limit during the month if the total volume of milk so diverted does not exceed 35 percent of his nonmember producer milk during that month; and

(iii) If the 35 percent limitation described in paragraph (d)(2)(i) and (ii) of this section is exceeded, the diversion of any eligible dairy farmer's milk shall be limited to 15 days' production during any such month. If this 15-day limitation is exceeded for any such dairy farmer, he shall be eligible for pooling only with respect to that milk physically received at pool plants during the month; and

(3) Diverted milk shall be deemed to have been received at the location of the plant to which diverted.

§ 1094.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1094.40(b)(1) from any source other than producers, handlers described in § 1094.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1094.40.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1094.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1094.40(b)(1)) for which the handler fails to establish a disposition.

§ 1094.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1094.40 (b) or (c) (1)(i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5-percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1094.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1094.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1094.18 Cooperative association.

Cooperative association means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1094.30 Reports of receipts and utilization.

On or before the 5th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1094.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1094.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been

fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1094.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1094.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1094.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1094.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1094.32 Other reports.

(a) Each handler who operates an other order plant with route disposition in the marketing area shall report such disposition to the market administrator on or before the seventh day after the end of each month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1094.30 and 1094.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1094.40 Classes of utilization.

Except as provided in § 1094.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1094.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, and Creole cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c) (1) (iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, dry curd cottage cheese, and Creole cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b) (1) of this section in bulk form;

(3) In fluid 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 § 1094.15; and

(6) In shrinkage assigned pursuant to § 1094.41(a) to the receipts specified in § 1094.41(a)(2) and in shrinkage specified in § 1094.41 (b) and (c).

§ 1094.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1094.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1094.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective

amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1094.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1094.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1094.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1094.44 (a) (12) and the corresponding step of § 1094.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1094.44(a) (7) or the corresponding step of § 1094.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1094.44(a) (11) or (12) or the corresponding steps of § 1094.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant; and

(4) Unless a different utilization is claimed by both handlers, skim milk or butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as the operator of a pool plant or as a handler described in § 1094.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class at the pool plant of the transferee-handler after the computations pursuant to § 1094.44(a) (13) (i) and the corresponding step of § 1094.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b) (3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1094.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d) (2) (i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d) (2) (ii) through (ix) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1094.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Except as provided in paragraph (d) (2) (ix) of this section, transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant;

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph; and

(ix) Transfers of bulk fluid milk products from a nonpool plant to a pool plant that are not in excess of bulk receipts during the month at such nonpool plant from pool plants shall be classified pursuant to paragraph (a) of this section as if moved directly from the first pool plant to the second pool plant with Class II or Class III utilization indicated. If the classification limitations provided in paragraph (a) of this section result in any skim milk or butterfat classified as Class I from pool plants of two or more handlers, such classification shall be shared pro rata between such handlers unless at or before the time of reporting, signed statements by operators of such plants indicate agreement on a different sharing of such Class I classification.

§ 1094.43 General classification rules.

In determining the classification of producer milk pursuant to § 1094.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1094.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1094.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1094.40, 1094.41, and 1094.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1094.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1094.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1094.9(a) for each of his pool plants separately and of each handler described in § 1094.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1094.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1094.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1094.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1094.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1094.40(b)(1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be ad-

justed in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1094.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1094.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7)(v), and (8) (i)) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be sutracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be sutracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7)(vi) and (8)(ii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) of this section such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined, being sutracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1094.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceedir the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv.) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III, combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant or a handler described in § 1094.9(c) according to the classification of such products pursuant to § 1094.42(a); and

(ii) A handler described in § 1094.9 (c) according to the classification of such products pursuant to § 1094.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1094.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1094.44(a)(12) and the corresponding step of § 1094.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1094.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1094.50 Class prices.

Subject to the provisions of § 1094.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.85.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1094.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1094.52 Plant location adjustments for handlers.

(a) For that milk which is received from producers or from a handler described in § 1094.9(c) at a pool plant more than 50 miles by shortest toll-free highway distance, as determined by the market administrator, from the nearer of the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma, La., and utilized as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1094.50 (a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

	Rate per hundredweight (cents)
Zones measured from the nearer of the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma, La. (miles):	
More than 50 but not more than 60	13.5
Each additional 10 miles or fraction thereof	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The market administrator shall determine and publicly announce the zone location of each plant of each handler according to the shortest toll-free highway distance between such plant and the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1094.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1094.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1094.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1094.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1094.44(a)(14) and the corresponding step of § 1094.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1094.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1094.44 (a)(9) and the corresponding step of § 1094.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1094.44(a)(7) (i) through (iv) and the corresponding step of § 1094.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1094.44(a)(7) (v) and (vi) and the corresponding step of § 1094.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1094.44 (a)(11) and the corresponding step of § 1094.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat dis-

posed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1094.61 Computation of uniform price.

For each month, the market administrator shall compute the 3.5 percent value of all milk as follows:

(a) Combine into one total the individual values of milk of all handlers computed pursuant to § 1094.60 except those of handlers who failed to make payments required pursuant to §§ 1094.71 and 1094.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1094.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the produce-settlement fund;

(d) Divide the amount computed pursuant to paragraphs (a) through (c) of this section by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk included pursuant to paragraph (a) of this section; and

(2) The total hundredweight for which a value is computed pursuant to § 1094.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers.

§ 1094.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1094.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1094.71, 1094.76, and 1094.77, and out of which he shall make all payments pursuant to §§ 1094.72 and 1094.77: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

§ 1094.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1094.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1094.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1094.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1094.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1094.71(a)(2) exceeds the amount computed pursuant to § 1094.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1094.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer, who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, each handler shall make payment to each producer for milk which was received from him during the month at not less than the uniform price, as adjusted pursuant to §§ 1094.74 and 1094.75, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1094.86;

(iii) Plus or minus adjustments for errors made in previous payments to such producer;

(iv) Less deductions authorized in writing by such producer; and

(v) If by such date such handler has not received full payment from the market administrator pursuant to § 1094.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Each handler shall furnish to the producer the following information:

(1) On or before the 25th day of the month, the pounds of milk received from the producer during the first 15 days of such month;

(2) On or before the 15th day of the following month (i) the pounds of milk received from the producer each day and the total for the month, together with the butterfat content of such milk, (ii) the amount (or rate) and nature of deductions made from payments, and (iii) the amount and nature of payments due pursuant to § 1094.77.

(c) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any claim on the part of the association, each handler:

(1) Shall pay to the cooperative association, in lieu of payments pursuant to paragraph (a) of this section, on or before the 2d day prior to the date on which payments are due individual producers, an amount equal to not less than the amount due such certified members as determined pursuant to paragraph (a) of this section;

(2) Report to the cooperative association on or before the 25th day of the month, the pounds of milk received from each member of the cooperative association during the first 15 days of such month and on or before the 7th day of the following month to the cooperative association for its individual members the following information: (i) The pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) the amount (or rate) and nature of deductions made from payments and (iii) the amount and nature of payments due pursuant to § 1094.77. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the

month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

(3) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) Each handler shall make payment to a cooperative association for milk received from such association in its capacity as a handler pursuant to § 1094.9(a) and § 1094.9(c) as follows:

(1) On or before the 22d day of each month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from any cooperative association during the first 15 days of the current month; and

(2) On or before the 12th day after the end of each month in which it was received at not less than the class prices, as adjusted by the butterfat differential specified in § 1094.74, that are applicable at the location of the receiving handler's pool plant, plus the amount due the market administrator from the cooperative association on such milk pursuant to § 1094.85, less amounts paid pursuant to paragraph (d)(1) of this section.

§ 1094.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1094.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant, each at the rates set forth in § 1094.52(a); and

(b) The uniform price applicable to other source milk shall be adjusted at the rates set forth in § 1094.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1094.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1094.30(b) and 1094.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1094.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1094.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1094.60 for such handler shall include, in lieu of the value of other source milk specified in § 1094.60(f) less the value of such other source milk specified in § 1094.71(a)(2)(ii), a value of milk determined pursuant to § 1094.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1094.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1094.30(b) and 1094.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1094.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1094.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1094.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant

to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b) (1) (iii) of this section applies.

§ 1094.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1094.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may, from time to time, prescribe, to be announced by the market administrator on or before the 11th day after the end of such month, with respect to all skim milk and butterfat received by such handler in:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1094.44(a) (7) and (11) and the corresponding steps of § 1094.44(b), except such other source milk that is excluded from the computations pursuant to § 1094.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1094.76(a) (2).

§ 1094.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1094.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1096—MILK IN NORTHERN LOUISIANA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1096.1 General provisions.

DEFINITIONS

1096.2 Northern Louisiana marketing area.
1096.3 Route disposition.
1096.4 Plant.
1096.5 Distributing plant.
1096.6 Supply plant.
1096.7 Pool plant.
1096.8 Nonpool plant.
1096.9 Handler.
1096.10 Producer-handler.
1096.11 [Reserved]
1096.12 Producer.
1096.13 Producer milk.
1096.14 Other source milk.
1096.15 Fluid milk product.
1096.16 Fluid cream product.
1096.17 Filled milk.
1096.18 Cooperative association.

HANDLER REPORTS

1096.30 Reports of receipts and utilization.
1096.31 Payroll reports.
1096.32 Other reports.

CLASSIFICATION OF MILK

1096.40 Classes of utilization.
1096.41 Shrinkage.
1096.42 Classification of transfers and diversions.
1096.43 General classification rules.
1096.44 Classification of producer milk.
1096.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1096.50 Class prices.
1096.51 Basic formula price.
1096.52 Plant location adjustments for handlers.
1096.53 Announcement of class prices.
1096.54 Equivalent price.

UNIFORM PRICE

1096.60 Handler's value of milk for computing uniform price.
1096.61 Computation of uniform price.
1096.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1096.70 Producer-settlement fund.
1096.71 Payments to the producer-settlement fund.
1096.72 Payments from the producer-settlement fund.
1096.73 Payments to producers and to cooperative associations.
1096.74 Butterfat differential.
1096.75 Plant location adjustments for producers and on nonpool milk.
Sec.
1096.76 Payments by handler operating a partially regulated distributing plant.
1096.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1096.85 Assessment for order administration.
1096.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1096 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1096.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1096.2 Northern Louisiana marketing area.

"Northern Louisiana marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the Parishes of Bossier, Caddo, Claiborne, De Soto, Lincoln, Morehouse, Ouachita, Red River, Union, and Webster, all in the State of Louisiana.

§ 1096.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product(s) classified as Class I milk from a plant to wholesale or retail outlets (including any disposition by a vendor, from a plant store, or through a vending machine) other than a delivery to another plant.

§ 1096.4 Plant.

"Plant" means the land, buildings together with their surroundings, facilities and equipment whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and/or processed or packaged: *Provided*, That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distributing depot for fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1096.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition of Grade A fluid milk products during the month in the marketing area.

§ 1096.6 Supply plant.

"Supply plant" means a plant from which fluid milk products eligible for distribution in the marketing area under a Grade A label are moved to a distributing plant during the month.

§ 1096.7 Pool plant.

Except as provided in paragraph (d) of this section, pool plant" means:

(a) A distributing plant from which during the month there is route disposition, except filled milk, of not less than 50 percent of the fluid milk products, except filled milk, that are approved by a duly constituted regulatory agency for

distribution under a Grade A label and that are physically received at such plant or diverted to a nonpool plant as producer milk pursuant to § 1096.13 and total route disposition, except filled milk, in the marketing area during the month is not less than 10 percent of such fluid milk products.

(b) A supply plant from which during the month not less than 50 percent of the total quantity of Grade A milk approved by a duly constituted regulatory agency that was physically received at such plant from dairy farmers and handlers described in § 1096.9(c) or diverted therefrom by the plant operator or a cooperative association as producer milk to a nonpool plant pursuant to § 1096.13 is shipped during the month to a plant(s) described in paragraph (a) of this section. A supply plant that was a pool plant pursuant to this paragraph in each of the months of September through January shall be a pool plant in each of the following months of February through August in which it does not meet the shipping requirements, unless written reques. is filed with the market administrator prior to the beginning of any such month for nonpool status for any of the remaining months through August.

(c) A nondistributing plant, which is operated by a cooperative association and which did not meet the shipping requirements of paragraph (b) of this section, shall be a pool plant in any month in which the volume of milk received at pool distributing plants directly from member producers or a handler described in § 1096.9(c) is not less than 60 percent of the total pounds of member producer milk pooled during the month, except that on written request for nonpool status for any month, made to the market administrator prior to the beginning of such month, the plant shall be a nonpool plant for the month and for each of the succeeding 11 months in which it does not qualify as a pool plant pursuant to paragraph (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant operated by a governmental agency;

(3) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which the Secretary determines route disposition, except filled milk, during the month in such other Federal order marketing area was greater than route disposition in this marketing area, and which was fully subject to the classification and pooling provisions of such other order; and

(4) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

§ 1096.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is not an other order plant, a producer-handler plant, or an exempt plant.

(e) "Exempt plant" means a plant operated by a governmental agency.

§ 1096.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to milk of producers it diverts pursuant to § 1096.13;

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

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1096.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1096.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and whose only source of supply for Class I milk is his own farm production and transfers from pool plants: *Provided,* That such person furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of Class I milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprises of and at the personal risk of such person.

§ 1096.11 [Reserved]

§ 1096.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency, which milk is received at a pool plant or accounted for by a cooperative association pursuant to § 1096.13(c), or is diverted pursuant to § 1096.13(b).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1096.44(a)(8)(iii) and the corresponding step of § 1096.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1096.13 Producer milk.

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

(a) Received at a pool plant directly from a producer or a handler described in § 1096.9(c);

(b) Diverted by the operator of a pool plant or by a cooperative association to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (d) of this section; or

(c) The difference between the quantity of milk received by a handler described in § 1096.9(c) from producers' farms and the quantity of such milk delivered to pool plants. For the purposes of §§ 1096.52 and 1096.75, such milk shall be deemed to have been received by such handler at the pool plant to which all other producer milk in the same tank truck was delivered.

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

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

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

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

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

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

him to a nonpool plant shall be producer milk.

§ 1096.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1096.40 (b) (1) from any source other than producers, handlers described in § 1096.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1096.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1096.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1096.40(b) (1)) for which the handler fails to establish a disposition.

§ 1096.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1096.40 (b) or (c) (1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1096.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1096.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1096.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1096.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1096.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1096.40(b) (1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1096.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products, in such manner as the market administrator may prescribe.

§ 1096.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1096.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and addess;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1096.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1096.32 Other reports.

(a) Each handler, who causes milk to be diverted for his account directly from a producer's farm to a nonpool plant, shall prior to such diversion report to the market administrator and to the cooperative association of which such producer is a member his intention to divert such milk, the proposed date or dates of such diversion, and the name of the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1096.30 and 1096.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1096.40 Classes of utilization.

Except as provided in § 1096.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1096.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing 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 § 1096.15; and

(6) In shrinkage assigned pursuant to § 1096.41(a) to the receipts specified in § 1096.41(a)(2) and in shrinkage specified in § 1096.41(b) and (c).

§ 1096.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1096.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1096.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1096.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1096.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1096.44(a)(12) and the corresponding step of § 1096.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1096.44(a)(7) or the corresponding step of § 1096.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1096.44(a)(11) or (12) or the corresponding steps of § 1096.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other

order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1096.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt plant shall be classified:

(1) As Class I milk, if moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1096.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Except as provided in paragraph (d)(2)(ix) of this section, transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant;

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph; and

(ix) Transfers of bulk fluid milk products from a nonpool plant to a pool plant shall be classified as if they were a direct transfer pursuant to paragraph (a) of this section from one pool plant to another pool plant with Class II or Class III utilization indicated: *Provided*, That if the classification limitations provided in paragraph (a) of this section result in any skim milk or butterfat covered by this subdivision being classified as Class I from pool plants of two or more handlers, such classification shall be shared pro rata between such handlers according to the respective quantities of fluid milk products each handler transferred to the nonpool plant unless, at or before the time of reporting, signed statements by operators of such plants indicate agreement on a different sharing of such Class I classification.

§ 1096.43 General classification rules.

In determining the classification of producer milk pursuant to § 1096.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1096.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1096.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1096.40, 1096.41, and 1096.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1096.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1096.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1096.9(a) for each of his pool plants separately and of each handler described in § 1096.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1096.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1096.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1096.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1096.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1096.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in 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, milk from a handler described in § 1096.9(c), and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1096.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the han-

dler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) and (8) (iii) of this section:

(i) Subject to the provisions of paragraph (a) (12) (ii), (iii), and (iv) of this section, such subtraction shall be prorata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1096.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a) (12) (i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the 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 the pounds of skim milk remaining in each class at this allocation step at the pounds of skim milk in Class I shall be decreased by a like amount. In such case, handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1096.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

§ 1096.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1096.44(a) (12) and the corresponding step of § 1096.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1096.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 11th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

Class Prices

§ 1096.50 Class prices.

Subject to the provisions of § 1096.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.47.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1096.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1096.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located more than 50 miles, by the shortest hard-surfaced highway distance as determined by the market administrator, from the nearer of the City Hall in Minden or Monroe, Louisiana, and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1096.50(a) shall be reduced 1.5 cents for each 10 miles or fraction thereof that such plant is from the nearer of the City Hall in Minden or Monroe.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1096.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then

in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1096.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1096.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1096.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1096.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1096.44(a)(14) and the corresponding step of § 1096.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1096.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1096.44(a)(9) and the corresponding step of § 1096.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1096.44(a)(7) (i) through (iv) and the corresponding step of § 1096.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1096.44(a)(7) (v) and (vi) and the corresponding step of § 1096.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1096.44(a)(11) and the corresponding step of § 1096.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1096.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1096.61 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1096.60 for all pool handlers who made reports prescribed in § 1096.30 for such month and who have made payments for the previous month pursuant to § 1096.71;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1096.75;

(c) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1096.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for producer milk.

§ 1096.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1096.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1096.71, 1096.76, and 1096.77 and out of which he shall make payments to handlers pursuant to §§ 1096.72 and 1096.77: *Provided*, That payments due to any handler shall be offset by any payment due from such handler.

§ 1096.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1096.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1096.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1096.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1096.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1096.71(a)(2) exceeds the amount computed pursuant to § 1096.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market admin-

istrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1096.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 28th day of each month, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month;

(b) On or before the 15th day after the end of each month for milk received during the month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1096.61, subject to the butterfat differentials and location adjustments computed pursuant to §§ 1096.74 and 1096.75, respectively; and

(1) Less payment made pursuant to paragraph (a) of this section;

(2) Less deductions for marketing services pursuant to § 1096.86;

(3) Plus or minus adjustments pursuant to § 1096.77 for errors in previous payments made to such producers; and

(4) Less proper deductions authorized by such producer;

(c) On or before the 25th and 13th days of each month, in lieu of the payment pursuant to paragraphs (a) and (b) of this section, respectively, each handler shall pay to a cooperative association which so requests, with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers;

(d) In making the payments to producers pursuant to paragraph (b) or (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer;

(e) Each handler shall make payment to a cooperative association for each hundredweight of milk received from such association in its capacity as a handler pursuant to § 1096.9(a) as follows:

(1) On or before the 25th day of each month for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 13th day after the end of each month an amount equal to not less than the applicable class prices adjusted pursuant to § 1096.74, (i) less the amounts paid pursuant to paragraph (e)(1) of this section, and (ii) plus or minus adjustments pursuant to § 1096.77 for errors in previous payments made to such cooperative association; and

(f) Each handler shall make payment to a cooperative association for milk received from such association in its capacity as a handler described in § 1096.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized such cooperative association to collect for their milk as follows:

(1) On or before the 25th day of each month for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 13th day after the end of each month at not less than the uniform price adjusted pursuant to §§ 1096.74 and 1096.75, less payment made pursuant to paragraph (f)(1) of this section.

§ 1096.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1096.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk shall be reduced according to the location of the plant at which the milk was physically received, at the rates set forth in § 1096.52.

(b) For purposes of computations pursuant to §§ 1096.71 and 1096.72 the uniform price shall be adjusted at the rates set forth in § 1096.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1096.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1096.30(b) and 1096.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations;

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under an order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1096.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1096.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the han-

dling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1096.60 for such handler shall include, in lieu of the value of other source milk specified in § 1096.60(f) less the value of such other source milk specified in § 1096.71(a)(2)(ii), a value of milk determined pursuant to § 1096.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1096.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1096.30 (b) and 1096.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1096.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1096.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterbasis by the butterfat differential specified in § 1096.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1096.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, discloses errors resulting in moneys due (a) the market administrator from such handler; (b) such handler from the market administrator; or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1096.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part each handler, except a producer-handler, shall pay to the market administrator on or before the 15th day after the end of the month, 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, as follows:

(a) Each pool handler with respect to (1) all receipts of producer milk including such handler's own production, and (2) other source milk allocated to Class I pursuant to § 1096.44(a) (7) and (11) and the corresponding steps of § 1096.44 (b), except such other source milk that is excluded from the computations pursuant to § 1096.60 (d) and (f);

(b) Each cooperative association on producer milk diverted to a nonpool plant for the account of such association or received by such association as a handler described in § 1096.9(c); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1096.76(a)(2).

§ 1096.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1096.73 shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to provide market information and to verify the weights, samples and tests of milk received from such producers during the month. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the service set forth in paragraph (a) of this section and for whom a cooperative association is authorized to receive payment for marketing services as set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payment to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and shall pay such deductions to the cooperative association entitled to receive it, on or before the 15th day after the end of the month during which such milk was received. Such deductions shall be accompanied by a statement showing the quantity of milk for which such deduction was computed for each producer. In lieu of such statement, the handler may request the market administrator to furnish such cooperative association the information reported for such producers pursuant to § 1096.31.

PART 1097—MILK IN MEMPHIS, TENNESSEE, MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1097.1 General provisions.

Definitions

1097.2 Memphis, Tennessee, marketing area.
1097.3 Route disposition.
1097.4 [Reserved]
1097.5 [Reserved]
1097.6 [Reserved]
Sec.
1097.7 Fluid milk plant.
1097.8 Nonfluid milk plant.
1097.9 Handler.
1097.10 Producer-handler.
1097.11 [Reserved]
1097.12 Producer.
1097.13 Producer milk.
1097.14 Other source milk.
1097.15 Fluid milk product.
1097.16 Fluid cream product.
1097.17 Filled milk.
1097.18 Cooperative association.

Handler Reports

1097.30 Reports of receipts and utilization.
1097.31 Payroll reports.
1097.32 Other reports.

Classification of Milk

1097.40 Classes of utilization.
1097.41 Shrinkage.
1097.42 Classification of transfers and diversions.
1097.43 General classification rules.
1097.44 Classification of producer milk.
1097.45 Market administrator's reports concerning classification.

Class Prices

1097.50 Class prices.
1097.51 Basic formula price.
1097.52 Plant location adjustments for handlers.
1097.53 Announcement of class prices.
1097.54 Equivalent price.

Uniform Prices

1097.60 Handler's value of milk for computing uniform price.
1097.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).
1097.62 Announcement of uniform prices for each handler and butterfat differential.

Payments for Milk

1097.71 Payments to market administrator.
1097.72 [Reserved]
1097.73 Payments to producers and to cooperative associations.
1097.74 Butterfat differential.
1097.75 Plant location adjustments for producers.
1097.76 [Reserved]
1097.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

Sec.
1097.85 Assessment for order administration.
1097.86 Deduction for marketing services.

BASE-EXCESS PLAN

1097.90 Base milk.
1097.91 Excess milk.
1097.92 Computation of daily average base for each producer.
1097.93 Determination of monthly base for each producer.
1097.94 Base rules.
1097.95 Announcement of established bases.

ADVERTISING AND PROMOTION PROGRAM

1097.110 Agency.
1097.111 Composition of Agency.
1097.112 Term of office.
1097.113 Selection of Agency members.
1097.114 Agency operating procedure.
1097.115 Powers of the Agency.
1097.116 Duties of the Agency.
1097.117 Advertising, Research, Education and Promotion Program.
1097.118 Limitation of expenditures by the Agency.
1097.119 Personal liability.
1097.120 Procedure for requesting funds.
1097.121 Duties of the market administrator.
1097.122 Liquidation.

AUTHORITY: The provisions of this Part 1097 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–67).

GENERAL PROVISIONS

§ 1097.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1097.2 Memphis, Tennessee, marketing area.

"Memphis, Tennessee, marketing area" means all the territory, including incorporated municipalities and military reservations, within the Tennessee counties of Fayette, Hardeman (except Civil Districts 5 and 6), Haywood, Lauderdale, Madison (except Civil Districts 4 and 9), Shelby and Tipton; the Mississippi counties of De Soto, Tate, Panola (except the village of Crowder), Tunica, Lafayette, and Marshall (exclusive of Beat 5); and the townships of Mississippi and Proctor in Crittenden County, Arkansas.

§ 1097.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a delivery to a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets, without intermediate movement to another milk or filled milk plant.

§ 1097.4 [Reserved]

§ 1097.5 [Reserved]

§ 1097.6 [Reserved]

§ 1097.7 Fluid milk plant.

Except as provided in paragraph (c) of this section, "fluid milk plant" means:

(a) Any milk processing or packaging plant from which a volume of Class I milk, except filled milk, equal to an average of 1,000 pounds or more per day, or not less than 5.0 percent of the Class I milk, except filled milk, of such plant, is disposed of during the month as route disposition in the marketing area.

(b) Any plant from which during the month fluid milk products (bulk or packaged), except filled milk, in excess of 70,000 pounds are moved to and received at a plant(s) described pursuant to paragraph (a) of this section.

(c) The term "fluid milk plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) or (b) of this section which would be fully regulated pursuant to the provisions of another order issued pursuant to the Act and from which the market administrator determines that a greater volume of fluid milk products, except filled milk, was disposed of during the month from such plant as route disposition in the marketing area regulated by the other order and as fluid milk products transferred as Class I milk to plants fully regulated by such other order than as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants: *Provided,* That a plant which was a fluid milk plant pursuant to paragraph (a) or (b) of this section in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of fluid milk products, except filled milk, is disposed of as route disposition in such other marketing area or to plants fully subject to such other order, unless the other order requires regulation of the plant without regard to its qualifying as a fluid milk plant for regulation under this order subject to the proviso of this subparagraph; and

(3) A plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements for fully regulated plants under another Federal order and from which the market administrator determines a greater volume of fluid milk products, except filled milk, is disposed of during the month as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants than as route disposition in the other marketing area and fluid milk products transferred as Class I milk to plants fully regulated by such other order, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation under the particular circumstances described herein of having greater route disposition under the Memphis, Tenn., order.

§ 1097.8 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk manufacturing, processing, or packaging plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonfluid milk plant from which fluid milk products are moved during the month to a fluid milk plant and which is not an other order plant nor a producer-handler plant.

§ 1097.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more fluid milk plants;

(b) Any cooperative association with respect to milk of its member producers diverted by it pursuant to § 1097.12 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its member-producers which it causes to be delivered directly from the farm to the fluid milk plant(s) of another handler in a bulk tank truck owned and operated by, or under contract to, or under control of such cooperative, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing, that it wishes to become the handler for such milk. The cooperative association shall be considered the handler for such bulk tank milk, effective the first day of the month following receipt of such notice, and shall account for the actual receipts from each producer as determined at the farm at prices applicable to receipts from producers at plants to which the cooperative association delivers the milk. The cooperative association, once it becomes the handler for such bulk tank milk, shall remain the handler for such bulk tank milk from month to month until the cooperative association notifies the market administrator and handler that such status is to be discontinued, effective the first day of the month following receipt of such notice;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1097.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1097.10 Producer-handler.

"Producer-handler" means any person who operates an approved plant from which Class I milk is disposed of in the marketing area but who receives no milk from other dairy farmers.

§ 1097.11 [Reserved]

§ 1097.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any

person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is:

(1) Received at a fluid milk plant; or

(2) Diverted from a fluid milk plant to a nonfluid milk plant that is not a producer-handler plant for the account of the handler. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the plant from which it was diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a fluid milk plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1097.44 (a)(8)(iii) and the corresponding step of § 1097.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1097.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk from producers (in an amount determined by weights and measurements for individual producers, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is:

(a) Received directly from producers at a fluid milk plant;

(b) Diverted pursuant to § 1097.12; or

(c) Received by a handler described in § 1097.9(c).

§ 1097.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1097.40 (b)(1) from any source other than producers, handlers described in § 1097.9(c), or fluid milk plants;

(b) Receipts in packaged form from other plants of products specified in § 1097.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1097.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1097.40(b)(1)) for which the handler fails to establish a disposition.

§ 1097.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1097.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1097.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1097.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1097.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

Handler Reports

§ 1097.30 Reports of receipts and utilization.

By mailing on or before the sixth day after the end of each month or by delivery not later than the eighth day after the end of such month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his fluid milk plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the fluid milk plant to other plants;

(2) Receipts of milk from handlers described in § 1097.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other fluid milk plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1097.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler described in § 1097.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1097.31 Payroll reports.

(a) By mailing on or before the sixth day after the end of the month, or by delivery not later than the eighth day after the end of such month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer:

(1) His name and address;

(2) The number of days on which milk was received from such producer;

(3) The total pounds of milk received from such producer;

(4) The average butterfat content of such milk;

(5) The location at which such milk was received; and

(6) The amount of any deductions authorized in writing by the producer to be made in making payments to such producer.

(b) On or before the 21st day of each month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in detail and on forms prescribed by him, the name and address or appropriate identification of each producer from whom milk was received during the first 15 days of such month, the total pounds of milk received from each producer, the location at which such milk was received, the amount of any deductions

authorized in writing by producers from whom such handler received milk, the total pounds of milk received from each handler described in § 1097.9(c), and the name and address of each such cooperative association.

§ 1097.32 Other reports.

(a) Each handler operating a partially regulated distributing plant shall report on or before the seventh day after the end of the month, the respective amounts of skim milk and butterfat in route disposition in the marketing area.

(c) In addition to the reports required pursuant to §§ 1097.30 and 1097.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1097.40 Classes of utilization.

Except as provided in § 1097.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1097.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1097.15; and

(6) In shrinkage assigned pursuant to § 1097.41(a) to the receipts specified in § 1097.41(a)(2) and in shrinkage specified in § 1097.41 (b) and (c).

§ 1097.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1097.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each fluid milk plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1097.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other fluid milk plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in 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 § 1097.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1097.42 Classification of transfers and diversions.

(a) *Transfers to fluid milk plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another fluid milk plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the conditions set forth in paragraph (a) (1), (2), and (3) of this section. For purposes of this paragraph, skim milk and butterfat transferred as bulk milk to the fluid milk plant of another handler by a handler described in § 1097.9(c) shall

be considered a receipt of producer milk in the transferee plant.

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1097.44(a)(12) and the corresponding step of § 1097.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1097.44(a)(7) or the corresponding step of § 1097.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1097.44(a) (11) or (12) or the corresponding steps of § 1097.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the fluid milk plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1097.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a fluid milk plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonfluid milk plants.* Skim milk or butterfat transferred or diverted in the following forms from a fluid milk plant to a nonfluid milk plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if tranferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonfluid milk plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1097.30 for the month within which such transaction occurred; and

(*b*) The nonfluid milk plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonfluid milk plant and transfers of packaged fluid milk products from such nonfluid milk plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonfluid milk plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonfluid milk plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonfluid milk plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonfluid milk plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonfluid milk plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonfluid milk plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant; and

(*b*) To such nonfluid milk plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonfluid milk plant;

(vii) Receipts of bulk fluid cream products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonfluid milk plant; and

(viii) In determining the nonfluid milk plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonfluid milk plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1097.43 General classification rules.

In determining the classification of producer milk pursuant to § 1097.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1097.30 and shall compute separately for each fluid milk plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1097.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1097.40, 1097.41, and 1097.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1097.9 (b) or (c) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association.

§ 1097.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1097.9(a) for each of his fluid milk plants separately and of each handler described in § 1097.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1097.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1097.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1097.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order; and

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all fluid milk plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between fluid milk plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all fluid milk plants of the handler of producer milk, milk from a handler described in § 1097.9(c), fluid milk products from fluid milk plants of other handlers, and bulk fluid milk products from other order plants; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1097.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler (excluding any duplication of utilization in each class resulting from transfers between fluid milk plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same

unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subject to the provisions of paragraph (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler (excluding any duplication of utilization in each class resulting from transfers between fluid milk plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section and that were not offset by transfers or diversions of bulk fluid milk products to the same other order plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another fluid milk plant according to the classification of such products pursuant to § 1097.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1097.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1097.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating a fluid milk plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of milk delivered by such association or by its members which was allocated to each class by each handler receiving such milk.

Class Prices

§ 1097.50 Class prices.

Subject to the provisions of § 1097.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.94.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1097.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat 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.

§ 1097.52 Plant location adjustments for handlers.

For that milk which is received at a fluid milk plant (from producers or from a handler described in § 1097.9(c)), located 50 miles or more from the city hall in Memphis, Tenn., by shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred in the form of products designated as Class I milk in § 1097.40(a) to another fluid milk plant and assigned to Class I pursuant to the calculation provided in this section, or otherwise classified as Class I milk, the price specified in § 1097.50(a) shall be adjusted at the rate set forth in the following schedule according to the location of the fluid milk plant where such milk is received:

Location of plant	*Rate per hundredweight*
In the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Add 9 cents.
For each additional 10 miles in excess of 50 miles	Add an additional 1.5 cents.
Outside the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Subtract 9 cents.
For each additional 10 miles in excess of 50 miles	Subtract an additional 1.5 cents.

For purposes of calculating such location adjustment, fluid milk products transferred in bulk between fluid milk plants shall be assigned to the Class I disposition at the transferee-plant in excess of the sum of receipts at such plant from producers and from handlers described in § 1097.9(c) times 1.05, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment or a plus location adjustment is applicable and then in sequence beginning with the plant at which the smallest minus location adjustment would apply.

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1097.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1097.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1097.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1097.44(a)(14) and the corresponding step of § 1097.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1097.74, that are applicable at the location of the fluid milk plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the fluid milk plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after the computations pursuant to § 1097.44(a)(11) and the corresponding step of § 1097.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months; and

(e) In computing, for the purposes of § 1097.61, the value of milk of a handler described in § 1097.9(c), the value of milk received by fluid milk plants of other handlers shall be the sum of the amounts assigned pursuant to § 1097.61(a)(2) with respect to such milk as adjusted pursuant to § 1097.75 for the location of the fluid milk plant to which delivered.

§ 1097.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).

(a) For each of the months of August through February the market administrator shall compute for each handler a uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1097.60 by adding or subtracting, as the case may be, the total of the location adjustments applicable pursuant to § 1097.75;

(2) For each handler operating a fluid milk plant receiving milk from a handler described in § 1097.9(c), prorate the resulting amount between such milk and producer milk;

(3) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform prices for the preceding month;

(4) Subtract an amount computed by multiplying the total hundredweight of producer milk in each class by 5 cents; and

(5) Divide the resulting amount by the total hundredweight of producer milk received by the handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content f.o.b. market.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to producer milk, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided for in paragraph (a) (1), (2), (3), and (4) of this section;

(2) Compute the value of excess milk received by such handler as producer milk and bulk milk from a handler described in § 1097.9(c) as follows:

(i) Multiply the quantity of such milk, not in excess of the total Class III milk included in this computation, by the Class III price less 5 cents;

(ii) Multiply the remaining quantity of such milk, not in excess of the total Class II milk included in this computation, by the Class II price less 5 cents;

(iii) Multiply the remaining quantity of excess milk by the Class I price less 5 cents; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such excess milk and adjust to the nearest cent. The resulting figure shall be the uniform price for such handler for all excess milk of 3.5 percent butterfat content;

(4) Subtract, for each handler, the value of such handler's excess milk obtained in paragraph (b)(3) of this section from the value of all milk obtained for such handler pursuant to paragraph (b)(1) of this section; and

(5) Divide the amount obtained in paragraph (b)(4) of this section by the total hundredweight of base milk received by such handler. The result, less any fraction of a cent per hundredweight, shall be the uniform price for such handler for base milk of 3.5 percent butterfat content.

§ 1097.62 Announcement of uniform prices for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 13th day after the end of each month the applicable uniform prices for each handler pursuant to § 1097.61 for such month.

PAYMENTS FOR MILK

§ 1097.71 Payments to market administrator.

(a) On or before the 25th day of each month each handler operating a fluid milk plant shall pay to the market administrator a sum of money calculated by multiplying the hundredweight of milk received from producers and from a handler described in § 1097.9(c) during the first 15 days of such month by the Class III price for the preceding month, less proper deductions authorized in writing by producers from whom such handler received milk.

(b) On or before the 12th day after the end of each month, each handler operating a fluid milk plant shall pay to the market administrator an amount of money equal to such handler's value of milk for such month as determined pursuant to § 1097.60, as adjusted pursuant to § 1097.74, less payments made pursuant to paragraph (a) of this section for such month and less proper deductions authorized in writing by producers from whom such handler received milk.

§ 1097.72 [Reserved]

§ 1097.73 Payments to producers and to cooperative associations.

(a) On or before the last day of each month, the market administrator shall make payment to each producer for milk received from such producer during the first 15 days of such month by handlers from whom the appropriate payments pursuant to § 1097.71(a) have been received at not less than the Class III price per hundredweight for the preceding month;

(b) On or before the 15th day after the end of each month, the market administrator shall make payment to each producer for milk received from such producer or cooperative association during the month by each handler from whom the appropriate payments have been received pursuant to § 1097.71(b), such payments by the market administrator to be at not less than the uniform price(s) computed pursuant to § 1097.61 (a) or (b), as applicable, subject to the following:

(1) Adjustment pursuant to §§ 1097.74 and 1097.75;

(2) Less payments made pursuant to paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1097.86;

(4) Less proper deductions authorized in writing by the producer;

(5) Adjusted for any error in calculating payment to such individual producer for past months; and

(6) If the market administrator has not received full payment from any handler for such month, pursuant to § 1097.71, he shall reduce uniformly per hundredweight his payments due for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall make such balance of payment to such producers on or before the next date (for making payments pursuant to this paragraph) following that on which such balance of payment is received from such handler;

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section the market administrator shall, on or before the second day prior to the date payments are due to individual producers, make payment to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payment has been received, and to a handler described in § 1097.9(c), a total amount equal to, but not less than, the sum of the individual payments otherwise payable to such producers pursuant to this section; and

(d) In making the payments pursuant to paragraphs (b) and (c) of this section, the market administrator shall furnish each producer or cooperative association with a statement, in such form that it may be retained by the producer or cooperative association which shall show:

(1) The delivery period and the identity of the handler and the producer;

(2) The total pounds of milk received from the producer, including for the months of March through July, such producer's deliveries of base and excess milk;

(3) The average butterfat content of the total pounds of milk received from the producer during the month;

(4) The minimum rates at which payment to the producer or cooperative association is required;

(5) The amount or rates per hundredweight of each deduction, together with a description of the respective deductions; and

(6) The net amount of payment to the producer or cooperative association.

§ 1097.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1097.75 Plant location adjustments for producers.

In making payment pursuant to § 1097.73, the applicable uniform prices for all milk received shall be adjusted according to the location of the fluid milk plant where such milk was received at the rate provided pursuant to § 1097.52.

§ 1097.76 [Reserved]

§ 1097.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due the market administrator from such handler, or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1097.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to (a) receipts of milk at fluid milk plants from producers (including receipts from a handler described in § 1097.9(c) and such handler's own production), (b) other source milk allocated to Class I pursuant to § 1097.44 (a) (7) and (11) and the corresponding steps of § 1097.44(b), (c) receipts of milk by a handler described in § 1097.9(c) in excess of that specified in paragraph (a) of this section, and (d) receipts of milk by a handler described in § 1097.9(b).

§ 1097.86 Deduction for marketing services.

(a) The market administrator in making payments to producers pursuant to § 1097.73 shall:

(1) Deduct 7 cents per hundredweight or such amount not exceeding 7 cents per hundredweight as may be prescribed by the Secretary, with respect to milk (other than milk of a handler's own production) of those producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association; or

(2) If so requested in writing by a cooperative association, deduct such amount as may be authorized by the member producers of such association from the payment to be made to such producers for whom the cooperative is performing the services specified in paragraph (b) of this section and pay such amounts to the cooperative association on or before the date for making payment to producers.

(b) The monies received by the market administrator pursuant to paragraph (a) (1) of this section shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

BASE-EXCESS PLAN

§ 1097.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1097.93.

§ 1097.91 Excess milk.

"Excess milk" means milk received by a handler from a producer during any of the months of March through July, which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1097.93.

§ 1097.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tenn.; Fort Smith, Ark.; and Central Arkansas marketing areas (this Part 1097 and Parts 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January, by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a fluid milk plant during or after the end of the

base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a fluid milk plant during such period.

§ 1097.93 Determination of monthly base of each producer.

Subject to the rules set forth in § 1097.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month.

(b) If milk is received as producer milk from the same farm by more than one handler and/or by handlers fully regulated under the terms of the Central Arkansas (Part 1108 of this chapter) or Fort Smith, Ark. (Part 1102 of this chapter), orders during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1097.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1097.94 Base rules.

The following rules shall apply in connection with the establishment of bases for each producer computed pursuant to § 1097.92:

(a) An entire base or share of a joint holder shall be transferred from a person holding such base to other persons as of the end of the month during which an application for the transfer of such base is received by the market administrator, such application to be on forms approved by the market administrator and signed by the base holder(s) or by the heirs and by the person to whom such base is to be transferred subject to the following conditions:

(1) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to one of the joint holders;

(2) The share of a joint base holder may be transferred to a person other than a joint holder of the base only if all shares of the entire base are at the same time transferred to the same or other persons; and

(3) If one or more bases are transferred to a producer already holding a base, a new base shall be computed by adding together the total eligible deliveries during the period of September through January of all persons in whose names such bases were earned and dividing the total by the total number of days in such period beginning with the first day on which milk was received during the months of September through January from any of such persons but not less than 120 days.

§ 1097.95 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer, or shall notify the cooperative association of which such producer is a member of such daily average base.

ADVERTISING AND PROMOTION PROGRAM

§ 1097.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1097.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1097.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1097.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1097.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1097.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1097.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1097.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1097.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1097.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1097.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1097.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1097.110 and 1097.117.

§ 1097.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1097.110 and 1097.117;

(c) Keep minutes, books and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1097.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1097.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1097.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1097.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1097.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1097.121 Duties of the market administrator.

Except as specified in § 1097.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1097.113(c).

(b) Set aside the amounts substracted under § 1097.61(a)(4) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that 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 § 1097.61(a)(4).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1097.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1097.61(a)(4) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1097.110 through 1097.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1097.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall be distributed in an equitable manner to producers by the market administrator.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.	
1098.1	General provisions.
	DEFINITIONS
1098.2	Nashville, Tennessee, marketing area.
1098.3	Route disposition.
1098.4	[Reserved]
1098.5	Distributing plant.
1098.6	Supply plant.
1098.7	Pool plant.
1098.8	Nonpool plant.
1098.9	Handler.
1098.10	Producer-handler.
1098.11	[Reserved]
1098.12	Producer.
1098.13	Producer milk.

Sec.
1098.14 Other source milk.
1098.15 Fluid milk product.
1098.16 Fluid cream product.
1098.17 Filled milk.
1098.18 Cooperative association.

HANDLER REPORTS

1098.30 Reports of receipts and utilization.
1098.31 Payroll reports.
1098.32 Other reports.

CLASSIFICATION OF MILK

1098.40 Classes of utilization.
1098.41 Shrinkage.
1098.42 Classification of transfers and diversions.
1098.43 General classification rules.
1098.44 Classification of producer milk.
1098.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1098.50 Class prices.
1098.51 Basic formula price.
1098.52 Plant location adjustments for handlers.
1098.53 Announcement of class prices.
1098.54 Equivalent price.

UNIFORM PRICES

1098.60 Handler's value of milk for computing uniform price.
1098.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).
1098.62 Announcement of uniform prices and butterfat differential.

PAYMENTS FOR MILK

1098.70 Producer-settlement fund.
1098.71 Payments to the producer-settlement fund.
1098.72 [Reserved]
1098.73 Payments to producers and to cooperative associations.
1098.74 Butterfat differential.
1098.75 Plant location adjustments for producers and on nonpool milk.
1098.76 Payments by handler operating a partially regulated distributing plant.
1098.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1098.85 Assessment for order administration.
1098.86 Deduction for marketing services.

BASE-EXCESS PLAN

1098.90 Base milk.
1098.91 Excess milk.
1098.92 Computation of daily average base for each producer.
1098.93 Base rules.
1098.94 Announcement of established bases.

AUTHORITY: The provisions of this Part 1098 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1098.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1098.2 Nashville, Tennessee, marketing area.

"Nashville, Tennessee, marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the following:

(a) Tennessee counties of:

Bedford.	Maury.
Cannon.	Montgomery.
Cheatham.	Overton.
Clay.	Perry.
Coffee.	Pickett.
Davidson.	Putnam.
DeKalb.	Robertson.
Dickson.	Rutherford.
Fentress.	Smith.
Giles.	Stewart.
Hickman.	Sumner.
Houston.	Trousdale.
Humphreys.	Warren.
Jackson.	Wayne.
Lawrence.	White.
Lewis.	Williamson.
Macon.	Wilson.
Marshall.	

(b) Kentucky counties of:

Allen.	Monroe.
Barren.	Simpson.
Metcalf.	Warren.

(c) Fort Campbell military reservation.

§ 1098.3 Route disposition.

"Route disposition" means any delivery (including delivery by a vendor or a sale from a plant store) of any fluid milk product classified as Class I milk other than a delivery to a milk or filled milk processing plant.

§ 1098.4 [Reserved]

§ 1098.5 Distributing plant.

"Distributing plant" means a plant in which fluid milk products approved by a duly constituted regulatory agency for fluid consumption, or filled milk, are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1098.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted regulatory agency for fluid consumption, or filled milk, is shipped during the month to a pool plant.

§ 1098.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route disposition, except filled milk, during the month of not less than 50 percent of the fluid milk products, except filled milk, approved by a duly constituted regulatory agency for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1098.13 and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of its total disposition of fluid milk products, except filled milk, during the month.

(b) A supply plant from which not less than 50 percent of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1098.13 during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of August through February shall be a pool plant for the months of March through July unless the milk received at the plant does not continue to meet the requirements of a duly constituted regulatory agency or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

(c) A plant that is approved by a duly constituted regulatory agency to handle milk for fluid consumption in the marketing area, that is operated by a cooperative association, for which pool plant status has been requested by the cooperative association, and from which during the month the quantity of fluid milk products (except filled milk) shipped to pool plants qualified pursuant to paragraph (a) of this section plus the milk physically received at such plant by direct delivery from the farms of producer members of the cooperative association is not less than two-thirds of the producer milk received at or diverted from pool plants of the cooperative association plus its members' producer milk received at or diverted from all other pool plants during the same month. If the cooperative association operating a plant qualified as a pool plant pursuant to this paragraph files with the market administrator prior to the first day of any month a written request for nonpool status for such month, the plant shall be a nonpool plant for such month and for each of the next 11 months in which it does not qualify as a pool plant pursuant to paragraph (a) or (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tenn., marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order, subject to the proviso of this paragraph: *And provided further,* On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secre-

tary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Nashville, Tenn., marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Nashville, Tenn., order; and

(4) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to paragraph (b) of this section during the preceding August through January period.

§ 1098.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1098.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plant(s);

(b) A cooperative association with respect to milk of its producer members diverted pursuant to § 1098.13 for the account of such association;

(c) A cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant(s) of another handler in a tank truck owned, operated by or under contract to, such cooperative association for the account of the cooperative association if the cooperative association has notified in writing, prior to delivery, both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. Such milk shall be considered as having been received at the location of the plant to which it was delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1098.7(d).

§ 1098.10 Producer-handler.

"Producer-handler" means a person who:

(a) Produces milk and operates a distributing plant;

(b) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(c) Receives no fluid milk products during the month except milk of his own production and transfers from pool plants.

§ 1098.11 [Reserved]

§ 1098.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency, which milk is received at a pool plant or diverted pursuant to § 1098.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1098.44(a)(8)(iii) and the corresponding step of § 1098.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1098.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk of a producer which is:

(a) Received at a pool plant directly from a dairy farmer or a handler described in § 1098.9(c): *Provided,* That if the milk received at a pool plant from a handler described in § 1098.9(c) is purchased on a basis other than weights determined by farm bulk tank calibrations and butterfat tests determined by farm bulk tank samples the amount by which the total of such farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1098.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant. Such milk shall be accounted for as received by the diverting handler at the location of the nonpool plant.

§ 1098.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1098.40(b)(1) from any source other than producers, handlers described in § 1098.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1098.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1098.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1098.40(b)(1)) for which the handler fails to establish a disposition.

§ 1098.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added notfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1098.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1098.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1098.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and con-

tains less than 6 percent nonmilk fat (or oil).

§ 1098.18 Cooperative Association.

"Cooperative Association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified pursuant to the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be authorized by its members to make collective sales of or to market milk or its products for its members.

HANDLER REPORTS

§ 1098.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1098.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1098.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1098.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1098.31 Payroll reports.

(a) On or before the sixth day after the end of each month, each handler described in § 1098.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information for each producer for such month:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The total pounds of base milk and excess milk;

(4) The average butterfat content of such milk; and

(5) The amount of any deductions authorized in writing by such producer to be made from payments due for milk delivered.

(b) On or before the 21st day of each month, each handler described in § 1098.9 (a), (b), and (c) shall report to the market administrator, in the detail and on forms prescribed by him, the name and address of each producer from whom milk was received during the first 15 days of such month, and the pounds of milk so received during said period from such producer.

(c) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1098.76 (b) shall report on or before the 15th day after the end of the month for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section plus the amount paid each dairy farmer.

§ 1098.32 Other reports.

(a) On or before the third day after the end of the month:

(1) Each handler described in § 1098.9(c) shall report to each pool plant operator purchasing producer milk from such handler, on a basis of weights determined by farm bulk tank calibrations and butterfat tests determined from farm bulk tank samples, the total pounds and butterfat content of such milk delivered to each pool plant operator during the month; and

(2) The operator of each pool plant purchasing producer milk from a handler described in § 1098.9(c), on a basis other than weights determined by farm bulk tank calibrations and butterfat tests determined from farm bulk tank samples, shall report to such handler the total pounds and butterfat content of such milk received by the pool plant during the month.

(b) On or before the 21st day of each month each handler described in § 1098.9(c) shall report to the market administrator the quantities of producer milk delivered to each pool plant for the first 15 days of such month.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1098.30 and 1098.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1098.40 Classes of utilization.

Except as provided in § 1098.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1098.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1098.15; and

(6) In shrinkage assigned pursuant to § 1098.41(a) to the receipts specified in § 1098.41(a)(2) and in shrinkage specified in § 1098.41 (b) and (c).

§ 1098.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1098.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1098.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1098.9(c), except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1098.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1098.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1098.44(a)(12) and the corresponding step of § 1098.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1098.44(a)(7) or the corresponding step of § 1098.44 (b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1098.44(a) (11) or (12) or the corresponding steps of § 1098.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market adminstrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1098.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization filed with their respective paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1098.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1098.43 General classification rules.

In determining the classification of producer milk pursuant to § 1098.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1098.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1098.9 (b) or (c) the pounds of skim milk and butterfat, respectively in each class in accordance with §§ 1098.40, 1098.41, and 1098.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1098.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1098.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1098.9(a) for each of his pool plants separately and of each handler described in § 1098.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1098.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1098.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1098.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the 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 § 1098.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1098.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii)(*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class 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 § 1098.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1098.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be 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 ad-

justed in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from an other pool plant according to the classification of such products pursuant to § 1098.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1098.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1098.44(a)(12) and the corresponding step of § 1098.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1098.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 15th day after the end of each delivery period, the market administator shall report to each cooperative association, upon request by such association, the percentage of milk caused to be delivered by such association or by its members which was used in each class by each handler receiving any such milk. For the purpose of this report, any milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler are allocated to such class.

Class Prices

§ 1098.50 Class prices.

Subject to the provisions of § 1098.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.58.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1098.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1098.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the State of Tennessee and 50 miles or more by shortest hard-surfaced highway distance as determined by the market administrator, from the State Capitol at Nashville, Tennessee, and classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the price computed pursuant to § 1098.50(a) shall be reduced by 10.0 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 70 miles; and

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant which is in excess of the sum of receipts at such plant from producers and handlers described in § 1098.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rate set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1098.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1098.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Prices

§ 1098.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1098.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1098.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1098.44(a)(14) and the corresponding step of § 1098.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1098.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1098.44(a)(9) and the corresponding step of § 1098.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price

by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1098.44(a)(7)(i) through (iv) and the corresponding step of § 1098.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1098.44(a)(7)(v) and (vi) and the corresponding step of § 1098.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1098.44(a)(11) and the corresponding step of § 1098.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1098.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) For each month the market administrator shall compute the weighted average price and for each of the months of August through February the uniform price per hundredweight of milk received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1098.60 for all handlers who filed the reports prescribed by § 1098.30 for the month and who are not in default of payments pursuant to § 1098.71;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1098.75;

(3) Add an amount equal to the unobligated balance on hand in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included in paragraph (a)(1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to §1098.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and also the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers in the months of August through February.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class III milk by the Class III price;

(ii) Multiply the remaining quantity of excess milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II price;

(iii) Multiply the remaining quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(3) From the amount resulting from the computations in paragraph (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract from the value determined pursuant to paragraph (b)(3) of this section, the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section by the hundredweight of excess milk;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1098.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1098.61 for such month.

PAYMENTS FOR MILK

§ 1098.70 Producer-settlement fund.

The market administrator shall maintain a producer-settlement fund into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1098.71, 1098.76, and 1098.77, and out of which he shall make appropriate payments required pursuant to §§ 1098.73 and 1098.77.

§ 1098.71 Payments to the producer-settlement fund.

(a) On or before the 25th day of each month each handler receiving milk from producers or from a handler described in § 1098.9(c) (except for producers having made deliveries for less than 20 days during the month) shall pay to the market administrator for deposit into the producer-settlement fund an amount of money calculated by multiplying the hundredweight of producer milk received by him during the first 15 days of such month by the Class III price for the preceding month.

(b) On or before the 12th day after the end of each month, each person shall pay to the market administrator for deposit into the producer-settlement fund an amount of money equal to such handler's value of milk for such month as determined pursuant to § 1098.60(a), adjusted by the butterfat differential specified in § 1098.74, and § 1098.60 (b) through (f), less:

(1) Payments made pursuant to paragraph (a) of this section for such month;

(2) An amount computed by multiplying the quantities of receipts of other source milk for which a value is computed pursuant to § 1098.60(f) by the weighted average price computed pursuant to § 1098.61(a) as adjusted pursuant to § 1098.75; and

(3) Proper deductions authorized in writing by producers from whom such handler received milk.

(c) On or before the 25th day after the end of the month each handler who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (c)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1098.72 [Reserved]

§ 1098.73 Payments to producers and to cooperative associations.

(a) On or before the last day of each month, the market administrator shall make payment to each producer for milk received from such producer during the first 15 days of such month by handlers from whom the appropriate payments have been received pursuant to § 1098.71

(a) at not less than the Class III price per hundredweight for the preceding month;

(b) On or before the 15th day after the end of each month, the market administrator shall make payment to each producer for milk received from such producer during the month by handlers from whom the appropriate payments have been received pursuant to § 1098.71 (b), such payments by the market administrator to be at not less than the uniform price computed pursuant to § 1098.61(a) for the months for which such uniform prices are computed, and such payments to be for base and excess milk at not less than the uniform prices for base and excess milk, respectively, computed pursuant to § 1098.61(b) for the months for which such uniform prices for base and excess milk are computed subject to the following: (1) adjustments pursuant to §§ 1098.74 and 1098.75, (2) less payments made pursuant to paragraph (a) of this section, (3) less deductions for marketing services pursuant to § 1098.86, (4) less proper deductions authorized in writing by the producer, and (5) adjusted for any error in calculating payment to such individual producer for past months: *Provided,* That if the market administrator has not received full payment from any handler for such month, pursuant to § 1098.71, he shall reduce uniformly per hundredweight his payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler: *And provided further,* That the market administrator shall make such balance of payment to producers on or before the next date for making payments pursuant to this paragraph following that on which such balance of payment is received from such handler;

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the second day prior to the date payments are due to individual producers, to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payments has been received, a total amount equal to the sum of the individual payments otherwise payable to such producers pursuant to this section; and

(d) In making the payments required by paragraph (b) of this section, the market administrator shall furnish each producer or cooperative association with a supporting statement in such form that it may be retained by the producer or cooperative association which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk delivered by the producer, including for the months in which base and excess prices apply, the pounds of base and excess milk;

(3) The minimum rate or rates at which payment to the producer or cooperative association is required;

(4) The amount or the rate per hundredweight of each deduction claimed by the handler including any deductions made pursuant to § 1098.86, together with a description of the respective deductions; and

(5) The net amount of payment to the producer or cooperative association.

§ 1098.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1098.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1098.73(b), the uniform price and the uniform price for base milk pursuant to § 1098.61 for producer milk received at a plant shall be reduced according to the location of the plant, each at the rates set forth in § 1098.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1098.52 (a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1098.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1098.30(b) and 1098.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1098.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1098.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1098.60 for such handler shall include, in lieu of the value of other source milk specified in § 1098.60(f) less the value of such other source milk specified in § 1098.71(a)(2)(ii), a value of milk determined pursuant to § 1098.60 for each nonpool plant that is not an other order plant which serves as a supply

plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1098.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1098.30(b) and 1098.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1098.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1098.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1098.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1098.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records or accounts or other verification discloses errors resulting in money due the market administrator from such handler, or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1098.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to receipts during the month of:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1098.44(a) (7) and (11) and the corresponding steps of § 1098.44(b), except such other source milk that is excluded from the computations pursuant to § 1098.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1098.76(a)(2).

§ 1098.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator, in making payments to producers pursuant to § 1098.73, shall deduct an amount not exceeding 6 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk received by a handler(s) from producers during the month. Such moneys shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers who are members of a cooperative association which the Secretary determines is performing the services specified in paragraph (a) of this section for its members, the market administrator shall, in lieu of the deductions provided in paragraph (a) of this section, make such deductions as are authorized by such producers, and on or before the 15th day after the end of each month, pay the money so deducted to such cooperative association.

Base-Excess Plan

§ 1098.90 Base milk.

"Base milk" means milk received at pool plants from a producer during any of the months specified in § 1098.61 for the computation of uniform base and excess prices, which is not in excess of such producer's daily average base computed pursuant to § 1098.92, multiplied by the number of days in such month.

§ 1098.91 Excess milk.

"Excess milk" means milk received at pool plant from a producer during any of the months specified in § 1098.61 for the computation of uniform base and excess prices, which is in excess of the base milk of such producer for such month, and shall include all milk received during such month from a producer for whom no daily average base can be computed pursuant to § 1098.92.

§ 1098.92 Computation of daily average base for each producer.

Subject to the rules set forth in § 1098.93, the daily average base for each producer shall be an amount calculated by dividing the total pounds of producer milk received from such producer at all pool plants during the months of September through January immediately preceding by 153: *Provided*, That the base of a producer, who delivers milk during August and whose deliveries are temporarily discontinued during the base-forming period, shall be determined by dividing by the number of days for which deliveries are made or by 138, whichever is higher: *And provided further*, That in the case of producers delivering milk to a pool plant which was not a pool plant during all of the preceding months of September through January a daily average base for each such producer shall be computed pursuant to this paragraph on the basis of his verifiable deliveries of milk to such plant during the period September through January preceding the month in which the plant became a pool plant.

§ 1098.93 Base rules.

The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the market administrator shall assign a base as calculated pursuant to § 1098.92 to each person for whose account producer milk was delivered to pool plants during the months specified in § 1098.92 for computation of base;

(b) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to in writing by the partners provided written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective; and

(c) An entire base shall be transferred from a person holding such base to any other person, effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided*, That an entire base or any portion thereof may be transferred from a producer to any other person upon adequate proof that such producer has discontinued marketing milk: *And provided further*, That if a base is held jointly, it shall be transferable only upon the receipt of such application signed by all joint holders or their heirs.

§ 1098.94 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer and the handler

receiving milk from such producer of the daily average base established by such producer.

PART 1102—MILK IN FORT SMITH, ARKANSAS, MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1102.1 General provisions.

DEFINITIONS

1102.2 Fort Smith, Arkansas, marketing area.
1102.3 [Reserved]
1102.4 [Reserved]
1102.5 [Reserved]
1102.6 [Reserved]
1102.7 Approved plant.
1102.8 Unapproved plant.
1102.9 Handler.
1102.10 Producer-handler.
1102.11 [Reserved]
1102.12 Producer.
1102.13 Producer milk.
1102.14 Other source milk.
1102.15 Fluid milk product.
1102.16 Fluid cream product.
1102.17 Filled milk.
1102.18 Cooperative association.

HANDLER REPORTS

1102.30 Reports of receipts and utilization.
1102.31 Payroll reports.
1102.32 Other reports.

CLASSIFICATION OF MILK

1102.40 Classes of utilization.
1102.41 Shrinkage.
1102.42 Classification of transfers and diversions.
1102.43 General classification rules.
1102.44 Classification of producer milk.
1102.45 Market administrator's reports concerning classification.

CLASS PRICES

1102.50 Class prices.
1102.51 Basic formula price.
1102.52 Plant location adjustments for handlers.
1102.53 Announcement of class prices.
1102.54 Equivalent price.
1102.60 Handler's value of milk for computing uniform price.

UNIFORM PRICES

1102.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).
1102.62 Announcement of uniform prices for each handler and butterfat differential.

PAYMENTS FOR MILK

1102.73 Payments to producers and to cooperative associations.
1102.74 Butterfat differential.
1102.75 Plant location adjustments for producers.
1102.76 [Reserved]
1102.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1102.85 Assessment for order administration.
1102.86 Deduction for marketing services.

BASE-EXCESS PLAN

1102.90 Base milk.
1102.91 Excess milk.
1102.92 Computation of daily average base for each producer.
1102.93 Determination of monthly base for each producer.
1102.94 Base rules.
1102.95 Announcement of established bases.

ADVERTISING AND PROMOTION PROGRAM

1102.110 Agency.
1102.111 Composition of Agency.
1102.112 Term of office.
1102.113 Selection of Agency members.
1102.114 Agency operating procedure.
1102.115 Powers of the Agency.
1102.116 Duties of the Agency.
1102.117 Advertising, Research, Education and Promotion Program.
1102.118 Limitation of expenditures by the Agency.
1102.119 Personal liability.
1102.120 Procedure for requesting refunds.
1102.121 Duties of the market administrator.
1102.122 Liquidation.
1102.123 Payment of advertising and promotion fund.

AUTHORITY: The provisions of this Part 1102 issued under Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1102.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1102.2 Fort Smith, Ark., marketing area.

"Fort Smith, Ark., Marketing Area," called the marketing area in this part, means all territory within the corporate limits of Fort Smith, Ark. and Van Buren, Ark. and within the boundaries of the Camp Chaffee military reservation.

§ 1102.3 [Reserved]

§ 1102.4 [Reserved]

§ 1102.5 [Reserved]

§ 1102.6 [Reserved]

§ 1102.7 Approved plant.

Except as provided in paragraph (b) of this section, "approved plant" means:

(a) Any milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores).

(b) The term "approved plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) Any plant operated by a handler who the Secretary determines disposes of a greater portion of his fluid milk products, except filled milk, as Class I milk in another marketing area regulated by a milk marketing agreement or order issued pursuant to the Act.

§ 1102.8 Unapproved plant.

"Unapproved plant" means any milk or filled milk receiving, manufacturing, or processing plant other than an approved plant. The following categories of unapproved plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means and unapproved plant which is not an other order plant nor a producer-handler plant and from which fluid milk products eligible for distribution in the marketing area for fluid consumption are moved during the month to an approved plant.

§ 1102.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores); and

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted pursuant to § 1102.12 for the account of such cooperative association.

§ 1102.10 Producer-handler.

"Producer-handler" means any person who (a) produces milk, and (b) operates a milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products for fluid consumption are disposed of in the marketing area on wholesale or retail routes (including plant stores), and (c) receives no milk from producers.

§ 1102.11 [Reserved]

§ 1102.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk which is received at an approved plant: *Provided*, That such milk is produced under a dairy farm inspection permit or inspection rating issued by any health authority having jurisdiction in the marketing area for the production of milk to be disposed of for consumption as fluid milk. "Producer" shall include any such person whose milk is caused to be diverted by a handler to an unapproved plant, and milk so diverted shall be deemed to have been received at an approved plant by the handler who causes it to be diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to an approved plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1102.44(a)(8)(iii) and the corresponding step of § 1102.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved

is assigned to Class I under the provisions of such other order.

§ 1102.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer which is received by a handler directly from producers.

§ 1102.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1102.40 (b) (1) from any source other than producers or approved plants;

(b) Receipts in packaged form from other plants of products specified in § 1102.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1102.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1102.40(b) (1)) for which the handler fails to establish a dispositon.

§ 1102.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1102.40(b) or (c) (1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quality of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1102.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1102.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1102.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act,";

(b) to have full authority in the sale of milk of its members; and

(c) to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1102.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his approved plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk; including producer milk diverted by the handler from the approved plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other approved plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1102.40(b) (1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler described in § 1102.9 (b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1102.31 Payroll reports.

On or before the 20th day after the end of each month, each handler who operates an approved plant and each handler described in § 1102.9(b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(a) His name and address;

(b) The total pounds of milk received from such producer;

(c) The average butterfat content of such milk; and

(d) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

§ 1102.32 Other reports.

(a) Each handler who operates an approved plant and each handler described in § 1102.9(b) shall report to the market administrator in the detail and on forms prescribed by the market administrator on or before the seventh day of each month of April through August, for each producer for the preceding month:

(1) His name and address or other appropriate identification;

(2) The total pounds of milk and butterfat received from such producer;

(3) The location at which such milk was received; and

(4) The number of days on which milk was received from each producer.

(b) In addition to the reports required pursuant to §§ 1102.30 and 1102.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1102.40 Classes of utilization.

Except as provided in § 1102.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1102.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise 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 § 1102.15; and
(6) In shrinkage assigned pursuant to § 1102.41(a) to the receipts specified in § 1102.41(a)(2) and in shrinkage specified in § 1102.41 (b) and (c).

§ 1102.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1102.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each approved plant to the respective quantities of skim milk and butterfat:
(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and
(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:
(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);
(2) [Reserved]
(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;
(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other approved plants;
(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;
(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and
(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1102.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1102.42 Classification of transfers and diversions.

(a) *Transfers to approved plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from an approved plant to another approved plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:
(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1102.44(a)(12) and the corresponding step of § 1102.44(b);
(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1102.44(a)(7) or the corresponding step of § 1102.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and
(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1102.44(a)(11) or (12) or the corresponding steps of § 1102.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from an approved plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the approved plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:
(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;
(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);
(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;
(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;
(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order classification under this paragraph shall be in accordance with the provisions of § 1102.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from an approved plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other unapproved plants.* Skim milk or butterfat transferred or diverted in the following forms from an approved plant to an unapproved plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the unapproved plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1102.30 for the month within which such transaction occurred; and

(*b*) The unapproved plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the unapproved plant and transfers of packaged fluid milk products from such unapproved plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such unapproved plant from approved plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such unapproved plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such unapproved plant from approved plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such unapproved plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the unapproved plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such unapproved plant from approved plants and other order plants;

(iv) Transfers of bulk fluid milk products from the unapproved plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such unapproved plant from approved plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such unapproved plant from other order plants;

(v) Any remaining unassigned Class I disposition from the unapproved plant shall be assigned to the extent possible in the following sequence:

(*a*) To such unapproved plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such unapproved plant; and

(*b*) To such unapproved plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such unapproved plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the unapproved plant from approved plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such unapproved plant;

(vii) Receipts of bulk fluid cream products at the unapproved plant from approved plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such unapproved plant; and

(viii) In determining the unapproved plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such unapproved plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1102.43 General classification rules.

In determining the classification of producer milk pursuant to § 1102.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1102.30 and shall compute separately for each approved plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1102.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1102.40, 1102.41, and 1102.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1102.9(b) shall be determined separately from the operations of any approved plant operated by such cooperative association.

§ 1102.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1102.9(a) for each of his approved plants separately and of each handler described in § 1102.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1102.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1102.40(b)(1) that were received in packaged form from other plans, but not in excess of

the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1102.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1102.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1102.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order; and

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other approved plant of the handler, and then at each successively more distant approved plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other approved plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all approved plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between approved plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all approved plants of the handler of producer milk, fluid milk products from approved plants of other handlers, and bulk fluid milk products from other order plants; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this approved plant is of all such receipts remaining at this allocation step at all approved plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1102.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all approved plants of the handler (excluding any duplication of utilization in each class resulting from transfers between approved plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other approved plant of the handler, and then at each successively more distant approved plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other approved plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other approved plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subject to the provisions of paragraph (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all approved plants of the handler (excluding any duplication of utilization in each class resulting from transfers between approved plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section and that were not offset by transfers or diversions of bulk fluid milk products to the same other order plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other approved plant of the handler, and then at each successively

more distant approved plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other approved plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other approved plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another approved plant according to the classification of such products pursuant to § 1102.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1102.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1102.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating an approved plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

CLASS PRICES

§ 1102.50 Class prices.

Subject to the provisions of § 1102.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.95.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class price shall be the basic formula price for the month.

§ 1102.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1102.52 Plant location adjustments for handlers.

(a) For milk received from producers at an approved plant located more than 50 miles by the shortest highway distance, as determined by the market administrator, from the county courthouse in Fort Smith, Ark., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1102.50(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is distant from the county courthouse in Fort Smith, Ark.; and

(b) For purposes of calculating such adjustment, transfers of fluid milk products between approved plants shall be assigned to Class I disposition at the transferee-plant which is in excess of the sum of receipts as such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

§ 1102.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1102.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1102.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1102.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1102.44(a)(14) and the corresponding step of § 1102.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1102.74, that are applicable at the location of the approved plant; and

(c) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

§ 1102.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).

(a) For each of the months of August through February, the market administrator shall compute for each handler a uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1102.60 by adding the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month;

(2) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1102.75;

(3) Subtract an amount computed by multiplying the total hundredweight of producer milk in each class by 5 cents; and

(4) Divide the resulting amount by the total hundredweight of milk received

from producers by such handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to milk received from producers, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided for in paragraph (a) (1), (2), and (3) of this section;

(2) Compute the value of excess milk received by such handler from producers as follows:

(i) Multiply the quantity of such milk that is not in excess of the total Class III milk included in this computation by the Class III price less 5 cents;

(ii) Multiply the remaining quantity of such milk that it not in excess of the total Class II milk included in this computation by the Class II price less 5 cents;

(iii) Multiply the remaining quantity of excess milk by the Class I price less 5 cents; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such milk, and adjust to the nearest cent. The resulting figure shall be the uniform price for such handler for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract, for each handler, the value of such handler's excess milk obtained in paragraph (b)(3) of this section from the value of all milk obtained for such handler pursuant to paragraph (b) (1), (2), and (3), of this section and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent; and

(5) Divide the amount obtained in subparagraph (b)(4) of this section by the total hundredweight of such handler's base milk included in this computation. The result shall be such handler's uniform price for base milk of 3.5 percent content.

§ 1102.62 Announcement of uniform prices for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the applicable uniform prices for each handler pursuant to § 1102.61 for such month.

Payments for Milk

§ 1102.73 Payments to producers and to cooperative associations.

Each handler shall make payment to producers as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer except as provided in paragraph (c) of this section, at not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1102.74 and 1102.75, for all milk received from such producer during the preceding month less the amount of payment made pursuant to paragraph (b) of this section.

(b) On or before the last day of each month, each handler shall make payment for milk received from producers during the first 15 days of the month to each producer, except as provided in paragraph (c) of this section, at not less than the Class III price for the preceding month.

(c) On or before the 13th and the third from the last day of each month, in lieu of payments pursuant to paragraphs (a) and (b) respectively of this section, each handler shall make payment to a cooperative association which so requests, with respect to producers for which such cooperative association is authorized to collect payment, in an amount equal to the sum of the individual payments otherwise payable to such producers.

§ 1102.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1102.75 Plant location adjustments for producers.

The uniform price for producer milk received at an approved plant shall be reduced according to the location of the approved plant at the rates set forth in § 1102.52.

§ 1102.76 [Reserved]

§ 1102.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler; (b) such handler from the market administrator; or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1102.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month four cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) producer milk (including such handler's own production); and

(b) other source milk allocated to Class I pursuant to § 1102.44(a) (7) and (11) and the corresponding steps of § 1102.44(b).

§ 1102.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1102.73, shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 15th day after the end of each month and pay such deduction to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions, and the amount and average butterfat test of milk for which such deduction was computed for each producer. In lieu of such statement a handler may authorize the market administrator to furnish such cooperative association the information with respect to such producers reported pursuant to § 1102.31.

Base-Excess Plan

§ 1102.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1102.93.

§ 1102.91 Excess milk.

"Excess milk" means milk received by a handler from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1102.93.

§ 1102.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tenn.; Fort Smith, Ark.; and Central Arkansas marketing areas (Parts

1097, 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a plant which first became an approved plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the plant had been an approved plant during such period.

§ 1102.93 Determination of monthly base for each producer.

Subject to the rules set forth in § 1102.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1102.92 by the number of days in such month.

(b) If milk is received as producer milk from the same farm by more than one handler and/or by handlers fully regulated under the terms of the Memphis, Tenn. (Part 1097 of this chapter), or Central Arkansas (Part 1108 of this chapter) orders during the month, multiply such producer's daily average base computed pursuant to § 1102.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1102.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1102.94 Base rules.

The following rules shall apply in connection with the transfer of daily average bases for each producer computed pursuant to § 1102.92.

(a) An entire base shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the base-holder, or his heirs, and by the person to whom such base is to be transferred.

(b) If a base is held jointly, the entire base shall be transferred only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1102.95 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1102.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1102.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1102.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1102.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1102.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1102.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1102.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1102.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1102.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1102.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1102.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1102.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and

promotion programs and projects specified in §§ 1102.110 and 1102.117.

§ 1102.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1102.110 and 1102.117;

(c) Keep minutes, books, and records, and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1102.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1102.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1102.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1102.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence or those which are criminal in nature.

§ 1102.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1102.121 Duties of the market administrator.

Except as specified in § 1102.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1102.113(c).

(b) Set aside the amounts subtracted under § 1102.61(a)(3) and received pursuant to § 1102.123 into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1102.61(a)(3).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1102.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1102.61(a)(3) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1102.110 through 1102.123).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1102.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall be distributed in an equitable manner to producers by the market administrator.

§ 1102.123 Payment of advertising and promotion funds.

On or before the 15th day after the end of each month during which producer milk was received, each handler shall turn over to the market administrator the advertising and promotion funds deducted pursuant to § 1102.61(a)(3).

PART 1108—MILK IN CENTRAL ARKANSAS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1108.1 General provisions.

DEFINITIONS

1108.2 Central Arkansas marketing area.
1108.3 [Reserved]
1108.4 [Reserved]
1108.5 Distributing plant.
1108.6 Supply plant.
1108.7 Pool plant.
1108.7a Approved plant.
1108.8 Nonpool plant.

Sec.
1108.9 Handler.
1108.10 Producer-handler.
1108.11 [Reserved]
1108.12 Producer.
1108.13 Producer milk.
1108.14 Other source milk.
1108.15 Fluid milk product.
1108.16 Fluid cream product.
1108.17 Filled milk.
1108.18 Cooperative association.

HANDLER REPORTS

1108.30 Reports of receipts and utilization.
1108.31 Payroll reports.
1108.32 Other reports.

CLASSIFICATION OF MILK

1108.40 Classes of utilization.
1108.41 Shrinkage.
1108.42 Classification of transfers and diversions.
1108.43 General classification rules.
1108.44 Classification of producer milk.
1108.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1108.50 Class prices.
1108.51 Basic formula price.
1108.52 Plant location adjustments for handlers.
1108.53 Announcement of class prices.
1108.54 Equivalent price.

UNIFORM PRICES

1108.60 Handler's value of milk for computing uniform price.
1108.61 Computation of uniform price (including weighted average price and base and excess prices).
1108.62 Announcement of uniform prices and butterfat differential.

PAYMENTS FOR MILK

1108.70 Producer-settlement fund.
1108.71 Payments to the producer-settlement fund.
1108.72 Payments from the producer-settlement fund.
1108.73 Payments to producers and to cooperative associations.
1108.74 Butterfat differential.
1108.75 Plant location adjustments for producers and on nonpool milk.
1108.76 Payments by handler operating a partially regulated distributing plant.
1108.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1108.85 Assessment for order administration.
1108.86 Deduction for marketing services.

BASE-EXCESS PLAN

1108.90 Base milk.
1108.91 Excess milk.
1108.92 Computation of daily average base for each producer.
1108.93 Determination of monthly base of each producer.
1108.94 Base rules.
1108.95 Announcement of established bases.
1108.96 Monthly announcement of base milk and excess milk for each producer.

ADVERTISING AND PROMOTION PROGRAM

1108.110 Agency.
1108.111 Composition of Agency.
1108.112 Term of office.
1108.113 Selection of Agency members.
1108.114 Agency operating procedure.
1108.115 Powers of the Agency.
1108.116 Duties of the Agency.
1108.117 Advertising, Research, Education and Promotion Program.
1108.118 Limitation of expenditures by the Agency.
1108.119 Personal liability.
1108.120 Procedure for requesting refunds.
1108.121 Duties of the market administrator.
1108.122 Liquidation.

AUTHORITY: The provisions of this Part 1108 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1108.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1108.2 Central Arkansas marketing area.

"Central Arkansas marketing area", called the "marketing area" in this part, means all the territory included within the boundaries of the counties of Clark, Conway, Craighead, Cross, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lee, Lonoke, Monroe, Phillips, Poinsett, Pope, Prairie. Pulaski, Saline, St. Francis, White, and Woodruff, all in the State of Arkansas.

§ 1108.3 [Reserved]

§ 1108.4 [Reserved]

§ 1108.5 Distributing plant.

"Distributing plant" means an approved plant from which Class I milk, except filled milk, equal to not less than 50 percent of its receipts of producer milk, milk from a handler described in § 1108.9(c), and fluid milk products, except filled milk, from other pool plants is disposed of during the month, on routes or through plant stores, to wholesale or retail outlets (except pool plants) and from which Class I milk, except filled milk, equal to not less than 10 percent of such receipts is disposed of during the month on routes or through plant stores, to wholesale or retail outlets (except pool plants) located in the marketing area.

§ 1108.6 Supply plant.

"Supply plant" means:

(a) An approved plant from which fluid milk products, except filled milk, in an amount not less than 50 percent of its receipts of producer milk and milk received from a handler described in § 1108.9(c) is moved during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months during the period October through January shall upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September; or

(b) An approved plant which is operated by a cooperative association having member producers which delivers 50 percent or more of its member milk to the pool plants of other handlers and from which fluid milk products in an amount not less than 25 percent of its receipts of producer milk during the month at such plant are shipped during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months October through January shall, upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September.

§ 1108.7 Pool plant.

(a) Except as provided in paragraph (b) of this section, "pool plant" means a distributing plant or a supply plant.

(b) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless a greater volume of Class I milk, except filled milk, was disposed of from such plant during the 6-month period immediately preceding to retail or wholesale outlets (except pool plants or nonpool plants) in the Central Arkansas marketing area than in the marketing area regulated pursuant to such other order; and

(3) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant for each of the preceding months of August through January.

§ 1108.7a Approved plant.

"Approved plant" means all of the buildings, premises and facilities of a plant (a) in which milk or skim milk is processed or packaged and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors and sales through plant stores) to wholesale or retail outlets (except pool plants) located in the marketing area, or (b) from which milk or skim milk is shipped during the month to a distributing plant.

§ 1108.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are shipped during the month to a pool plant qualified pursuant to § 1108.7, and which is not an other order plant nor a producer-handler plant.

§ 1108.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more approved plants.

(b) A cooperative association with respect to milk of producers diverted for the account of such association in accordance with the provisions of § 1108.12.

(c) Any cooperative association with respect to the milk of its producer members which is delivered to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing, that it will be the handler for such milk for the month, such cooperative handler status to be effective the first day of the month following receipt by the market administrator of such notice and to continue until the first day of the month following receipt of a request to discontinue such cooperative handler status. Milk so delivered shall be considered to have been received by the cooperative association at the plant to which delivered and then transferred to the handler operating the plant.

(d) Any person who operates a partially regulated distributing plant.

§ 1108.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant which during the month has no other source milk, producer milk in § 1108.9(c).

§ 1108.11 [Reserved]

§ 1108.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is received during the month at a pool plant: *Provided*, That if such milk is diverted by a handler for his account from a pool plant to a nonpool plant that is not a producer-handler plant any day during the months of February through August, or on not more than 10 days during any other month, the milk so diverted shall be deemed to have been received at a pool plant at the location of the plant from which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1108.44(a)(8) (iii) and the corresponding step of § 1108.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1108.13 Producer milk.

"Producer milk" shall be that skim milk or butterfat for each handler's account in milk (in an amount determined by weights and measurements for individual producer's deliveries, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is received pursuant to paragraphs (a) and (b) of this section and diverted pursuant to § 1108.12 as follows:

(a) Received directly from producers' farms at a pool plant by the operator of the pool plant (except that received from a handler described in § 1108.9(c)) or diverted by the pool plant operator pursuant to § 1108.12.

(b) Received directly from producers' farms for his account by a handler described in § 1108.9(c) or diverted for his account pursuant to § 1108.12.

§ 1108.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1108.40(b)(1) from any source other than producers, handlers described in § 1108.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1108.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1108.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1108.40(b)(1)) for which the handler fails to establish a disposition.

§ 1108.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1108.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1108.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1108.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1108.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1108.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1108.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1108.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

(c) Each handler described in § 1108.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1108.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1108.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1108.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1108.32 Other reports.

(a) Each handler, except a producer-handler and a handler making payments pursuant to § 1108.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the seventh day of each month of April through August, for each producer for the preceding month:

(i) His name and address or other appropriate identification;

(ii) The total pounds of milk and butterfat received from such producer, including, for the months of March through July, the pounds of base milk;

(iii) The location at which such milk was received; and

(iv) The number of days on which milk was received from such producer;

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to § 1108.12 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1108.30 and 1108.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1108.40 Classes of utilization.

Except as provided in § 1108.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1108.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milk fat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1108.15; and

(6) In shrinkage assigned pursuant to § 1108.41(a) to the receipts specified in § 1108.41(a)(2) and in shrinkage specified in § 1108.41 (b) and (c).

§ 1108.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1108.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1108.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of

weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1108.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1108.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1108.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1108.44(a)(12) and the corresponding step of § 1108.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1108.44(a)(7) or the corresponding step of § 1108.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1108.44 (a) (11) or (12) or the corresponding steps of § 1108.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant; and

(4) If a specified utilization of skim milk and butterfat transferred by a handler described in § 1108.9(c) to a pool plant of another handler is not claimed by both handlers, such skim milk and butterfat shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class at the pool plant of the transferee-handler after the computations pursuant to § 1108.44(a)(13)(i) and the corresponding step of § 1108.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3), of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1108.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1108.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk

products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization; and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1108.43 General classification rules.

In determining the classification of producer milk pursuant to § 1108.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1108.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1108.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1108.40, 1108.41, and 1108.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1108.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1108.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1108.9(a) for each of his pool plants separately and of each handler described in § 1108.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1108.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1108.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1108.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used, to produce, or added to, any product specified in § 1108.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1108.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (a) through (c) of this sec-

tion. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1108.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handlers; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1108.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1108.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant or a handler described in § 1108.9(c) according to the classification of such products pursuant to § 1108.42(a); and

(ii) A handler described in § 1108.9(c) according to the classification of such products pursuant to § 1108.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the

pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding steps of paragraph (b) of this section.

§ 1108.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1108.44(a)(12) and the corresponding step of § 1108.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1108.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1108.50 Class prices.

Subject to the provisions of § 1108.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.94.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1108.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 60 miles, by shortest highway distance as measured by the market administrator, from the nearest of the County Courthouse in Arkadelphia, Ark., the County Courthouse in Forrest City, Ark., or the State Capitol in Little Rock, Ark., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1108.50 (a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof between such plant and such nearest point.

(b) For purposes of calculating such adjustment, transfers of fluid milk products between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1108.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1108.54 Equivalent price.

If for any reason a price or pricing constitutent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constitutent that is required.

UNIFORM PRICES

§ 1108.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1108.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1108.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1108.44(a)(14) and the corresponding step of § 1108.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1108.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1108.44(a)(9) and the corresponding step of § 1108.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1108.44(a)(7) (i) through (iv) and the corresponding step of § 1108.44(b), excluding receipts of bulk fluid cream products from another plant.

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1108.44(a)(7) (v) and (vi) and the corresponding step of § 1108.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1108.44(a)(11) and the corresponding step of § 1108.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any

other payment obligation under any order.

§ 1108.61 Computation of uniform price (including weighted average price and base and excess prices).

(a) For each month the market administrator shall compute the uniform price (or weighted average price) per hundredweight of milk received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1108.60 for all handlers who filed the reports prescribed by § 1108.30 for the month and who made the payments pursuant to §§ 1108.71 and 1108.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to §1108.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section by 5 cents;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1108.60(f); and

(6) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for the months of March through July, shall be the "uniform price" for milk of 3.5 percent butterfat content received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk as follows:

(1) Subtract from the amount resulting from the computations made pursuant to paragraph (a) (1) through (4) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (a) (5) (ii) of this section by the weighted average price;

(2) Compute the aggregate value of excess milk by assigning such milk, in series beginning with Class III, to the hundredweight of producer milk in each class, multiplying the quantities of milk so assigned to each class by the respective class prices less 5 cents and adding together the resulting amounts;

(3) Divide the aggregate value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such milk, adjust to the nearest cent and subtract 4 cents. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract an amount determined by multiplying the uniform price obtained in paragraph (b)(3) of this section, plus 4 cents, times the hundredweight of excess milk from the aggregate value of milk obtained in paragraph (b)(1) of this section;

(5) Divide the result obtained in paragraph (b)(4) of this section by the total hundredweight of base milk of handlers included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1108.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform prices for such month.

PAYMENTS FOR MILK

§ 1108.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1108.71, 1108.76 and 1108.77, and out of which he shall make all payments pursuant to §§ 1108.72 and 1108.77: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

§ 1108.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1108.60.

(2) The sum of:

(i) The value at the uniform prices, as adjusted pursuant to § 1108.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1108.60.

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1108.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1108.71(a)(2) exceeds the amount computed pursuant to § 1108.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1108.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s) adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1108.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1108.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator

determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section.

(c) Each handler shall furnish the person to whom payment is to be made pursuant to this section with the following information:

(1) On or before the 25th day of the month, the pounds of milk received from the producer or from each member of the cooperative association during the first 15 days of such month:

(2) On or before the 7th day of the following month to a cooperative association for its individual members, or on or before the 15th day of the following month to producers:

(i) The pounds of milk received each day and the total for the month, together with the butterfat content of such milk;

(ii) For the months of March through July, the pounds of base milk received;

(iii) The amount or rate and nature of deductions made from payments; and

(iv) The amount and nature of payments due pursuant to § 1108.77.

(d) To a cooperative association with respect to receipts of milk for which it is the handler described in § 1108.9(c):

(1) On or before the 2d day prior to the last day of the delivery period, an amount equal to the rate specified in paragraph (a)(1) of this section times the volume received during the first 15 days of the delivery period; and

(2) On or before the 13th day after the end of each delivery period, an amount equal to not less than the value of such milk at applicable class price(s) adjusted by the butterfat differential pursuant to § 1108.74 less payment made pursuant to paragraph (d)(1) of this section.

§ 1108.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1108.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices to be paid for producer milk received at a pool plant located 60 miles or more from the County Courthouse in Arkadelphia, Ark., the County Courthouse in Forrest City, Arkansas, or the State Capital in Little Rock, Ark., whichever is nearer by the shortest highway distance, as determined by the market administrator, shall be reduced according to the distance of the plant from the respective buildings designated above at the rate of 1.5 cents for each 10 miles or residual fraction thereof.

(b) For purposes of computations pursuant to §§ 1108.71 and 1108.72 the weighted average price shall be adjusted at the rates set forth in § 1108.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price plus 5 cents shall not be less than the Class III price.

§ 1108.76. Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1108.30(b) and 1108.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1108.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers 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 § 1108.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1108.60 for such handler shall include, in lieu of the value of other source milk specified in § 1108.60(f) less the value of such other source milk specified in § 1108.71(a)(2)(ii), a value of milk determined pursuant to § 1108.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1108.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1108.30(b) and 1108.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1108.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1108.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1108.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1108.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1108.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk received by a handler described in § 1108.9(c), except that transferred to another handler operating a pool plant;

(b) Producer milk of a handler operating a pool plant (including such handler's own production), plus milk received from a handler described in § 1108.9(c);

(c) Other source milk allocated to Class I pursuant to § 1108.44(a) (7) and (11) and the corresponding steps of § 1108.44(b), except such other source milk that is excluded from the computations pursuant to § 1108.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1108.76(a)(2).

§ 1108.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1108.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

BASE-EXCESS PLAN

§ 1108.90 Base milk.

"Base milk" means milk received by handlers from a producer during any of the months of March through July which is not in excess of such producer's base computed pursuant to § 1108.93.

§ 1108.91 Excess milk.

"Excess milk" means milk received by handlers from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1108.93.

§ 1108.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1097, 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a plant which first became a pool plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the plant had been a pool plant during such period.

§ 1108.93 Determination of monthly base of each producer.

Subject to the rules set forth in § 1108.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by handlers as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1108.92 by the number of days in such month;

(b) If milk is received as producer milk from the same farm by handlers regulated under this part and by handlers fully regulated under the terms of the Memphis, Tennessee (Part 1097 of this chapter), or Fort Smith, Arkansas (Part 1102 of this chapter), orders during the month, multiply such producer's daily average base computed pursuant to § 1108.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1108.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1108.94 Base rules.

The following rules shall apply in connection with the transfer of daily average bases for each producer computed pursuant to § 1108.92:

(a) An entire base shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred; and

(b) If a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1108.95 Announcement of established bases.

On or before February 25 of each year the market administrator shall notify

each producer of the daily average base established by such producer.

§ 1108.96 Monthly announcement of base milk and excess milk for each producer.

On or before the 11th day after the end of each of the months March through July, the market administrator shall notify each handler of the amount of base milk and excess milk received from each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1108.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1108.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1108.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1108.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1108.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1108.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1108.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1108.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1108.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1108.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1108.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1108.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1108.110 and 1108.117.

§ 1108.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1108.110 and 1108.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1108.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1108.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1108.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1108.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1108.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1108.121 Duties of the market administrator.

Except as specified in § 1108.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1108.113(c).

(b) Set aside the amounts subtracted under § 1108.61(a)(4) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1108.61(a)(4).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1108.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1108.61(a)(4) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1108.110 through 1108.122).

(d) Make the necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1108.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1108.70.

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

Effective date: August 1, 1974.

Signed at Washington, D.C., on April 29, 1974.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.74-10171 Filed 5-3-74;8:45 am]

[Milk Order No. 137]

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

Order Suspending Certain Provisions

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

Notice of proposed rulemaking was published in the FEDERAL REGISTER (39 FR 13890) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

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

§ 1137.10 [Amended]

1. In the first sentence of paragraph (a) of § 1137.10, the provision, "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and

2. In the second sentence of paragraph (a) of § 1137.10, the provision "distributing".

STATEMENT OF CONSIDERATION

This suspension removes the provision that three deliveries of a producer's milk must be received at a pool distributing plant during the month to qualify his milk for diversion. In addition, the suspension enables a cooperative association to divert milk based on the cooperative's deliveries to all pool plants rather than on the basis of deliveries to pool distributing plants only.

The suspension was requested by a cooperative association supplying the market. The basis for the request is that current marketing conditions require the association to handle an increasing quantity of reserve supply milk during the coming months of relatively heavy production. No adverse views were filed.

On the basis of the data, views, and arguments filed, it is found that without the suspension, the association would be forced to make uneconomic and fuel-consuming shipments of producer milk that was associated with the market during the period of tight supply conditions last fall and winter in order to qualify it for pooling during the coming period of relatively heavy milk production.

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

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

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

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

Therefore, good cause exists for making this order effective May 6, 1974.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months April through June 1974.

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

Effective date: May 6, 1974.

Signed at Washington, D.C., on May 1, 1974.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.74–10363 Filed 5–3–74;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—GUARANTEED LOANS

[FHA Instructions 449.1 and 449.3]

PART 1843—FARMER LOANS

Miscellaneous Amendments

Part 1843, Title 7, Code of Federal Regulations (38 FR 29051, 30102, 30533) is amended. The changes are as follows:

1. Section 1843.1(b) is amended to clarify the definition of Farmer Loans.

2. Section 1843.1(d) is amended to clarify the definition of Rural youth.

3. Section 1843.3 is revised to clarify and simplify existing procedures, including, among other things, deletion of paragraph (a)(1) covering local interest rate, and addition of a new paragraph (h) showing interest rates to borrowers, FHA rates, and loan subsidy rates for each type of Farmer Loan. The interest rates to borrowers and FHA rates are presently published in the Notices section of 38 FR 30117.

4. Section 1843.5 is amended to renumber Form FHA 449–21 to Form FHA 449–16.

5. Section 1843.10 is amended for clarification and to correct a cross-reference citation, and § 1843.10(a) is amended to clarify the meaning of the second sentence.

6. Section 1843.20 is amended to add an additional section citation.

7. Section 1843.30 is amended to correct section citations in that section and the last sentence of paragraph (a) of that section.

8. Section 1843.42(e) is amended to delete the word "building," and to correct a cross reference.

9. Section 1843.44(a) is amended to explain the requirement for a first lien.

10. Section 1843.44(b) is amended to clarify the loan limitation.

11. Section 1843.44(f)(6) is amended to correct a cross-reference citation.

12. Section 1843.90(a) is revised to update the FHA forms that will be used and the distribution thereof.

13. Section 1843.90(c) is amended to delete reference to Form FHA 449–8, "Assumption Agreement for Guaranteed Loans (Same Terms)."

14. Section 1843.91 is deleted because it duplicates material in 7 CFR 1841.75.

In accordance with 5 USC 553 these amendments are not published for notice of proposed rule making inasmuch as they only clarify and simplify existing agency procedures. Therefore, these amendments are effective on publication in the FEDERAL REGISTER.

The amendments are as follows:

§ 1843.1 Definitions.

1. In § 1843.1 paragraphs (b) and (d) are revised to read:

* * * * *

(b) *Farmer loans.* Farm Ownership (FO), Soil and Water (SW), and Recreation (RL) loans authorized in Subtitle A of the Act; Operating (OL) loans authorized in Subtitle B of the Act; and Emergency (EM) loans authorized in Subtitle C of the Act. However, the term "Farmer loans" does not cover small business enterprise loans authorized by sections 304(b) and 312(b) of the Act, or pollution abatement and control project loans authorized by section 312(c) of the Act, or EM loans involving cancellation.

(d) *Rural youth.* A person who has not reached the age of 21 even though he or she has reached the age of full legal competency as an adult under applicable State law, and who does not reside in a city or town which has a population in excess of 10,000 inhabitants.

2. Section 1843.3 is revised to read:

§ 1843.3 Loan subsidy rates, claims, and payments.

Loan subsidies are payments made by FHA to original lenders or subsequent holders to induce them to make and/or service and collect guaranteed loans. Such subsidies are determined by application of per annum rates on loan principal.

(a) *Subsidy rates.* Such subsidy rates, if any, will be established by FHA periodically. Thus, the subsidy rate for the same loan may vary from time to time. However, the subsidy rate in effect at the time the Contract of Guarantee is executed wil remain constant during the period covered by the initial guarantee fee payment, and the subsidy rate in effect at the time any subsequent guarantee fee falls due will remain constant during the period covered by the subsequent guarantee fee payment, provided in each instance:

(1) The guarantee fee is paid in accordance with the requirements of 7 CFR 1841.30 and 1841.31;

(2) The Contract of Guarantee remains in effect and enforceable;

(3) An eligible transferee does not assume the loan at a higher interest rate; and

(4) The loan is not assumed by an ineligible transferee.

(b) *Method of calculating subsidy rates.* The subsidy rate for each type of loan will be a rate equal to the difference, if any, between the interest rate charged to the borrower and any higher FHA rate described in paragraph (c) of this section.

(c) *FHA rate.* This is a per annum rate established by FHA for the purpose of calculating any subsidy to be paid by FHA to the holder. The FHA rate used in making this calculation for any guarantee fee period will be the rate in effect at the beginning of such period, except as otherwise provided in paragraph (d) of this section with respect to certain transfer and assumption cases. See paragraph (h) of this section to ascertain the subsidy rate in effect at any particular time, except for certain transfer and assumption cases mentioned in paragraph (d) of this section.

(d) *Decreased subsidy rates in certain transfer and assumption cases.* This decrease will occur in those transfer and assumption cases in which the interest rate to an eligible transferee is required to be increased because the interest rate to new borrowers for the type of loan involved is higher at the time of the transfer and assumption than at the time the loan being assumed was made. In such cases the subsidy rate will be decreased in the same amount as the interest rate to the transferee is increased.

(e) *Information on subsidy rates.* Lenders or holders can ascertain the subsidy rates in effect at any particular time by calling any FHA office or by consulting this section.

(f) *Semiannual subsidy claims and payments.* A Form FHA 449–24, "Loan Subsidy Claim," will be prepared by the holder for each such claim in each case. The subsidy payments will be made semiannually beginning 6 months after the issuance of the Contract of Guarantee, unless by agreement between the lender or holder and FHA a different payment date is arranged. The subsidy payments will be based on the principal balance outstanding from time to time during the 6-month period involved on the guaranteed loan promissory note (or assumption agreement). After receipt of a proper Loan Subsidy Claim on Form FHA 449–24 made by the holder direct to the Finance Office, a Treasury check will be sent by the Finance Office to the holder for the amount of the subsidy payment owed for the preceding 6-month period.

(g) *When subsidy payments cease.* Loan subsidy payments will not be made after a transfer to and assumption by an "ineligible transferee" or after the Contract of Guarantee is terminated or becomes void or unenforceable.

(h) *Current borrower, FHA, and subsidy rates.*

[In percent]

Loan type	Interest rate to borrower	FHA rate	Subsidy rate
OL	6¾	9	2¼
EM for production purposes	5	9	4
EM for real estate purposes	5	8	3
FO, SW, RL	5	8	3

§ 1843.5 [Amended]

3. Section 1843.5 is amended to renumber Form FHA 449-21 to Form FHA 449-16.

4. Section 1843.10(a) is amended by inserting the words "at or" after the word "funds" the second time it appears in that paragraph (a), and the introductory paragraph, is amended to read:

§ 1843.10 Loan making and servicing.

The following provisions with respect to loan making and servicing, in addition to those in §§ 1841.10 and 1841.46 of this chapter, are applicable to Farmer Loans.

§ 1843.20 [Amended]

5. Section 1843.20 is amended by inserting "1841.60," between "§§ " and "1841.61."

§ 1843.30 [Amended]

6. Section 1843.30, the introductory paragraph, is amended by changing "§§ 1825.66 and 1825.67" to "§§ 1841.66 and 1841.67;" paragraph (a) of that section is amended by changing "§ 1826.63" in the last sentence to "§ 1843.20."

7. Section 1843.42(e) is amended by deleting the word "building" in the last line of that paragraph, and by changing "§ 1826.12" to "§ 1841.12."

§ 1843.44 [Amended]

8. Paragraph (a) is amended by adding the following to the end:

* * * * *

The first lien requirement can be met in subsequent loan cases by obtaining:

(1) A first lien on new property acquired or refinanced with the subsequent loan or other property not serving as security for the existing loan, or

(2) A lien on the same property to secure both the existing loan and the subsequent loan if there are no liens intervening between the first lien securing the existing loan and the new lien taken to secure both the existing loan and the subsequent loan, or

(3) Liens meeting the requirements of both subparagraphs (1) and (2) of this paragraph.

9. Paragraph (b) is amended to read:

* * * * *

(b) *Loan limitations.* The FO loans to a borrower cannot exceed $100,000, the market value of the farm and any other security, or the amount certified by the County Committee, whichever is less.

10. Paragraph (f)(6) is amended by changing the first cross-reference from "§ 1841.26(a)(8)" to "§ 1841.26(a)(9)."

11. Section 1843.90(a) is amended to read:

§ 1843.90 Forms and forms distribution.

(a) *FHA forms.* The following chart lists the FHA forms applicable to lenders, holders, or applicants, number to be prepared, signatures required and manner of distribution. These forms may be obtained from FHA.

FHA form No.	Name of form	Total No.	Signed by [1]	Distribution [1]
400-1	Equal Opportunity Agreement	3	B-O	O-L, C-B, C-FHA.
400-3	Notice to Contractors and Applicants	4	L-O	O-Con, C-B, C-L, C-FHA.
400-6	Compliance Statement	4	L and Con 3-0.	O-L, C-Con, C-B, C-FHA.
441-22	Certification of Disaster Losses	2	B-O	O-L, C-FHA.
449-6	Application for Guaranteed Loan (Farmer Programs).	2	B-O	O-L, C-FHA.
449-7	Assumption Agreement for Guaranteed Loans (New Terms).	4	B-O	O-L, C-B, 2C-FHA.
449-9	Request for Conditional Commitment to Guarantee Loan.	2	L-O	O-FHA, C-L.
449-11	Certificate of Acquisition or Construction	4	B and L and Con-O.	O-FHA, C-L, C-B, C-Con.
449-13	Denial Letter	2	FHA-O	O-L, C-FHA.
449-14	Conditional Commitment for Guarantee	2	FHA-O	O-L, C-FHA.
449-16	Request for Contract of Guarantee	2	L-O	O-FHA, C-L.
449-17	Contract of Guarantee	2	FHA-0	O-L, C-FHA.
449-18	Lenders or Holders Request for Approval	2	L-0	O-FHA, C-L.
449-19	Guarantee Fee Report	2	L-0	O-FHA, C-L b first report. O-FC, C-L subsequent reports.
449-20	Report of Loss	3	L-0	O-FHA, C-L, C-FHA.
449-24	Loan Subsidy Claim	2	L-0	O-FC, C-L.
471-7	Notice and Acknowledgment of Sale of Insured or Guaranteed Loan.	4	L-0	O-FC, C-FC, C-L, C-FHA.

[1] Signatures and distribution: L—lender; B—borrower or assumptor; FC—Finance Office; FHA—authorized FHA official; Con—contractor; O—original; C—copy. "lender" includes "holder."

§ 1843.90 [Amended]

12. In § 1843.90(c) the first sentence is amended to read:

Some FHA forms, such as Form FHA 449-6 and Form FHA 449-7 contain space for coding the race of the applicant for the loan or assumption.

§ 1843.91 [Reserved]

13. Section 1843.91 is removed and reserved.

((7 USC 1989); delegation of authority by the Secretary of Agriculture (7 CFR 2.23); delegation of authority by the Assistant Secretary for Rural Development (7 CFR 2.70))

Effective Date.—These amendments shall become effective on May 6, 1974.

Dated: March 26, 1974.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.74-10159 Filed 5-3-74;8:45 am]

Title 24—Housing and Urban Development

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 258]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

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

§ 1914.4 **Status of participating communities.**

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
Delaware	New Castle	Newark, city of	I 10 003 0000 04 through I 10 003 0000 12	Division of Soil and Water Conservation, Department of National Resources and Environmental Control, Tatnall Bldg., Capitol Complex, Dover, Del. 19901. Delaware Insurance Department, 21 The Green, Dover, Del. 19901.	City of Newark Planning Department P.O. Box 390, Newark, Del. 19711.	June 5, 1970. Emergency. Apr. 29, 1974. Regular.
Do	do	New Castle, city of.	I 10 003 0000 04 through I 10 003 0000 12	do	Town Hall, New Castle, Del. 19720.	Do.

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

Issued: April 23, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.74–10098 Filed 5–3–74;8:45 am]

[Docket No. FI 260]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

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

§ 1914.4 **Status of participating communities.**

* * * * * * *

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area Identified	State map repository	Local map repository
Arkansas	Mississippi	Blytheville, city of	Apr. 30, 1974. Emergency.	Nov. 16, 1973		
Colorado	La Plata	Durango, city of	do	Nov. 30, 1973		
Idaho	Bannock	Unincorporated areas	do			
Illinois	Cook	Sauk Village, village of	do	Mar. 8, 1974		
Do	Henderson	Oquawka, village of	do	Dec. 7, 1973		
Do	Jackson	Grand Tower, city of	do	Jan. 9, 1974		
Do	Pike	Hull, village of	do			
Massachusetts	Essex	Haverhill, city of	do			
Minnesota	Carlton	Unincorporated areas	do			
Do	Clearwater	Bagley, city of	do	Mar. 29, 1974		
Do	Houston	Unincorporated areas	do			
Do	Le Sueur	New Prague, city of	do	May 10, 1974		
Do	Lyon	Minneota, city of	do	May 3, 1974		
Do	Mower	Mapleview, city of	do			
Do	Norman	Ada, city of	do	May 10, 1974		
Do	Renville	Unincorporated areas	do			
Do	St. Louis	Hibbing, city of	do			
Do	Steele	Unincorporated areas	do			
Do	Swift	do	do			

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area Identified	State map repository	Local map repository
Do.	Todd	Clarissa, city of	do.	May 3, 1974		
Do.	Traverse	Browns Valley, city of	do.	May 10, 1974		
New Jersey	Ocean	Ocean, township of	do.			
New York	Schenectady	Schenectady, city of	do.	May 10, 1974		
North Carolina	Guilford	Unincorporated areas	do.			
Oklahoma	Woodward	Woodward, city of	do.			
Oregon	Malheur	Unincorporated areas	do.			
Pennsylvania	Allegheny	Port Vue, borough of	do.	Jan. 10, 1974		
Do.	do.	Whitehall, borough of	do.			
Do.	Lycoming	Brady, township of	do.			
Do.	Montgomery	Lower Salford, township of	do.			
South Dakota	Lawrence	Unincorporated areas	do.			
Utah	Sevier	Salina, city of	do.	Jan. 23, 1974		
Do.	Weber	Uintah, town of	do.			
Vermont	Caledonia	St. Johnsbury, town of	do.			
Do.	Windsor	Woodstock, town of	do.			
Washington	Okanogan	Unincorporated areas	do.			
Do.	Snohomish	Edmonds, city of	do.			

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

Issued: April 24, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.74–10100 Filed 5–3–74;8:45 am]

[Docket No. FI 261]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

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

§ 1914.4 **Status of participating communities.**

* * * * * * *

State	County	Location	Hazard area identified	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
*	*	*	*	*	*	*
Florida	Broward	Sunrise, city of	Feb. 22, 1974			May 3, 1974, Emergency.
Idaho	Benewah	Unincorporated areas.				Do.
Kentucky	Pendleton	Butler, city of	Jan. 16, 1974			Do.
Michigan	Genesee	Gaines, township of.				Do.
Minnesota	St. Louis	Hoyt Lakes, city of.				Do.
Mississippi	Tallahatchie	Webb, town of				Do.

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

Issued: April 26, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.74–10101 Filed 5–3–74;8:45 am]

[Docket No. FI 262]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

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

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area Identified	State map repository	Local map repository
*	*	*	*	*	*	*
Alabama	Jefferson	Unincorporated areas	May 1, 1974, Emergency			
Arkansas	Hot Spring	Malvern, city of	do	Nov. 16, 1973		
Illinois	Boone	Unincorporated areas	do			
Do	Pike	do	do			
Do	St. Clair	Brooklyn, village of	do	Mar. 1, 1974		
Do	do	Mascoutah, city of	do	do		
Do	Union	Unincorporated areas	do			
Do	Washington	Okawville, village of	do	Mar. 1, 1974		
Do	Whiteside	Rock Falls, city of	do	Mar. 22, 1974		
Iowa	Clayton	Guttenberg city of	do	Feb. 8, 1974		
Kentucky	Campbell	Bellevue, city of	do	Feb. 1, 1974		
New Mexico	Curry	Clovis, city of	do			
North Dakota	Pembina	Unincorporated areas	do			

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

Issued: April 24, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.74–10102 Filed 5–3–74;8:45 am]

[Docket No. FI 263]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

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

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area Identified	State map repository	Local map repository
*	*	*	*	*	*	*
Florida	Flagler	Flagler Beach, city of	May 2, 1974, Emergency.	Feb. 1, 1974		
Minnesota	Benton	Foley, city of	do	Mar. 29, 1974		
Do	Brown	Springfield, city of	do	Nov. 30, 1973		
Do	Clay	Barnesville, city of	do	May 10, 1974		
Do	Freebron	Glenville, city of	do	Mar. 8, 1974		
Do	Hennepin	Hopkins, city of	do	Nov. 9, 1973		
Do	Mower	Leroy, city of	do			
Do	Nobles	Adrian, city of	do	May 3, 1974		
Tennessee	Smith	Carthage, city of	do			
Texas	Brazos	Bryan, city of	do	Mar. 15, 1974		

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

Issued: April 25, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.74–10103 Filed 5–3–74;8:45 am]

[Docket No. FI 259]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

The Federal Insurance Administrator finds that comment and public procedure and the use of delayed effective dates in identifying the areas of communities which have special flood or mudslide hazards, in accordance with 24 CFR Part 1915, would be contrary to the public interest. The purpose of such identifications is to guide new development away from areas threatened by flooding. Since this publication is merely for the purpose of informing the public of the location of areas of special flood hazard and has no binding effect on the sale of flood insurance or the commencement of construction, notice and public procedure are impracticable, unnecessary, and contrary to the public interest. Inasmuch as this publication is not a substantive rule, the identification of special hazard areas shall be effective on the date shown. Accordingly, § 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 **List of communities with special hazard areas.**

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazard
*	*	*	*	*	*	*
Delaware	New Castle	Newark, city of	H 10 003 0000 04 through H 10 003 0000 12	Division of Soil and Water Conservation, Department of National Resources and Environmental Control Tatnall Bldg., Capitol Complex, Dover, Del. 19901. Delaware Insurance Department, 21 The Green, Dover, Del. 19901.	City of Newark Planning Department, P.O. Box 390, Newark, Del. 19711.	Dec. 7, 1971.
Do	do	New Castle, city of.	H 10 003 0000 04 through H 10 003 0000 12	do	Town Hall, New Castle, Del. 19720	Do.

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

Issued: April 23, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.74–10099 Filed 5–3–74;8:45 am]

[Docket No. FI 257]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

The Federal Insurance Administrator finds that comment and public procedure and the use of delayed effective dates in identifying the areas of communities which have special flood or mudslide hazards, in accordance with 24 CFR Part 1915, would be contrary to the public interest. The purpose of such identifications is to guide new development away from areas threatened by flooding. Since this publication is merely for the purpose of informing the public of the location of areas of special flood hazard and has no binding effect on the sale of flood insurance or the commencement of construction, notice and public procedure are impracticable, unnecessary, and contrary to the public interest. Inasmuch as this publication is not a substantive rule, the identification of special hazard areas shall be effective on the date shown. Accordingly, § 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of communities with special hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
*	*	*	*	*	*	*
California	San Diego	Oceanside, city of	H 06 073 2510 01 through H 06 073 2510 15	Department of Water Resources, P.O. Box 388, Sacramento, Calif. 95802. California Insurance Department, 107 South Broadway, Los Angeles, Calif. 90012, and 1407 Market St., San Francisco, Calif. 94103.	Mayor, City Hall, 706 3d St., Oceanside, Calif. 92054.	May 10, 1974.
Illinois	Lake	Waukegan, city of	H 17 097 9100 01 through H 17 097 9100 08	Governor's Task Force on Flood Control, P.O. Box 475, Lisle, Ill. 60532. Illinois Insurance Department, 509 State Office Bldg., Springfield, Ill. 62702.	City Hall, 106 N. Utica St., Waukegan, Ill. 60085.	Do.
Kentucky	Jackson	McKee, city of	H 21 109 2135 01 through H 21 109 2135 03	Division of Water, Kentucky Department of Natural Resources, Capitol Plaza, Office Tower, Frankfort, Ky. 40601. Kentucky Insurance Department, Old Capitol Annex, Frankfort, Ky. 40601.	Mayor, City Hall, McKee, Ky. 40447.	Do.
Michigan	Wayne	Trenton, city of	H 26 163 4900 01 through H 26 163 4900 03	Water Resources Commission, Bureau of Water Management, Stevens T. Mason Bldg., Lansing, Mich. 48926. Michigan Insurance Bureau, 111 N. Mosmer St., Lansing, Mich. 48913.	Engineering Department, 2800 3d St., Trenton, Mich. 48183.	Do.
Texas	Cameron	Rio Hondo, town of.	H 48 061 5790 01 through H 48 061 5790 02	Texas Water Development Board, P.O. Box 13087, Capitol Station, Austin, Tex. 78711. Texas Insurance Department, 1110 San Jacinto St., Austin, Tex. 78701.	Mayor, P.O. Box 396, Rio Hondo, Tex. 78583.	Do.
Do.	Collin	Plano, city of	H 48 085 5390 01 through H 48 085 5390 13	do	Mayor, Box 358, Plano, Tex. 75074.	Do.
Do.	Culberson	Van Horn, town of.	H 48 109 7140 01 through H 48 109 7140 03	do	Mayor, City Hall, Van Horn, Tex. 79855.	Do.
Do.	Lavaca	Yoakum, city of	H 48 285 7630 01 through H 48 285 7630 04	do	City Manager, Municipal Bldg., Yoakum, Tex. 77995.	Do.
Do.	Lynn	Tahoka, city of	H 48 305 6740 01 through H 48 305 6740 02	do	Mayor, Tahoka, Tex. 79373.	Do.

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

Issued: April 24, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.74–10097 Filed 5–3–74;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 565–74]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Miscellaneous Amendments

This order makes certain further changes in the structure and organizational relationships within the Department of Justice. Its purpose is to improve the management and operation of the Department.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1 of Subpart A of Part 0 is revised to read as follows:

§ 0.1 Organizational Units.

The Department of Justice shall consist of the following principal organizational units:

OFFICES

Office of the Attorney General
Office of the Deputy Attorney General
Office of the Solicitor General
Office of Legal Counsel
Office of Legislative Affairs
Office of Public Information
Office of Management and Finance
Office of Criminal Justice
Office of Watergate Special Prosecution Force
Office of the Pardon Attorney
Community Relations Service
Executive Office for United States Attorneys

DIVISIONS

Antitrust Division
Civil Division
Civil Rights Division
Criminal Division
Land and Natural Resources Division
Tax Division

BUREAUS

Federal Bureau of Investigation
Bureau of Prisons
Drug Enforcement Administration
Immigration and Naturalization Service
Law Enforcement Assistance Administration
United States Marshals Service

BOARDS

Board of Immigration Appeals
Board of Parole

§ 0.6 [Revoked]

2. Section 0.6 of Subpart B is revoked and reserved.

§ 0.7 [Amended]

3. The preambular paragraph of §0.7 of Subpart B is revised to read as follows:

The Office of Public Information is headed by a Director of Public Information. Under the general supervision of the Attorney General and the direction of the Deputy Attorney General the Director shall:

* * * * *

4. Section 0.7 is amended by revoking and reserving paragraph (g).

§§ 0.8—0.10 [Revoked]

5. Sections 0.8, 0.9, and 0.10 of Subpart B are revoked.

6. Section 0.15 of Subpart C is revised to read as follows:

§ 0.15 Deputy Attorney General.

(a) The Deputy Attorney General is authorized to exercise all the power and authority of the Attorney General specified in § 0.5 of Subpart B of this part, unless any such power or authority is required by law to be exercised by the Attorney General personally or has been specifically delegated to another Department official.

(b) The Deputy Attorney General shall act as Attorney General and perform all the duties of the Office of Attorney General in case of a vacancy in that office or in case of the absence or disability of the Attorney General and shall:

(1) Assist the Attorney General in the development of broad Department program policy and in the overall supervision and direction of the Department, including coordination of the activities of the divisions and other organizational units of the Department.

(2) Prepare, for the consideration of the Attorney General, recommendations for Presidential appointments to judicial positions and positions within the Department.

(3) Exercise the power and authority vested in the Attorney General and in the Law Enforcement Assistance Administration to take final action in matters pertaining to:

(i) the employment, separation, and general administration of personnel in General Schedule grades GS–16 through GS–18, or the equivalent, and of attorneys regardless of grade or pay in the Department; and

(ii) the appointment of Assistant U.S. Attorneys and other attorneys to assist U.S. Attorneys when the public interest so requires, and fixing their salaries.

(4) Administer the Attorney General's recruitment program for Honor Law Graduates and judicial law clerks.

(5) Coordinate and control the Department's reaction to civil disturbances.

(6) Coordinate the Department's response to requests for production or disclosure of information under 5 U.S.C. 552(a). (See Part 16(A) of this Chapter).

(7) Coordinate Departmental liaison with the White House staff and the Executive Office of the President.

(8) Perform such other duties and functions as may be especially assigned from time to time by the Attorney General.

(c) The Deputy Attorney General may review any personnel action taken by any officer of the Department.

7. Section 0.17 of Subpart C is revoked and the following new § 0.17 is inserted in its place:

§ 0.17 Office of criminal justice.

The Office of Criminal Justice is established in the Office of the Deputy Attorney General to provide an overview of problems in the criminal justice system and is headed by a Director. Under the general supervision of the Deputy Attorney General, the Director shall initiate, implement and evaluate proposals:

(a) To improve the effectiveness and the fairness of crime control and criminal justice administration; and

(b) To promote consistency and coordination in the handling of accused and convicted offenders by law enforcement, court, and correctional agencies in the Federal and District of Columbia systems.

§ 0.20 [Amended]

8. Paragraph (e) of § 0.20 of Subpart D relating to the Office of the Solicitor General is amended by adding "and the Deputy Attorney General" after "Assist the Attorney General".

9. Paragraph (m) of § 0.25 of Subpart E is amended by inserting "or the Deputy Attorney General" immediately after "The Attorney General" and the introductory text is revised to read as follows:

§ 0.25 General functions.

Subject to the general supervision of the Attorney General and the direction of the Deputy Attorney General the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Office of Legal Counsel:

* * * * *

10. Paragraph (d) of § 0.27 of Subpart E–1 is amended by adding "or the Deputy Attorney General" at the end and the introductory text is revised to read as follows:

§ 0.27 General functions.

Subject to the general supervision of the Attorney General and the direction of the Deputy Attorney General the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Office of Legislative Affairs:

* * * * *

11. Paragraph (r) of § 0.75 of Subpart O is revoked and the heading and introductory paragraph are revised to read as follows:

§ 0.75 Policy functions.

The Assistant Attorney General for Administration shall head the Office of Management and Finance and shall provide advice relating to basic Department policy for budget and financial management, auditing, personnel management and training, automatic data processing and telecommunications, security and for all matters pertaining to organization, management, and administration. Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or

supervised by, the Assistant Attorney General for Administration:

12. The introductory paragraph and paragraphs (d) and (q) of § 0.76 are revised to read as follows:

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the functions delegated to the Assistant Attorney General for Administration by this Subpart 0 shall also include the following specific policy functions:

* * * * *

(d) Reviewing settlements of claims, arising from Departmental operations, which are made by the various organizational units of the Department under the Federal Claims Collection Act of 1966 and to exercise the claims settlement authority as to all other organizational units of the Department (31 U.S.C. 952).

* * * * *

(q) Exercising, except for the authority conferred in § 0.15 of Subpart C and §§ 0.137 and 0.138 of Subpart X, and subject to the discretionary review of the Deputy Attorney General, the power and authority vested in the Attorney General to take final action on matters pertaining to the employment, separation, and general administration of personnel in General Schedule grades GS–1 through GS–15, and in wage board positions; to classify positions in the Department under the General Schedule and wage board systems regardless of grade; to postaudit and correct any personnel action within the Department; and to inspect at any time any personnel operations of the various organizational units of the Department.

13. Section 0.77 of Subpart 0 is redesignated § 0.78 and the following new § 0.77 is inserted:

§ 0.77 Operational functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Assistant Attorney General for Administration shall provide all direct administrative support services to the Offices, Divisions and Boards of the Department, and to the U.S. Marshals Service, except where independent administrative authority has been delegated to the Director, U.S. Marshals Service. These services shall include the following:

(a) Planning, directing and coordinating the personnel management program; providing personnel services including employment and staffing, employee relations, and classification, and including the employment, separation and general administration of employees, except attorneys, in General Schedule grades GS–15 and below, or equivalent pay levels.

(b) Formulating policies and plans for efficient administrative management and organization and developing and coordinating all management studies and reports on the operations of the Offices, Divisions and Boards.

(c) Planning, justifying, and compiling the annual and supplemental budget estimates of the Offices, Divisions and Boards.

(d) Planning, directing and executing accounting operations for the Offices, Divisions and Boards.

(e) Providing information systems analysis, design, computer programming, and systems implementation services consistent with Departmental information systems plans, policies and procedures.

(f) Implementing and administering management programs for the creation, organization, maintenance, use, and disposition of Federal records, and providing mail and messenger service.

(g) Implementing and administering programs for procurement, personal property, and supply, motor vehicle and space management.

(h) Operating and maintaining the Department Library.

(i) Routing and controlling correspondence, maintaining indices of legal cases and matters, replying to correspondence not assignable to a division, safeguarding confidential information, attesting to the correctness of records, and related matters.

(j) Accepting service of summons, complaints or other papers, as a representative of the Attorney General, under the Federal Rules of Civil and Criminal Procedure or in any suit within the purview of subsection (a) of Section 208 of the Department of Justice Appropriation Act, 1953 (66 Stat. 560 (43 U.S. 666(a))).

(k) Making the certificates required in connection with the payment of expenses of collecting evidence: *Provided*, That each such certificate shall be approved by the Attorney General.

(l) Determining the amounts of bonds required of U.S. Marshals (28 U.S.C. 564).

(m) Designating a highway mileage guide containing a shortline nationwide table of distances for use in determining mileage payable to witnesses (28 U.S.C. 1821).

(n) Authorizing payment of extraordinary expenses incurred by ministerial officers of the United States in executing acts of Congress (28 U.S.C. 1929).

(o) Representing the Attorney General with the Secretary of State in arranging for reimbursement by foreign governments of expenses incurred in extradition cases, and certifying to the Secretary the amounts to be paid to the United States as reimbursement (18 U.S.C. 3195).

14. The introductory paragraph of § 0.85 of Subpart P is revised to read as follows:

§ 0.85 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Director of the Federal Bureau of Investigation shall:

* * * * *

15. The introductory paragraph of § 0.95 of Subpart Q is revised to read as follows:

§ 0.95 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Director of the Bureau of Prisons shall direct all activities of the Bureau of Prisons, including:

* * * * *

16. The introductory paragraph of § 0.100 of Subpart R is revised to read as follows:

§ 0.100 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following described matters are assigned to, and shall be conducted, handled, or supervised by, the Administrator of the Drug Enforcement Administration:

17. The introductory paragraph of § 0.101 of Subpart R is revised to read as follows:

§ 0.101 Specific functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Administrator shall be responsible for:

* * * * *

18. The introductory paragraph of § 0.105 of Subpart S is revised to read as follows:

§ 0.105 General functions.

Subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General, the Commissioner of Immigration and Naturalization shall:

* * * * *

19. A new § 0.138a is inserted immediately after § 0.138, to read as follows:

§ 0.138a U.S. Marshals Service.

The Director of the United States Marshals Service is authorized to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employment, direction, and general administration (including appointment, assignment, training, promotion, demotion, compensation, leave classification, and separation) of personnel in General Schedule grades GS–1 through GS–13 and in wage board positions, and to employ on a temporary basis experts or consultants or organizations thereof, including stenographic reporting services (5 U.S.C. 3109(b)). All personnel actions taken under this section shall be subject to postaudit and correction by the Assistant Attorney General for Administration.

§ 0.139 [Amended]

20. Paragraph (a) of § 0.139 of Subpart X is amended by deleting "the Deputy Attorney General."

§§ 0.140, 0.143–0.145, 0.151 and 0.153 [Amended]

21. Sections 0.140, 0.143–0.145, 0.151 and 0.153 are amended by deleting "The

Deputy Attorney General," and by inserting "(including U.S. Attorneys)" immediately after "all other organizational units of the Department."

§ 0.141 [Amended]

22. Section 0.141 is amended by deleting "The Deputy Attorney General," and by inserting "the Director of the United States Marshals Service," immediately after "the Administrator of the Drug Enforcement Administration."

§ 0.142 [Amended]

23. Section 0.142 is amended by deleting "The Deputy Attorney General," by inserting "the Director of the United States Marshals Service" immediately after "the Administrator of the Drug Enforcement Administration," and by inserting "(including U.S. Attorneys)" immediately after "all other organizational units of the Department."

24. Section 0.147 is revised to read as follows:

§ 0.147 Certification of obligations.

The following-designated officials are authorized to make the certifications required by section 1311(c) of the Supplemental Appropriations Act, 1955 (68 Stat. 831 (31 U.S.C. 200(c))); for the Federal Bureau of Investigation, the Assistant Director, Administrative Division; for the Bureau of Prisons, the Assistant Director, Administrative Services; for Federal Prison Industries, the Secretary; for the Immigration and Naturalization Service, the Assistant Commissioner, Administrative Division; for the Drug Enforcement Administration, the Director of Administration and Management; for the Law Enforcement Assistance Administration, the Chief, Administrative Services Division; and for all other organizational units of the Department (including U.S. Attorneys and Marshals), the Assistant Attorney General for Administration or the Director, Budget and Finance Staff, Office of Management and Finance.

§ 0.148 [Amended]

25. Section 0.148 is amended by deleting "for the legal activities, the Deputy Attorney General" immediately before "for the Federal Bureau of Investigation, the Director," by inserting "for the United States Marshals Service, the Director" immediately before "and for all other organizational units of the Department," and by inserting "(including U.S. Attorneys)" immediately after "all other organizational units of the Department."

§ 0.149 [Amended]

26. Section 0.149 is amended by deleting "The Deputy Attorney General," by inserting "the Director of the United States Marshals Service" immediately after "Drug Enforcement Administration," and by inserting "(including U.S. Attorneys and Marshals)" immediately after "all other organizational units of the Department."

§§ 0.152 and 0.155 [Amended]

27. Sections 0.152 and 0.155 are amended by deleting "The Deputy Attorney General", and by inserting "(including U.S. Attorneys and Marshals)" immediately after "all other organizational units of the Department."

§ 0.154 [Amended]

28. Section 0.154 is amended by deleting "The Deputy Attorney General," by inserting "the Director of the United States Marshals Service" immediately after "Drug Enforcement Administration," and by inserting "(including U.S. Attorneys)" immediately after "all other organizational units of the Department."

§ 0.172 [Amended]

29. Paragraph (a) of § 0.172 of Subpart Y is amended by inserting "the Director of the United States Marshals Service" immediately after "Commissioner of Immigration and Naturalization" and by inserting "the United States Marshals Service" immediately after "the Immigration and Naturalization Service."

30. Section 0.190 of Subpart BB is revised to read as follows:

§ 0.190 Changes within organizational units.

The head of each Office, Division, Bureau or Board may from time to time propose the establishment, transfer, reorganization or termination of major functions within his organizational unit as he may deem necessary or appropriate. In each instance, the head of the Office, Division, Bureau or Board shall submit the proposed change in writing to the Assistant Attorney General for Administration who shall evaluate it and submit the proposed change along with his recommendation to the Deputy Attorney General. Final authority to implement the proposed change is contingent upon the approval of the Attorney General.

§ 16.3 [Amended]

31. Paragraph (a) of § 16.3 of Subpart A of Part 16 is amended by substituting "Office of the Deputy Attorney General for "Office of Public Information, Office of the Attorney General" each place it appears.

32. Section 16.4 is revised to read as follows:

§ 16.4 Requests referred to division primarily concerned.

(a) Referral to responsible division. The Deputy Attorney General shall, promptly upon receipt of a request for Department records, ascertain which division of the Department has primary concern with the records requested. As used in this subpart, the term "division" includes all divisions, bureaus, offices, services, administrations, and boards of the Department, the Pardon Attorney and Federal Prison Industries except as otherwise expressly provided. He shall then promptly forward the request to the responsible division and notify the requester of his action. The Deputy Attorney General shall maintain or be furnished with a file copy of each request received, and records to show the date of its receipt from the requester, the division to which it was forwarded, and the date on which it was forwarded. For all purposes under this subpart the Board of Immigration Appeals and the Bureau of Prisons shall be considered the responsible division with respect to requests sent directly to them pursuant to § 16.3 hereof.

(b) Deputy Attorney General shall assure timely response. The Office of the Deputy Attorney General shall periodically review the practices of the divisions in meeting the time requirements set out in § 16.5 hereof, and take such action to promote timely responses as it deems appropriate.

§ 16.5 [Amended]

33. Section 16.5 is amended by substituting "Deputy Attorney General" for "Executive Secretary" each place it appears and by substituting "Office of the Deputy Attorney General" for "Executive Secretariat."

§ 16.7 [Amended]

34. Paragraph (d) of § 16.7 is amended by substituting "Deputy Attorney General" for "Executive Secretary" each place it appears.

§ 16.8 [Amended]

35. Section 16.8 is amended by substituting "Deputy Attorney General" for "Executive Secretary" each place it appears.

This order shall be effective as of May 11, 1974, except that the merger of the Office of Legal Administration into the Office of Management and Finance shall be effective immediately.

Dated: April 26, 1974.

WILLIAM B. SAXBE,
Attorney General.

[FR Doc.74-10334 Filed 5-3-74;8:45 am]

Proposed Rules

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 20]

ESTATE TAXATION

Proposal on Certain Debt Obligations

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by June 5, 1974. Written comments or suggestions which are not exempt from disclosure by the Internal Revenue Service may be inspected by any person upon compliance with 26 CFR 601.702(d)(9). The provisions of 26 CFR 601.601 (b) shall apply with respect to the designation of portions of comments or suggestions as exempt from disclosure. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by June 5, 1974. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)).

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

ESTATE TAXATION OF CERTAIN DEBT OBLIGATIONS WHERE INTEREST EQUALIZATION TAX APPLIES

This document contains proposed amendments to conform the Estate Tax Regulations (26 CFR Part 20) to the amendment made to the Internal Revenue Code of 1954 by section 3(a) of the Interest Equalization Tax Extension Act of 1973 (Pub. L. 93-17, 87 Stat. 12), relating to estate taxation of certain debt obligations where interest equalization tax applies.

Section 3(a) of the Act amended section 2104(c) of the Code to provide that certain debt obligations of a domestic corporation or partnership held by a nonresident alien at the time of his death will be treated as property outside the United States and not subject to the estate tax. This treatment is only extended to such debt obligations if the interest thereon, where received by the decedent at the time of his death, would have been treated as income from sources outside the United States by reason of section 861(a)(1)(G) of the Code, relating to certain debt obligations for which an election has been made under section 4912(c) of the Code to treat such debt obligations as the obligations of a foreign obligor the acquisition of which by a United States person would be subject to imposition of the interest equalization tax.

Section 3(a) of the Act applies with respect to estates of decedents dying after December 31, 1972, except that for debt obligations of a foreign corporation assumed by a domestic corporation treated as issued under section 4912(c)(2) during 1973, section 3(a) of the Act applies with respect to estates of decedents dying after December 31, 1973.

Proposed amendments to the regulations. In order to conform the Estate Tax Regulations (26 CFR Part 20) to the amendment of section 2104(c) of the Internal Revenue Code of 1954 made by section 3(a) of the Interest Equalization Tax Extension Act of 1973 (87 Stat. 12), the regulations are hereby proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. Section 20.2104 is amended by revising subsection (c) and the historical note. These revised provisions read as follows:

§ 20.2104 Statutory provisions; property within the United States.

SEC. 2104. *Property within the United States.* * * *

(c) *Debt obligations.* For purposes of this subchapter, debt obligations of—

(1) A United States person, or

(2) The United States, a State or any political subdivision thereof, or the District of Columbia,

owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States. With respect to estates of decedents dying after December 31, 1969, deposits with a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business, shall, for purposes of this subchapter, be deemed property within the United States. This subsection shall not apply to a debt obligation to which section 2105(b) applies or to a debt obligation of a domestic corporation if any interest on such obligation, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(B) or section 861(a)(1)(G) as income from sources without the United States.

[Sec. 2104 as amended by sec. 108(c), Foreign Investors Tax Act 1966 (80 Stat. 1572); sec. 435(b), Tax Reform Act 1969 (83 Stat. 625); sec. 3(a), Interest Equalization Tax Extension Act 1973 (87 Stat. 12)]

Par. 2. Section 20.2104-1 is amended by revising paragraph (a)(7). The revised provision reads as follows:

§ 20.2104-1 Estates of nonresidents not citizens; property within the United States.

(a) *In general.* * * *

(7) In the case of an estate of a decedent dying on or after November 14, 1966, except as specifically provided otherwise in paragraph (d), (i), (j), (l), or (m) of § 20.2105-1, any debt obligation, including a bank deposit, the primary obligator of which is—

(i) A United States person (as defined in section 7701(a)(30)), or

(ii) The United States, a State or any political subdivision thereof, the District of Columbia, or any agency or instrumentality of any such government.

This paragraph applies irrespective of whether the written evidence of the debt obligation is treated as being the property itself or whether the decedent was engaged in business in the United States at the time of his death. For purposes of this subparagraph and paragraphs (k), (l), and (m) of § 20.2105-1, a debt obligation on which there are two or more primary obligators shall be apportioned among such obligators, taking into account to the extent appropriate under all the facts and circumstances any choate or inchoate rights of contribution existing among such obligators with respect to the indebtedness. The term "agency or instrumentality," as used in paragraph (a)(7)(ii) of this section, does not include a possession of the United States or an agency or instrumentality of a possession. Currency is not a debt obligation for purposes of this subparagraph.

* * * * *

Par. 3. Section 20.2105-1 is amended by adding at the end thereof a new paragraph (m). This added provision reads as follows:

§ 20.2105-1 Estates of nonresidents not citizens; property without the United States.

* * * * *

(m)(1) In the case of an estate of a decedent dying after December 31, 1972,

except as otherwise provided in paragraph (m)(2) of this section, any debt obligation to the extent that the primary obligator on the debt obligation is a domestic corporation or domestic partnership, if any interest thereon, were the interest received from such obligator by the decedent at the time of his death, would be treated under section 861(a)(1) as income from sources without the United States by reason of section 861(a)(1)(G) (relating to interest received on certain debt obligations with respect to which elections have been made under section 4912(c)) and the regulations thereunder. This paragraph applies whether or not (i) the obligation is in fact interest bearing, (ii) the written evidence of the debt obligation is treated as being the property itself, or (iii) the decedent was engaged in business in the United States at the time of his death. See paragraph (a)(7) of § 20.2104-1 for the treatment of a debt obligation on which there are two or more primary obligors.

(2) In the case of an estate of a decedent dying before January 1, 1974, this paragraph does not apply to any debt obligation of a foreign corporation assumed by a domestic corporation which is treated under section 4912(c)(2) as issued by such domestic corporation during 1973.

[FR Doc.74-10311 Filed 5-3-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 33]

SHERBURNE NATIONAL WILDLIFE REFUGE, MINN.

Hunting and Fishing

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222; 16 U.S.C. 715), and the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927 as amended; 16 U.S.C. 668dd), as delegated to the Director, Bureau of Sport Fisheries and Wildlife, by Chapter 2, Part 242 of the Departmental Manual, it is proposed to amend 50 CFR Part 33 by the addition of Sherburne National Wildlife Refuge, Minnesota, to the lists of areas open to sport fishing.

It has been determined that regulated sport fishing may be permitted as designated on the above refuge without detriment to the objectives for which the areas were established.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections, with respect to the proposed amendment, to the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240, on or before June 5, 1974. Accordingly, § 33.4, List of open areas; sport fishing, is proposed to be amended by the following addition.

MINNESOTA

SHERBURNE NATIONAL WILDLIFE REFUGE

LYNN A. GREENWALT,
Director, Bureau of Sport Fisheries and Wildlife.

APRIL 30, 1974.

[FR Doc.74-10325 Filed 5-3-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

PICLORAM

Proposed Interim Tolerances

As a result of anticipated shortages of 2,4-D and other herbicides effective in controlling broadleaf weeds during the 1974 growing season, consideration is being given to using mixtures of 2,4-D and picloram on growing barley and wheat in the States of Montana and North Dakota. The Montana Department of Agriculture, Helena MT 59601 and the North Dakota Department of Agriculture, Bismarck, ND 58501, jointly submitted a petition (FAP 4H5052) proposing establishment of tolerances for residues of the herbicide picloram (4-amino-3,5,6-trichloropicolinic acid) in flour and other milled fractions of barley and wheat. Levels were not specified for the proposed tolerances. (For a related document, see this issue of the FEDERAL REGISTER, page 15880.)

The Reorganization Plan No. 3 of 1970, published in the FEDERAL REGISTER of October 6, 1970 (35 FR 15623), transferred (effective December 2, 1970) to the Administrator of the Environmental Protection Agency the functions vested in the Secretary of Health, Education, and Welfare for establishing tolerances for pesticide chemicals under sections 406, 408, and 409 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346, 346a, and 348).

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. The following tolerances will be adequate to cover residues resulting from the proposed use of picloram on growing barley and wheat:

a. 1 part per million in flour,

b. 2 parts per million in milled fractions (except flour).

2. The above tolerances will protect the public health.

Therefore, pursuant to provisions of the Act (sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d)), it is proposed that Part 121 be amended by adding the following new section to Subpart D:

§ 121.1256 Picloram.

The following interim tolerances are established for residues of the herbicide picloram resulting from application of 2,4-D—picloram mixtures to growing barley and wheat during the 1974 growing season in the States of Montana and North Dakota:

2 parts per million in milled fractions (except flour) of barley and wheat.

1 part per million in flour of barley and wheat.

Interested persons may, on or before June 5, 1974, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets SW., Waterside Mall, Washington, D.C. 20460, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. All written submissions made pursuant to this proposal will be made available for public inspection at the office of the Hearing Clerk.

Dated: April 30, 1974.

JOHN B. RITCH, Jr.
Director, Registration Division.

[FR Doc.74-10365 Filed 5-3-74;8:45 am]

[21 CFR Parts 141a, 146a, 149h]

BENZATHINE PHENOXYMETHYL PENICILLIN

Proposed Recodification, Technical Changes, and Updating

The Commissioner of Food and Drugs proposes to amend 21 CFR Parts 141a and 146a as they apply to benzathine phenoxymethyl penicillin and to amend 21 CFR Part 149h by including monographs from Parts 141a and 146a which provide for the certification of benzathine phenoxymethyl penicillin drug products that are currently being marketed.

In addition to recodification, the following revisions and updating of the monographs are proposed:

1. The regulations providing for the certification of benzathine phenoxymethyl penicillin (powder) for oral suspension and benzathine phenoxymethyl penicillin (for aqueous injection veterinary) are to be deleted since requests for certification are no longer being received.

2. The provision for veterinary use of benzathine phenoxymethyl penicillin oral suspension originally provided for under § 146a.109 is to be deleted since this drug product is not used to treat animals.

3. For the bulk form of benzathine phenoxymethyl penicillin:

a. The minimum potency is to be raised from 1,050 units per milligram to 1,060 units per milligram.

b. An upper potency limit of 1,240 units per milligram is to be established.

c. The specifications and test methods for sterility are to be deleted since sterile dosage forms are not being submitted for certification.

d. A lower moisture limit of 5 percent is to be established.

e. An upper limit of 105 percent of theory is to be established for phenoxymethyl penicillin content.

4. In the regulations providing for certification of benzathine phenoxymethyl penicillin oral suspension, the lower potency limit is to be raised to 90 percent and an upper potency limit of 120 percent is to be established.

Therefore, under provisions of the Federal Food, Drug, and Cosmetic Act (secs. 507, 512(n), 59 Stat. 463, as amended, 82 Stat. 350–351; (21 U.S.C. 357, 360b(n))) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that Parts 141a, 146a, and 149h be amended as follows:

PART 141a—PENICILLIN AND PENICILLIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

§§ 141a.83, 141a.87, and 141a.99 [Revoked]

1. In Part 141a by revoking and reserving for future use §§ 141a.83, 141a.87, and 141a.99.

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

§§ 146a.19, 146a.105, and 146a.109 [Revoked]

2. In Part 146a by revoking and reserving for future use §§ 146a.19, 146a.105, and 146a.109.

PART 149h—PHENOXYMETHYL PENICILLIN

3. In Part 149h by adding two new sections as follows:

§ 149h.4 Benzathine phenoxymethyl penicillin.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality and purity.* Benzathine phenoxymethyl penicillin is the benzathine salt of phenoxymethyl penicillin. It is so purified and dried that:

(i) Its potency is not less than 1,060 units and not more than 1,240 units per milligram.

(ii) It passes the safety test.

(iii) Its moisture content is not less than 5.0 percent and not more than 8.0 percent.

(iv) Its pH in a saturated aqueous solution is not less than 4.0 and not more than 6.5.

(v) Its phenoxymethyl penicillin content is not less than 62.3 percent and not more than 72.5 percent.

(vi) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

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

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, phenoxymethyl penicillin content, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained from the iodometric assay shall be conclusive:

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Dissolve an accurately measured representative portion of the sample in sufficient absolute methyl alcohol to give a solution of convenient concentration. Immediately further dilute with 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to the reference concentration of 1.0 unit of phenoxymethyl penicillin per milliliter (estimated).

(ii) *Iodometric assay.* Proceed as directed in § 141.506 of this chapter.

(2) *Safety.* Proceed as directed in § 141.5 of this chapter.

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

(4) *pH.* Proceed as directed in § 141.503 of this chapter, using a saturated aqueous solution prepared by adding approximately 30 milligrams per milliliter.

(5) *Phenoxymethyl penicillin content.* Accurately weigh approximately 50 milligrams of sample, dissolve in absolute methyl alcohol, and dilute to 100 milliliters with absolute methyl alcohol. Treat a portion of the phenoxymethyl penicillin working standard in the same manner. Using a suitable spectrophotometer equipped with a quartz cell and absolute methyl alcohol as the blank, determine the absorbance at 276 nanometers. Calculate the percent phenoxymethyl penicillin content as follows:

$$\text{Percent phenoxymethyl penicillin} = \frac{\text{Absorbance of sample} \times \text{Weight in milligrams of standard} \times \text{Percent phenoxymethyl penicillin in standard}}{\text{Absorbance of standard} \times \text{Weight in milligrams of sample}}$$

(6) *Crystallinity.* Proceed as directed in § 141.504(a) of this chapter.

§ 149h.20 Benzathine phenoxymethyl penicillin oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Benzathine phenoxymethyl penicillin oral suspension contains benzathine phenoxmethyl penicillin and one or more suitable dispersing agents, buffer substances, preservatives, colorings, and flavorings. Each milliliter contains benzathine phenoxymethyl penicillin equivalent to 17.7 milligrams (30,000 units) or 35.4 milligrams (60,000 units) of phenoxymethyl penicillin. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of phenoxymethyl penicillin that it is represented to contain. Its pH is not less than 6.0 and not more than 7.0. The benzathine phenoxymethyl penicillin used conforms to the standards prescribed by § 149h.4(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

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

(i) Results of tests and assays on:

(*a*) The benzathine phenoxymethyl penicillin used in making the batch for potency, safety, moisture, pH, phenoxymethyl penicillin content, and crystallinity.

(*b*) The batch for potency and pH.

(ii) Samples required:

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

(*b*) The batch: A minimum of 6 immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained from the iodometric assay shall be conclusive:

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Dissolve an accurately measured representative volume of the sample in sufficient absolute methyl alcohol to give a solution of convenient concentration. Immediately further dilute an aliquot with 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to the reference concentration of 1.0 unit of phenoxymethyl penicillin (estimated).

(ii) *Iodometric assay.* Proceed as directed in § 141.506 of this chapter, using a representative aliquot of the drug prepared for assay as described in paragraph (b)(2) of that section.

(2) *pH.* Proceed as directed in § 141.503 of this chapter, using the undiluted suspension.

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

Dated: April 29, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74–10301 Filed 5–3–74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 180]

PICLORAM

Proposed Interim Tolerances

As a result of anticipated shortages of 2,4–D and other herbicides effective in controlling broadleaf weeds during the 1974 growing season, consideration is being given to using mixtures of 2,4–D

and picloram on growing barley and wheat in the States of Montana and North Dakota. The Montana Department of Agriculture, Helena, MT 59601 and the North Dakota Department of Agriculture, Bismarck, ND 58501, jointly submitted a petition (PP 4E1489) proposing establishment of tolerances for residues of the herbicide picloram (4-amino-3,5,6-trichloropicolinic acid) in or on the grain, green forage and straw of barley and wheat and in the organs and tissues of hogs, horses and poultry. Levels were not specified for any of the proposed tolerances. (For a related document, see this issue of the FEDERAL REGISTER, page 15879.)

The Reorganization Plan No. 3 of 1970, published in the FEDERAL REGISTER of October 6, 1970 (35 FR 15623), transferred (effective December 2, 1970) to the Administrator of the Environmental Protection Agency the functions vested in the Secretary of Health, Education, and Welfare for establishing tolerances for pesticide chemicals under sections 406, 408, and 409 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346, 346a, and 348).

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. The herbicide is useful for the purpose for which the tolerances are proposed.

2. The following tolerances will be adequate to cover residues from the proposed use:

a. 1 part per million in or on green forage and straw of barley and wheat.

b. 0.5 part per million in or on grain of barley and wheat.

c. 5 parts per million in kidney of hogs and horses.

d. 0.5 part per million in liver of hogs and horses.

e. 0.2 part per million in meat, fat, and meat byproducts (except kidney and liver) of hogs and horses.

f. 0.05 part per milion in eggs and the meat, fat, and meat byproducts of poultry.

3. Existing tolerances for residues of picloram in the kidney of cattle, goats, and sheep at 5 parts per million; the liver of cattle, goats, and sheep at 0.5 part per million; the meat, fat, and meat byproducts (except kidney and liver) of cattle, goats, and sheep at 0.2 part per million; and in milk at 0.05 part per million are adequate to cover residues of picloram from the proposed and established uses.

4. The proposed tolerances will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; (21 U.S.C. 346a(e))), it is proposed that § 180.292 be amended by adding the following new paragraph thereto:

§ 180.292 4-Amino-3,5,6-trichloropicolinic acid; tolerances for residues.

* * * * *

Interim tolerances are established for residues of the herbicide picloram (4-amino-3,5,6-trichloropicolinic acid) in or on the following raw agricultural commodities when present therein or on as a result of application of 2,4-D-picloram mixtures to growing barley and wheat during the 1974 growing season in the States of Montana and North Dakota:

5 parts per million in kidney of hogs and horses.

1 part per million in green forage and straw of barley and wheat.

0.5 part per million in or on grain of barley and wheat.

0.5 part per million in liver of hogs and horses.

0.2 part per million in meat, fat, and meat byproducts (except kidney and liver) of hogs and horses.

0.5 part per million in eggs and the meat, fat and meat byproducts of poultry.

Interested persons may, on or before June 5, 1974, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, SW., Waterside Mall, Washington, D.C. 20460, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. All written submissions made pursuant to this proposal will be made available for public inspection at the office of the Hearing Clerk.

Dated: April 30, 1974.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.74-10366 Filed 5-3-74;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 561]

[No. 74-362]

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Proposed Amendment Relating to Scheduled Items

The Federal Home Loan Bank Board considers it advisable to propose to amend Part 561 of the rules and regulations for Insurance of Accounts (12 CFR Part 561) by revising the definition of scheduled items in § 561.15 thereof.

At present, § 561.15 defines scheduled items to mean, inter alia, slow loans (including deliquent mobile home loans) as defined in § 561.16, real estate owned (REO), loans secured by REO under certain circumstances, and REO which has been transferred to certain business entities, including service corporations, to the extent that such REO would have been included had it not been so transferred. The Board proposes to revise the definition of scheduled items to include the amount invested in repossessed mobile homes and the amount of certain loans to facilitate the sale of mobile homes previously repossessed in order to present a more complete picture of the condition of insured institutions. The proposal would therefore redesignate present paragraph (i) of § 561.15 as paragraph (1) thereof and add three new paragraphs thereto. New paragraph (i) would include in the definition of scheduled items the amount invested in any mobile home, including a mobile home in the possession of "any servicing company or dealer acting on behalf of an insured institution," owned as a result of repossession or acquired by transfer of title in lieu of repossession. New paragraph (j) would require the inclusion of certain loans secured by, and contracts for the sale of, the mobile homes described in said new paragraph (i)—i.e., repossessed mobile homes. To be included as a scheduled item any such loan or contract would have to have an unpaid principal balance in excess of the maximum amount permitted under otherwise applicable lending limitations, or in the absence of such limitations, in excess of 90 percent of the wholesale value of the repossessed mobile home (including any installed equipment), plus the cost of appropriate insurance and any applicable sales tax. The "wholesale value" of such a mobile home would be that established in a "dealers' market." The term "dealer's market" is used in § 545.7-1, "Mobile home financing," of the Rules and Regulations of the Federal Savings and Loan System (12 CFR 545.7-1) and means the value set forth in one of the two "blue books" listing values for used mobile homes. New paragraph (k) would also require the inclusion in the scheduled items definition of the amount invested in any repossessed mobile home transferred by an insured institution, if such mobile home would have been included under either paragraph (i) or (j) if it had not been so transferred, if such transfer was made to either (1) a service corporation as defined in § 561.26, or (2) any other corporation in which such insured institution has an investment.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend said Part 561, as set forth below.

Interested persons are invited to submit written data, views and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue, NW., Washington, D.C. 20552, by June 6, 1974, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the General Regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

§ 561.15 Scheduled items.

The term "scheduled items" means:

* * * * *

(i) The amount invested in any mobile home (other than a mobile home owned pending transfer to an insuring or guaranteeing agency of the U.S. Government), including a mobile home in the possession of any servicing company or dealer acting on behalf of an insured institution, which is owned as a result of repossession or which was acquired by transfer of title in lieu of repossession.

(j) The amount of any loan secured by, and any contract for the sale of, a

mobile home described in paragraph (i) of this section having an unpaid principal balance in excess of the maximum amount permitted under otherwise applicable lending limitations, or, in the absence of such limitations, in excess of 90 percent of the wholesale value of such mobile home (including any installed equipment) as established in a dealers' market, plus (1) the cost of appropriate insurance for the protection of the association and the owner (or beneficial owner) of such mobile home, and (2) any sales or similar tax applicable in the case of the retail purchase of such mobile home, and

(k) The amount invested in any mobile home transferred by an insured institution to a service corporation or to any other corporation in which an insured institution has an investment, to the same extent that such amount would have been counted as a scheduled item under paragraph (i) or (j) of this section, if such mobile home had not been so transferred.

(l) As used in this section, the term "residential real estate" means real estate (1) improved by a structure or structures designed primarily for residential use and (2) having at least 80 percent of its total value comprised of the land and improvements attributable to such residential use, but such term shall not include nursing homes, homes for the aging, and mobile home parks.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; (12 U.S.C. 1725, 1726). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071).

Dated: April 24, 1974.

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLIARD, Jr.,
Assistant Secretary.

[FR Doc.74–10362 Filed 5–3–74;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 Army

ARMED FORCES INSTITUTE OF PATHOLOGY SCIENTIFIC ADVISORY BOARD

Notice of Meeting

APRIL 29, 1974.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board, May 30–31, 1974, 0830 hours in the Director's Conference Room, Armed Forces Institute of Pathology, Washington, D.C. 20306. This meeting will be open to the public. Executive sessions will be closed to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to consultations, education and research. The Executive Secretary from whom substantive program information may be obtained is Colonel James H. Benner, Executive Officer, Armed Forces Institute of Pathology, Washington, D.C. 20306, Telephone 576–2900.

For the Director.

RONALD D. REED,
CPT, MSC, USA,
Adjutant.

[FR Doc.74–10288 Filed 5–3–74;8:45 am]

JUNIOR SCIENCE AND HUMANITIES SYMPOSIA (JSHS) ADVISORY COMMITTEE

Notice of Meeting

In accordance with Pub. L. 92–463 dated 6 October 1972, notice is given of a meeting of the Junior Science and Humanities Symposia (JSHS) Advisory Committee, as follows:

Date: 17 May 1974.
Time: 0930 hours.
Place: Pine Manor Junior College, Chestnut Hill, Massachusetts.
Agenda subjects will be as follows:
Action on Summary of 26th Meeting Held 12 October 1973.
Status of Regional Programs.
Other Army Support of JSHS, FY 74.
Procedures in Selecting Judges and Judging of Student Papers for '74 National.
Reorganization of Army Headquarters—ARO under AMC effective 20 May 1974.
Army Program in Science Fairs—Comparison of PSHS & Science Fair Awards.
London Fortnight Program.
Photography Documentary on '74 National JSHS.

The meeting will be open to the public. For specific rules concerning participation contact Miss Patsy Ashe, Executive Secretary, JSHS Advisory Committee, US Army Research Office, Box CM, Duke Station, Durham, North Carolina 27706, AV 935–3331; AC 919 286–2285.

LOTHROP MITTENTHAL,
COL, GS, Commanding.

[FR Doc.74–10287 Filed 5–3–74;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[New Mexico 21317, 21318, 21325, 21332, 21333 and 21355]

NEW MEXICO

Notice of Applications

APRIL 25, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), El Paso Natural Gas Company has applied for six 2⅜ inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 27 N., R. 5 W.,
Sec. 27, Lot 2.
T. 27 N., R. 8 W.,
Sec. 1, NW¼SE¼.
T. 28 N., R. 8 W.,
Sec. 12, SW¼SW¼.
T. 29 N., R. 10 W.,
Sec. 13, W½NW¼SE¼;
Sec. 17, Lot 7 and 11.

These pipelines will convey natural gas across 0.181 miles of national resource lands in Rio Arriba and San Juan Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 3550 Pan American Freeway, NE, Albuquerque, NM 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74–10298 Filed 5–3–74;8:45 am]

[New Mexico 21309; 21311–16; 21319–24; 21326–31; 21334; 21351–52; 21357]

NEW MEXICO

Notice of Applications

APRIL 29, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 135), El Paso Natural Gas Company has applied for twenty-three 4½ inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 26 N., R. 7 W.,
Sec. 7, Lot 4, SE¼SW¼.
T. 26 N., R. 8 W.,
Sec. 12, SE¼SE¼.
T. 27 N., R. 5 W.,
Sec. 7, N½NE¼, SE¼NE¼, E½NW¼;
Sec. 8, W½NE¼;
Sec. 17, Lot 4;
Sec. 23, W½NE¼.
T. 28 N., R. 5 W.,
Sec. 31, Lot 4, N½SW¼.
T. 29 N., R. 8 W.,
Sec. 28, N½NW¼.
T. 29 N., R. 10 W.,
Sec. 7, lots 16, 17, SE¼SW¼;
Sec. 8, lots 12, 13;
Sec. 12, lots 9, 10, 15;
Sec. 17, lots 3, 4;
Sec. 18, lot 7.
T. 29 N., R. 11 W.,
Sec. 5, E½SE¼;
Sec. 12, E½NE¼, E½NW¼, SW¼NW¼.
T. 30 N., R. 10 W.,
Sec. 7, lots 6, 9, 10, 11, 12;
Sec. 25, lots 5, 7, 10, 11;
Sec. 26, lots 8, 9.
T. 30 N., R. 11 W.,
Sec. 26, NW¼SW¼, SE¼SW¼;
Sec. 33, E½NE¼;
Sec. 35, E½SW¼.

These pipelines will convey natural gas across 5.518 miles of national resource lands in San Juan and Rio Arriba Counties, New Mexico.

The purpose of this notice is to allow the public an opportunity to comment upon the filing of the above twenty-three right-of-way applications.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 3550 Pan American Freeway, NE, Albuquerque, NM 87107.

STELLA V. GONZALES,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.74–10296 Filed 5–3–74;8:45 am]

[New Mexico 20470]

NEW MEXICO

Notice of Application

APRIL 25, 1974.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), El Paso Natural Gas Company has applied for a 4½ inch natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 27 N., R. 10 W.,
Sec. 36, lot 4, SW¼SE¼.

This pipeline will convey natural gas across 0.163 miles of national resource land in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 3550 Pan American Freeway, NE, Albuquerque, NM 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operation.

[FR Doc.74-10297 Filed 5-3-74;8:45 am]

Geological Survey

HYDROGEN SULFIDE IN DRILLING OPERATIONS

Proposed OCS Order No. 14, Gulf of Mexico

Notice is hereby given that pursuant to 30 CFR 250.11, the Chief, Conservation Division, Geological Survey, proposes to approve OCS Order No. 14 for the Gulf of Mexico as set forth below.

The purpose of proposed OCS Order No. 14 is to provide requirements to minimize the dangers of hydrogen sulfide gas when it is encountered during drilling operations.

Interested persons may submit written comments, suggestions, and objections concerning the proposed order to the Director, U.S. Geological Survey, National Center, Mail Drop 101, 12201 Sunrise Valley Drive, Reston, Virginia 22092 on or before June 1, 1974.

W. A. RADLINSKI,
Acting Director.

[OCS Order No. 14]

HYDROGEN SULFIDE IN DRILLING OPERATIONS

NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES IN THE OUTER CONTINENTAL SHELF, GULF OF MEXICO AREA

This order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.46.

When drilling operations are undertaken to penetrate reservoirs known or expected to contain hydrogen sulfide (H_2S), or if unknown, upon encountering hydrogen sulfide, the following preventive measures shall be taken to control the effects of the toxicity, flammability, and corrosive characteristics of H_2S. Alternative equipment or procedures that achieve the same or greater levels of safety may be approved by the District Supervisor.

1. *Personnel Safety and Protection*—A. *Training Program.* (1) All personnel, whether regularly assigned, contracted or employed on an unscheduled basis, shall be informed as to the severity of hydrogen sulfide (H_2S) detectors and alarms, ventilation equipment, prevailing winds, briefing areas, warning systems, and evacuation procedures.

(2) Information relating to these safety measures shall be prominently posted on the drilling facility and on vessels in the immediate vicinity which are serving the drilling facility.

(3) To promote efficient safety procedures, an on-site H_2S safety program, which includes a weekly drill and training session, shall be established. Records of attendance shall be maintained on the drilling facility.

(4) All personnel in the working crew shall have completed a basic first-aid course. During subsequent on-site training sessions and drills, emphasis should be placed upon rescue and first aid for H_2S victims. Each drilling facility shall have the following equipment, and each crew member should be thoroughly familiar with the location and use of these items:

(a) A Coast Guard-approved first-aid kit, sized for the normal working number of personnel.

(b) Resuscitators, complete with face masks, oxygen bottles, and spare oxygen bottles.

(c) A Stokes litter or equivalent.

(5) One person, who regularly performs duties on the drilling facility, shall be responsible for the overall operation of the on-site safety and training program.

B. *Visible Warning System.* Wind direction equipment shall be installed at prominent locations to indicate to all personnel, on or in the immediate vicinity of the facility of the facility, the wind direction at all times for determining safe upwind areas in the event that H_2S or SO_2 is present in the atmosphere.

Operational spheres shall be displayed from high points visible to all facility personnel and from watercraft and aircraft. Each sphere shall have a minimum diameter of two feet, shall be a high-visibility orange color, and shall be illuminated either internally or externally. These spheres shall indicate the following operational conditions and requirements:

(1) *ONE SPHERE.* Potential danger—while drilling in known H_2S zones or when H_2S has been detected in the drilling fluid or atmosphere.

(2) *TWO SPHERES.* Moderate danger—when the threshold limit value of H_2S (10 parts per million) is reached. If the concentration of H_2S reaches 20 parts per million, protective equipment shall be worn by all personnel, and all nonworking personnel shall proceed to the safe briefing areas.

(3) *THREE SPHERES.* Extreme danger—when H_2S is determined to have reached the injurious level (20 parts per million). Immediately evacuate all nonessential personnel, or all personnel, as appropriate. Radio communications shall be used to alert all known air and watercraft in the immediate vicinity of this condition.

C. *Contingency Plan.* A contingency plan shall be developed prior to the commencement of drilling operations which shall include the following:

(1) General information and physiological response to H_2S and SO_2 exposure.

(2) Safety procedures, equipment, and training.

(3) Procedures for operating conditions:

(a) One-sphere condition—potential danger to life.

(b) Two-sphere condition—moderate danger to life.

(c) Three-sphere condition—extreme danger to life.

(4) Responsibilities and duties of personnel for each operating condition.

(5) Designation of briefing areas as locations for assembly of personnel during three-sphere condition. At least two briefing areas should be established on each drilling facility. Of these two areas, the one upwind at any given time is the safe briefing area.

(6) Evacuation plan.

(7) Agencies to be notified in case of an emergency.

(8) A list of medical personnel and facilities, including addresses and telephone numbers. (See paragraph G.)

D. *H_2S Detection and Monitoring Equipment.* Each drilling facility shall have an H_2S detection and monitoring system which activates audible and visible alarms before the concentration of H_2S exceeds its threshold limit value of 10 ppm in air. This equipment shall be capable of sensing a minimum of 5 ppm H_2S in air, with sensing points located at the bell nipple, shale shaker, mud pits, driller's stand, living quarters, and other areas where H_2S might accumulate in hazardous quantities.

H_2S detector ampules shall be available for use by all working personnel. After H_2S has been initially detected by any device, periodic inspections of all areas of poor ventilation shall be made with a portable H_2S detector instrument.

E. *Personnel Protective Equipment.* (1) All personnel on a drilling facility or aboard marine vessels serving the facility shall be equipped with proper personnel protective breathing apparatus. The breathing apparatus used in an H_2S environment shall conform to all applicable Occupational Safety and Health Administration and American National Standards Institute standards and regulations. Optional equipment, such as nose cups and spectacle kits, shall be available for use as needed.

(2) The storage location of protective breathing apparatus shall be such that they are quickly and easily available to all personnel. Storage locations shall include the following:

(a) Rig floor.
(b) Any working area above the rig floor.
(c) Mud logging facility.
(d) Shale-shaker area.
(e) Mud pit area.
(f) Mud storage area.
(g) Pump rooms, (mud and cement).
(h) Crew quarters.
(i) Each briefing area.
(j) Heliport.

(3) A system of breathing air manifolds, hoses, and masks shall be provided on the rig floor and in the briefing areas. A cascade air bottle system shall be provided to refill individual protective breathing apparatus bottles. The cascade air bottle system may be recharged by a high-pressure compressor suitable for providing breathing-quality air, provided the compressor suction is located in an uncontaminated atmosphere. All breathing air bottles should be labeled as containing breathing-quality air fit for human usage.

(4) Workboats attendant to rig operations shall be equipped with protective breathing apparatus for all workboat crew members. Pressure demand or demand-type masks, connected to a breathing-air manifold, and extra protective breathing apparatus, shall be provided for evacuees. Whenever possible, boats should be stationed upwind.

(5) Helicopters attendant to rig operations shall be equipped with a protective breathing apparatus for the pilot.

(6) The following additional personnel safety equipment shall be available for use as needed:

(a) Portable H_2S detectors.

(b) Retrieval ropes with safety harnesses to retrieve incapacitated personnel from contaminated areas.

(c) Chalk boards and note pads located on the rig floor, in the shale-shaker area, and in the cement pump rooms for communication purposes.

(d) Bull horns and flashing lights.

(e) Resuscitators.

F. *Ventilation Equipment.* All ventilation devices shall be explosion-proof and situated in areas where H_2S or SO_2 may accumulate. Movable ventilation devices shall be provided in work areas and be multi-directional and capable of dispersing H_2S or SO_2 vapors away from working personnel.

G. *Notification of Regulatory Agencies.* The following agencies shall be immediately notified under the alert conditions indicated:

(1) Two Spheres.

(a) U.S. Geological Survey.

(b) U.S. Coast Guard.

(2) Three Spheres.
(a) U.S. Geological Survey.
(b) U.S. Coast Guard.
(c) Department of Defense (when operating in Department of Defense warning areas in the Northeast Gulf of Mexico).
(d) Appropriate State agencies.

2. *Metallurgical Equipment Considerations.* Equipment used when drilling zones bearing hydrogen sulfide shall be constructed of materials which, according to design principles, will be able to resist and/or prevent the phenomena known variously as sulfide stress cracking, hydrogen embrittlement, or stress corrosion cracking. Such equipment includes drill pipe, casing, casing heads, blowout-preventer stack assemblies, kill lines, choke manifolds, and other related equipment. A knowledge of the various interactions between stress, environment, and the metallurgy employed is required for successful operation of H_2S environments. The following general practices are required for acceptable performance:

A. *Drill String.* Drill strings shall be designed consistent with the anticipated depth, conditions of the hole, and reservoir environment to be encountered. Care shall be taken to minimize exposure to the stresses and yield strengths of the drill string as much as is practical and consistent with the anticipated hold conditions to be encountered.

B. *Casing.* Casing, couplings, flanges, and related equipment shall be designed for H_2S service. Casing flange bolting shall meet the standards as set forth in the latest edition of the National Association of Corrosion Engineers publication 1F-166. Field welding on casing (except conductor and surface strings) is prohibited unless approved by the District Supervisor.

C. *Wellhead, Blowout Preventers, and Pressure Control Equipment.* The blowout-preventer stack assembly shall meet the manufacturer's specification for H_2S service. Surface equipment such as choke manifold, kill lines, fill-up lines, flowlines, and other related pressure equipment which may contain well fluids shall be designed for H_2S service. Bolting and weldments shall conform to the recommendations as set forth in the latest edition of NACE publication 1F-166. Elastomers (rubbers), packing, and similar inner parts exposed to H_2S shall be resistant at the maximum anticipated temperature of exposure.

3. *Mud Program.* (1) Either water- or oil-base muds are suitable for use in drilling formations containing hydrogen sulfide. If oil-base muds are used, cuttings shall be cleaned of oil prior to disposal into Gulf waters.

(2) A pH of 9.5 or above shall be maintained in a water-base mud system to control corrosion and prevent sulfide stress cracking.

(3) Consideration shall also be given to the use of hydrogen sulfide scavengers in both water- and oil-base mud systems.

(4) Sufficient quantities of additives shall be maintained on location for addition to the mud system as needed to neutralize hydrogen sulfide picked up by the system when drilling in formations containing hydrogen sulfide.

(5) The application of corrosion inhibitors to the drill pipe to afford a protective coating or their addition to the mud system may be used as an additional safeguard to the normal protection of the metal by pH control and the scavengers mentioned above.

(6) Drilling mud containing hydrogen sulfide gas shall be degassed at the optimum location for the particular rig configuration employed. The gases so removed shall be piped into a closed flare system and burned at a suitable remote stack.

4. *General Operations.* All personnel in the working area shall utilize H_2S protective equipment when required, as specified in paragraph 1.B. The normal fixed-point monitor system outlined in paragraph 1.D. may be supplemented with portable H_2S detectors as conditions warrant.

A. *Drill String Trips or Fishing Operations.* Every effort shall be made to pull a dry drill string. If it should be necessary to pull the drill string wet after peneration of H_2S-bearing zones, increased monitoring of the working area shall be provided and protective breathing apparatus shall be worn under conditions as outlined in paragraph 1.B.

B. *Circulating Bottoms-up from a Drilling Break, Cementing Operations, Logging Operations, or Well Circulation While Not Drilling.* After penetration of an H_2S-bearing zone, protective breathing apparatus must be worn by those personnel in the working area 15 minutes in advance of circulating bottoms-up or when H_2S is indicated by the monitoring system in quantities sufficient to require breathing apparatus under paragraph 1.B. should this condition occur earlier.

C. *Coring Operations in H_2S-bearing Zones.* Personnel protective equipment must be worn 10–20 stands in advance of retrieving the core barrel. Cores to be transported must be sealed and marked for the presence of hydrogen sulfide.

D. *Abandonment or Temporary Abandonment Operations.* Internal well-abandonment equipment shall be designed for H_2S service.

E. *Logging Operations after Penetration of Known or Suspected H_2S-bearing Zones.* Equipment used in logging operations shall be treated with hydrogen sulfide corrosion inhibitors prior to going in the hole.

F. *Stripping Operations.* Displaced mud returns shall be monitored and protective equipment worn if hydrogen sulfide is detected at levels outlined for protective equipment under paragraph 1.B.

G. *Gas-cut Mud or Well Kick from H_2S-bearing zones.* Protective equipment shall be worn when a hydrogen sulfide concentration of 20 ppm is detected. Should a decision be made to circulate out a kick, protective equipment shall be worn during the entire operation. Procedures during this period shall be governed by the two-sphere (moderate danger) provision of paragraph 1.B.

H. *Drill String Precautions.* Precautions shall be taken to minimize drill string stresses caused by conditions such as excessive dogleg severity, improper stiffness ratios, improper torque, whip abrasive wear on tool joints, and joint imbalance. API Bulletin RP 7G shall be used as a guideline for drill string precautions. Sulphur-bearing tool-joint compounds shall not be used.

Proper handling techniques shall be employed to prevent notching, stress concentrations, and possible drill pipe failures.

I. *Flare System.* The flare system shall be designed to safely vent and burn any hydrogen sulfide gas. Flare lines shall be located as far from the drilling facility as feasible in a manner to compensate for wind changes. The flare system shall be equipped with a continuous pilot and an automatic igniter. Backup ignition for each flare shall be provided.

5. *Kick Detection and Well Control.* In addition to paragraph 3.B., OCS Order No. 2, Gulf of Mexico Area, all efforts shall be made to prevent a well kick as a result of gas-cut mud, drilling breaks, lost circulation, or trips for bit. Drilling rate changes shall be evaluated for the possibility of encountering abnormal pressures, and mud weights adjusted in an effort to compensate for any hydrostatic imbalance that might result in a well kick.

In the event of a kick, the disposal of the well influx shall be accomplished by one of two alternatives with regard for personnel safety, possible environmental damage, and possible facility or well equipment damage:

Alternative A. To contain the kick influx by shutting-in the well, calculating the necessary mud weight, and pumping the influx back into the formation by injecting barite or kill mud as appropriate.

Alternative B. To control the kick by using appropriate well-control techniques to prevent formation fracturing in open hole within the pressure limits of well equipment (drill pipe, casing, wellhead, blowout preventers, and related equipment). The disposal of H_2S and other gases shall be through pressured or atmospheric mud-gas separator equipment, depending on volume and pressure of H_2S gas. The equipment shall be designed to recover drilling mud and to vent to the atmosphere and burn the gases separated. The mud system shall be treated to neutralize H_2S and restore and maintain the proper mud quality.

6. *Well Testing in an H_2S Environment.*—A. *Procedures.* (1) Well testing shall be performed with the minimum number of personnel required in the immediate vicinity of the rig floor and test equipment to safely and adequately perform the test and to adequately maintain related equipment and services.

(2) Prior to initiation of the test, special safety meetings shall be conducted for all personnel who will be on the drilling facility during the test, with particular emphasis on use of personnel safety equipment, first-aid procedures, and the H_2S Contingency Plan.

(3) During the test, the use of H_2S detection equipment shall be intensified. All produced gases shall be vented and burned through a flare system which meets the requirements of paragraph 4.I. Produced fluids which are stored shall be vented into the flare system.

(4) "No Smoking" rules shall be rigorously enforced.

B. *Equipment.* (1) Drill-stem test tools and wellhead equipment shall be suitable for H_2S service.

(2) Tubing which meets the requirements for H_2S service shall be used for drill stem testing. Drill pipe shall not be used for drill stem tests without the prior approval of the District Supervisor. The water cushion shall be thoroughly inhibited in order to prevent H_2S corrosion. The test string shall be flushed with treated fluid for the same purpose after completion of the test.

(3) All surface test units and related equipment shall be designed for H_2S service. Only competent personnel who are trained in and knowledgeable of the severity and possible hazardous effects of H_2S shall be utilized in these tests.

DONALD W. SOLANAS,
Oil and Gas Supervisor,
Field Operations.

Approved:

RUSSELL G. WAYLAND,
Chief, Conservation Division.

[FR Doc.74-10258 Filed 5-3-74;8:45 am]

[OCS ORDER NO. 11]

OIL AND GAS PRODUCTION RATES, PREVENTION OF WASTE, AND PROTECTION OF CORRELATIVE RIGHTS

Notice to Lessees and Operators of Federal Oil and Gas Leases in the Outer Continental Shelf, Gulf of Mexico Area

Notice is hereby given that pursuant to 30 CFR 250.11, the Chief, Conservation Division, Geological Survey, has approved OCS Order No. 11 for the Gulf of Mexico as set forth below effective May 1, 1974.

Copies of OCS Order No. 11 may be obtained from the Conservation Manager—OCS Operations, Post Office Box 546, Metairie, Louisiana 70004.

Following publication in the FEDERAL REGISTER July 5, 1973, the following comments were received concerning specific provisions of the Order. Modifications of the Order resulting from these comments are also shown.

Comments, Subparagraph 1.A. These generally referred to the requirement to "timely initiate enhanced recovery operations." Determination of timeliness is the result of an interpretive effort and operators are concerned that interpretations of industry could vary widely from those of the USGS. The question was also raised as to the definition of waste.

Revision. The definition of "waste" in the regulation is considered to include the failure to initiate enhanced recovery operations (§ 250.2(h)(2)). Consequently, the definition in the OCS Order does not expand upon the definition in the regulation but clearly defines the intent of the provisions of 30 CFR 250.2(h). Accordingly, no changes in the Order were made, except for the addition of one sentence which defines "enhanced recovery operations."

Comments, Subparagraph 1.C. It was suggested that the addition of the words "and depletion" would define the intent of this definition more clearly.

Revision. Addition was made as recommended.

Comments, Subparagraph 1.N. Each of these comments described an interpretation of the intent of this Order. No revision was made in the Order.

Comments, Subparagraph 3.A. Comments received expressed concern about the type and amount of engineering and geologic data requested on Form 9–1866, "Request for Reservoir MER," including reserve estimates which the companies consider proprietary and subject to wide interpretation. Many of the comments also expressed concern with the requirement of filing the data early in the production life of the reservoir when much of the information may not be available.

Revision. The determination of an MER for a reservoir requires substantial technical data and is directly related to the estimate of original oil and gas in place. The proprietary data on Form 9–1866 will be handled in the same manner as all other proprietary data. No changes were made in this subparagraph, but a note was added to the form to clarify the intent that such information is required only as it becomes available, taking into consideration the stage of development of the reservoir.

Comments, Subparagraph 3.B. These generally were directed to the lack of tolerance between well test results and well MPR's. Suggestions were made for approval of well MPR's up to 110 to 120 percent of the rate demonstrated by a well test. One reply commented that subparagraph 3.B. appeared to be oil-well oriented and suggested that gas-water ratios and gas-water contacts be added as limitations on well MPR's.

Revisions. Minor revisions were made in the subparagraph to allow for the assignment of well MPR's up to 110 percent of a well test and to include gas-water ratios, gas-water contacts, and perforated interval as criteria for limiting well rates.

Comments, Subparagraph 4.C. It was proposed that provision be made, for the purpose of balancing overproduction from a reservoir, to exclude those individual wells which require sustained production rates due to high water or sand production from being shut-in.

Revisions. Exclusion of such wells from shut-in, when justified, may be approved by the Supervisor pursuant to 30 CFR 250.12(b). No revisions were made.

Comments, Paragraph 6. Comments were received from the Federal Power Commission concerning the gas well testing procedures of paragraph 6. The FPC petitioned for a four-point backpressure testing requirement to provide better projections of gas well deliverabilities. Additionally, they requested a standard reporting pressure base requirement of 14.73 psia at 60° F. instead of 15.025 psia now being used.

Revisions. Initial gas well testing procedures were changed in subparagraphs 6.A and 6.D to require a multi-point back-pressure test. No change in reporting pressure base was made as the pressure base of 15.025 psia is required under 30 CFR 250.61.

Comments, Paragraph 9. It was suggested that bottom-hole pressures calculated from shut-in surface measurements be acceptable as complying with sound engineering practice and that such data be submitted with the required annual MER update. No revisions were made in the Order.

Comments, Subparagraph 10.A. The comments pointed out that small volumes of gas vapors, in some instances, are released on a continuous basis and that the proposed language is inconsistent with the title of subparagraph in recognizing only temporary situations.

Revisions. It is often not feasible to collect gas vapors which are released on a continuous basis from storage tanks or other low pressure vessels. Revision was made as recommended. An additional revision was made, not as the result of a comment, but for clarifying the intent of subparagraph 10.A.(1).

Comments, Subparagraph 10.D. Comments were received recommending that economics based solely on the value of the gas that would otherwise be flared or vented be the criterion on which the approval to flare or vent casinghead gas would be based as this is the criterion of what constitutes "waste" as applied in the industry.

Revisions. A concept of economics based solely upon the value of gas that would be flared or vented would maximize profits from a lease, but may or may not result in obtaining maximum ultimate hydrocarbon production; whereas, the concept of ultimate total energy recovery would tend to maximize hydrocarbon recovery but may result in reduced profits from a lease. The economics, including profitability, under both concepts as well as the availability of marketing and transportation facilities, will always be considered by the Supervisor in determining whether there will be a loss of ultimate equivalent total energy by an approval to flare or vent. No revisions were made in the Order.

Comments, Subparagraph 10.E. It was recommended that a period of six months (instead of three months) after the effective date of the Order be provided for the submittal of applications to flare oil well gas.

Revisions. There has been much advance notice of the obligation to apply for approval to flare oil well gas. In all probability, these applications are already being prepared and the Supervisor may grant an extension of time for submittal if circumstances warrant such consideration. No revision was made.

Comments, Subparagraph 12.C. Comments were received advising that in some cases it is impractical to shut-in a marginal well for a packer test and that in other instances it is not possible to perform a packer test prior to initiating production.

Revision. When justified, a waiver may be granted from any requirement of the Order pursuant to 30 CFR 250.12(b). It is also recognized that in many instances a packer test cannot be conducted until after initiation of production. Revision was made to permit packer testing immediately after initiating production.

Comments, Subparagraph 14.B. It was pointed out that this subparagraph did not recognize natural drift inherent in drilling "straight" holes; in effect, it requires all wells to be directionally controlled; and, without clarification of intent, conflicts with the provisions of 30 CFR 250.40(b).

Revisions. The concern expressed through the comments is recognized. It was not intended to require directional control of every well or to expand upon the requirements of the OCS Operating Regulations. Revisions were made to clarify the intent of the provisions of this subparagraph. Wells drilled as straight holes will be subject to the provisions of 30 CFR 250.40(b).

Comments, Paragraph 15. Concern was expressed for interpretation of the term "enhanced recovery operations."

Revisions. Similar comments were submitted for subparagraph 1.A. and a definition of "enhanced recovery operations" was added thereto. No revision was made to subparagraph 15.

Comments, Subparagraph 16.B.(1). It was suggested that specific language be added specifying that an operator will not be required to divulge proprietary information to another operator for the purpose of preparing joint development plans for competitive reservoirs.

Revisions. It is the intent of this subparagraph to encourage the exchange of data for the equitable development of competitive reservoirs. However, it does not require exchange of proprietary data that may affect the competitive position of an operator. Such information received in the USGS office will be handled in the same manner as all other proprietary data. No revision was made.

W. A. RADLINSKI,
Acting Director.

OIL AND GAS PRODUCTION RATES PREVENTION OF WASTE, AND PROTECTION OF CORRELATIVE RIGHTS

This Order is established pursuant to the authority prescribed in 30 CFR 250.1, 30 CFR 250.11, and in accordance with all other applicable provisions of 30 CFR Part 250, and the notice appearing in the FEDERAL REGISTER, dated December 5, 1970 (35 FR 18559), to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein. This Order shall be applicable to all oil and gas wells on Federal leases in the Outer Continental Shelf of the Gulf of Mexico; provided, however, that it shall not apply to oil and gas wells on a lease of which any part lies within the disputed area referred to in paragraph 4 of the Supplemental Decree of December 20, 1971, in *United States vs. Louisiana, et al.*, 404 U.S. 388 (1971). All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b). References in this Order to approvals, determinations, and requirements for submittal of information or applications for approval are to those granted, made, or required by the Oil and Gas Supervisor or his delegated representative.

1. *Definition of Terms.* As used in this Order, the following terms shall have the meanings indicated:

A. *Waste of Oil and Gas.* The definition of waste appearing in 30 CFR 250.2(h) shall apply, and includes the failure to timely initiate enhanced recovery operations where such methods would result in an increased ultimate recovery of oil or gas under sound engineering and economic principles. Enhanced recovery operations refers to pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations which alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

B. *Correlative Rights.* The opportunity afforded each lessee or operator to produce

without waste his just and equitable share of oil and gas from a common source of supply.

C. *Maximum Efficient Rate (MER).* The maximum sustainable daily oil or gas withdrawal rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to ultimate recovery.

D. *Maximum Production Rate (MPR).* The approved maximum daily rate at which oil may be produced from a specified oil well completion or the maximum approved daily rate at which gas may be produced from a specified gas well completion.

E. *Interested Party.* The operators and lessees, as defined in 30 CFR 250.2(f) and (g), of the lease or leases involved in any proceeding initiated under this Order.

F. *Reservoir.* An oil or gas accumulation which is separated from and not in oil or gas communication with any other such accumulation.

G. *Competitive Reservoir.* A reservoir as defined herein containing one or more producible or producing well completions on each of two or more leases, or portions thereof, in which the lease or operating interests are not the same.

H. *Property Line.* A boundary dividing leases, or portions thereof, in which the lease or operating interest is not the same. The boundaries of Federally approved unit areas shall be considered property lines. The boundaries dividing leased and unleased acreage shall be considered property lines for the purpose of this Order.

I. *Oil Reservoir.* A reservoir that contains hydrocarbons predominantly in a liquid (single-phase) state.

J. *Oil Well Completion.* A well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

K. *Gas Reservoir.* A reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

L. *Gas Well Completion.* A well completed in a gas reservoir or in the gas cap of an oil reservoir with an associated gas cap.

M. *Oil Reservoir with an Associated Gas Cap.* A reservoir that contains hydrocarbons in both a liquid and a gaseous state (two-phase).

N. *Producible Well Completion.* A well which is physically capable of production and which is shut in at the wellhead or at the surface, but not necessarily connected to production facilities, and from which the operator plans future production.

2. *Classification of Reservoirs.*—A. *Initial Classification.* Each producing reservoir shall be classified by the operator, subject to approval by the Supervisor, as an oil reservoir, an oil reservoir with an associated gas cap, or a gas reservoir.

(1) The initial classification of each reservoir from which production is commenced subsequent to the date of this Order shall be submitted for approval with the initial submittal of MER data for the reservoir.

(2) Each reservoir from which production commenced on or prior to the date of this Order shall be classified by the operator, based on existing reservoir conditions. Such classification shall be determined and submitted to the Supervisor within six (6) months of the date of this Order.

B. *Reclassification.* A reservoir may be reclassified by the Supervisor, on his own initiative or upon application of an operator, during its productive life when information becomes available showing that such reclassification is warranted.

(3) *Oil and Gas Production Rates*—A. *Maximum Efficient Rate (MER).* The operator shall propose a maximum efficient rate (MER) for each producing reservoir based on sound engineering and economic principles. When approved at the proposed or other rate, such rate shall not be exceeded, except as provided in paragraph 4 of this Order.

(1) *Submittal of Initial MER.* Within 45 days after the date of first production or such longer period as may be approved, the operator shall submit a Request for Reservoir MER (Form 9–1866) with appropriate supporting information.

(2) *Revision of MER.* The operator may request a revision of an MER by submitting the proposed revision to the Supervisor on a Request for Reservoir MER (Form 9–1866) with appropriate supporting information. The Operator shall obtain approval to produce at test rates which exceed an approved MER when such testing is necessary to substantiate an increase in the MER.

(3) *Review of MER.* The MER for each reesrvoir will be reviewed by the operator annually, or at such other required or approved interval of time. The results of the review, with all current supporting information, shall be submitted on a Request for Reservoir MER (Form 9–1866).

(4) *Effective Date of MER.* The effective date of an MER, or revision thereof, will be determined by the Supervisor and shown on a Request for Reservoir MER (Form 9–1866) when the MER is approved. The effective data for an initial MER shall be the first day following the completion of an approved testing period. The effective date for a revised MER shall be the first day following the completion of an approved testing period, or if testing is not conducted, the date the revision is approved.

B. *Maximum Production Rate (MPR).* The operator shall propose a maximum production rate (MPR) for each producing well completion in a reservoir together with full information on the method used in its determination. When an MPR has been approved for a well completion, that rate shall not be exceeded, except as provided in paragraph 4 of this Order. The MPR shall be based on well tests and any limitations imposed by (1) well tubing, safety equipment, artificial lift equipment, surface back pressure, and equipment capacity; (2) sand producing problems; (3) producing gas-oil and water-oil ratios; (4) relative structural position of the well with respect to gas-oil or water-oil contacts; (5) position of perforated interval within total production zone; and (6) prudent operating practices. The MPR established for each well completion shall not exceed 110 percent of the rate demonstrated by a well test unless justified by supporting information.

(1) *Submittal of Initial MPR.* The operator shall have 30 days from the date of first continuous production within which to conduct a potential test, as specified under subparagraphs 5.B and 6.B of this Order, on all new and reworked well completions. Within 15 days after the date of the potential test, the operator shall submit a proposed MPR for the individual well completion on a Request for Well Maximum Production Rate (MPR) (Form 9–1867), with the results of the potential test on a Well Potential Test Report (Form 9–1868). Extension of the 30-day test period may be granted. The effective date for any approved initial MPR shall be the first day following the test period. During the 30-day period allowed for testing, or any approved extensions thereof, the operator may produce a new or reworked well completion at rates necessary to establish the MPR. The operator shall report the total production obtained during the test period, and approved extensions thereof, on the Well Potential Test Report (Form 9–1868).

(2) *Revision of MPR Increase.* If necessary to test a well completion at rates above the approved MPR to determine whether the MPR should be increased, notification of intent to test the well at such higher rates, not to exceed a stated maximum rate during a specified test period, shall be filed with the Supervisor. Such tests may commence on the day following the date of filing notification, unless otherwise ordered by the Supervisor. If an operator determines that the MPR should be increased he shall submit, within 15 days after the specified test period, a proposed increased MPR on a Request for Well Maximum Production Rate (MPR) (Form 9–1867), and any other available data to support the requested revision, including the results of the potential test and the total production obtained during the test period on a Well Potential Test Report (Form 9–1868). Prior to approval of the proposed increased MPR, the operator may produce the well completion at a rate not to exceed the proposed increased MPR of the well. The effective date for any approved increased MPR shall be the first day following the test period. If testing rates or increased MPR rates result in production from the reservoir in excess of the approved MER, this excess production shall be balanced by underproduction from the reservoir under the provisions of subparagraph 4.B of this Order.

(3) *Revision of MPR Decrease.* When the quarterly test rate for an oil well completion or the semiannual test rate for a gas well completion required under subparagraphs 5.C and 6.C of this Order is less than 90 percent of the existing approved MPR for the well, a new reduced MPR will be established automatically for that well completion equal to 110 percent of the test rate submitted. The effective date for the new MPR for such well completion shall be the first day of the quarter following the required date of submittal of periodic well-test results under subparagraphs 5.C and 6.C of this Order. Also, the operator may notify the Supervisor on a Request for Well Maximum Production Rate (MPR) (Form 9–1867) of, or the Supervisor may require, a downward revision of a well MPR at any time when the well is no longer capable of producing its approved MPR on a sustained basis. The effective date for such reduced MPR for a well completion shall be the first day of the month following the date of notification.

(4) *Continuation of MPR.* If submittal of the results of a quarterly well test for an oil completion or a semi-annual well test for a gas well completion, as provided for in subparagraphs 5.C and 6.C of this Order, cannot be timely, continuation of production under the last approved MPR for the well may be authorized, provided an extension of time in which to submit the test results is requested and approved in advance.

(5) *Cancellation of MPR.* When a well completion ceases to produce, is shut in pending workover, or any other condition exists which causes the assigned MPR to be no longer appropriate, the operator shall notify the Supervisor accordingly on a Request for Well Maximum Production Rate (MPR) (Form 9–1867), indicating the date of last production from the well, and the MPR will be canceled. Reporting of temporary shut-ins by the operator for well maintenance, safety conditions, or other normal operating conditions is not required, except as is necessary for completion of the Monthly Report of Operations (Form 9–152).

c. *MER and MPR Relationship.* The withdrawal rate from a reservoir shall not exceed the approved MER and may be produced from any combination of well completions subject to any limitations imposed by the MPR established for each well completion. The rate of production from the reservoir

shall not exceed the MER although the summation of individual well MPR's may be greater than the MER.

4. *Balancing of Production.*—A. *Production Variances.* Temporary well production rates, resulting from normal variations and fluctuations exceeding a well MPR or reservoir MER shall not be considered a violation of this Order, and such production may be sold or transferred pursuant to paragraph 8 of this Order. However, when normal variations and fluctuations result in production in excess of a reservoir MER, any operator who is overproduced shall balance such production in accordance with subparagraph 4.B below. Such operator shall advise the Supervisor of the amount of such excess production from the reservoir for the month at the same time as Form 9–152 is filed for that month.

B. *Balancing Periods.* As of the first day of the month following the month in which this Order becomes effective, all reservoirs shall be considered in balance. Balancing periods for overproduction of a reservoir MER shall end on January 1, April 1, July 1, and October 1 of each year. If a reservoir is produced at a rate in excess of the MER for any month, the operator who is overproduced shall take steps to balance production during the next succeeding month. In any event, all overproduction shall be balanced by the end of the next succeeding quarter following the quarter in which the overproduction occurred. The operator shall notify the Supervisor at the end of the month in which he has balanced the production from an overproduced reservoir.

C. *Shut-in for Overproduction.* Any operator in an overproduction status in any reservoir for two successive quarters which has not been brought into balance within the balancing period shall be shut in from that reservoir until the actual production equals that which would have occurred under the approved MER.

D. *Temporary Shut-in.* If, as the result of storm, hurricanes, emergencies, or other conditions peculiar to offshore operations, and operator is forced to curtail or shut in production from a reservoir, the Supervisor may, on request, approve makeup of all or part of this production loss.

5. *Oil Well Testing Procedures.*—A. *General.* Tests shall be conducted for not less than four consecutive hours. Immediately prior to the 4-hour test period, the well completion shall have produced under stabilized conditions for a period of not less than six consecutive hours. The 6-hour pretest period shall not begin until after recovery of a volume of fluid equivalent to the amount of fluids introduced into the formation for any purpose. Measured gas volumes shall be adjusted to the standard conditions of 15.025 psia and 60° F. for all tests. When orifice meters are used, a specific gravity shall be obtained or estimated for the gas and a specific gravity correction factor applied to the orifice coefficient. The Supervisor may require a prolonged test or retest of a well completion if such test is determined to be necessary for the establishment of a well MPR or a reservoir MER. The Supervisor may approve test periods of less than four hours and pretest stabilization periods of less than six hours for well completions, provided that test reliability can be demonstrated under such procedures.

B. *Potential Test.* Test data to establish or to increase an oil well MPR shall be submitted on a Well Potential Test Report (Form 9–1868). The total production obtained from all tests during the test period shall be reported on such form.

C. *Quarterly Test.* Tests shall be conducted on each producing oil well completion quarterly, and test results shall be submitted on a Quarterly Oil Well Test Report (Form 9–1869). Testing periods and submittal dates shall be as follows:

Testing period	Latest date for submittal of test results	For quarter beginning—
Sept. 11 to Dec. 10	Dec. 10	Jan. 1
Dec. 11 to Mar. 10	Mar. 10	Apr. 1
Mar. 11 to June 10	June 10	July 1
June 11 to Sept. 10	Sept. 10	Oct. 1

There shall be a minimum of 45 days between quarterly tests for an oil well completion.

6. *Gas Well Testing Procedures.*—A. *General.* Testing procedures for gas well completions shall be the same as those specified for oil well completions in subparagraph 5.A except for the initial test which shall be a multi-point back-pressure test as described in paragraph 6.D.

B. *Potential Test.* Test data to establish or to increase a gas well MPR shall be submitted on a Well Potential Test Report (Form 9–1868).

C. *Semiannual Test.* Tests shall be conducted on each producing gas well completion semiannually, and test results shall be submitted on a Semiannual Gas Well Test Report (Form 9–1870). Testing periods and submittal dates shall be as follows:

Testing period	For submittal of test results	For semiannual period beginning—
June 11 to Dec. 10	Dec. 10	Jan. 1
Dec. 11 to June 10	June 10	July 1

There shall be a minimum of 90 days between semiannual tests for a gas well completion.

D. *Back-Pressure Tests.* A multi-point back-pressure test to determine the theoretical open-flow potential of gas wells shall be conducted within thirty days after connection to a pipeline. If bottom-hole pressures are not measured, such pressures shall be calculated from surface pressures using the method, or other similar method, found in the Interstate Oil Compact Commission (IOCC) Manual of Back-Pressure Testing of gas wells. The results of all back-pressure tests conducted by the operator shall be filed with the Supervisor, including all basic data used in determining the test results. The Supervisor may waive this requirement if multi-point back-pressure test information has previously been obtained on a representative number of wells in a reservoir.

7. *Witnessing Well Tests.* The Supervisor may have a representative witness any potential or periodic well tests on oil and gas well completions. Upon request, an operator shall notify the appropriate District office of the time and date of well tests.

8. *Sale or Transfer of Production.* Oil and gas produced pursuant to the provisions of this Order, including test production, may be sold to purchasers or transferred as production authorized for disposal hereunder.

9. *Bottom-Hole Pressure Tests.* Static bottom-hole pressure test shall be conducted annually on sufficient key wells to establish an average reservoir pressure in each producing reservoir unless a different frequency is approved. The Operator may be required to test specific wells. Results of bottom-hole pressure tests shall be submitted within 60 days after the date of the test.

10. *Flaring and Venting of Gas.* Oil- and gas-well gas shall not be flared or vented, except as provided herein.

A. *Small-Volume or Short-Term Flaring or Venting.* Oil- and gas-well gas may be flared or vented in small volumes or temporarily without the approval of the Supervisor in the following situations:

(1) *Gas Vapors.* When gas vapors are released from storage and other low pressure production vessels if such gas

(2) *Emergencies.* During temporary emergency situations, such as compressor or other equipment failure, or the relief of abnormal system pressures.

(3) *Well Purging and Evaluation Tests.* During the unloading or cleaning up of a well and during drillstem, producing, or other well evaluation tests not exceeding a period of 24 hours.

B. *Approval for Routine or Special Well Tests.* Oil- and gas-well gas may be flared or vented during routine and special well tests, other than those described in paragraph A above, only after approval of the Supervisor.

C. *Gas-Well Gas.* Except as provided in A and B above, gas-well gas shall not be flared or vented.

D. *Oil-Well Gas.* Except as provided in A and B above, oil-well gas shall not be flared or vented unless approved by the Supervisor. The Supervisor may approve an application for flaring or venting of oil-well gas for periods not exceeding one year if (1) the operator has initiated positive action which will eliminate flaring or venting, or (2) the operator has submitted an evaluation supported by engineering, geologic, and economic data indicating that rejection of an application to flare or vent the gas will result in an ultimate greater loss of equivalent total energy than could be recovered for beneficial use from the lease if flaring or venting were allowed.

E. *Content of Application.* Applications under paragraph D above for existing operations, as of the date of this Notice, shall be filed within three months from the effective date of this Order. Applications under paragraph D(2) above shall include all appropriate engineering, geologic, and economic data in an evaluation showing that absence of approval to flare or vent the gas will result in premature abandonment of oil and gas production or curtailment of lease development. Applications shall include an estimate of the amount and value of the oil and gas reserves that would not be recovered if the application to flare or vent were rejected and an estimate of the total amount of oil to be recovered and associated gas that would be flared or vented if the application were approved.

11. *Disposition of Gas.* The disposition of all gas produced from each lease shall be reported monthly on, or attached to, Form 9–152. The report shall be submitted in the following manner:

[In thousand cubic feet]

	Oil-well gas	Gas-well gas
Sales		
Fuel		
Injected [1]		
Flared		
Vented		
Other (specify)		
Total		

[1] Gas produced from the lease and injected on or off the lease.

12. *Multiple and Selective Completions.*—A. *Number of Completions.* A well bore may contain any number of producible completions when justified and approved.

B. *Numbering Well Completions.* Well completions made after the date of this Order shall be designated using numerical and alphabetical nomenclature. Once desig-

nated as a reservoir completion, the well completion number shall not change. Appendix A contains a detailed explanation of procedures for naming well completions.

C. *Packer Tests.* Multiple and selective completions shall be equipped to isolate the respective producing reservoirs. A packer test or other appropriate reservoir isolation test shall be conducted prior to or immediately after initiating production and annually thereafter on all multiply completed wells. Should the reservoirs in any multiply completed well become intercommunicative the operator shall make repairs and again conduct reservoir isolation tests unless some other operational procedure is approved. The results of all tests shall be submitted on a Packer Test (Form 9–1871) within 30 days after the date of the test.

D. *Selective Completions.* Completion equipment may be installed to permit selective reservoir isolation or exposure in a well bore through wireline or other operations. All selective completions shall be designated in accordance with subparagraph 12.B when the application for approval of such completions is filed.

E. *Commingling.* Commingling of production from two or more separate reservoirs within a common well bore may be permitted if it is determined that, collectively, the ultimate recovery will not be decreased. An application to commingle hydrocarbons from multiple reservoirs within a common well bore shall be submitted for approval and shall include all pertinent well information, geologic and reservoir engineering data, and a schematic diagram of well equipment. For all competitive reservoirs, notice of the application shall be sent by the applicant to all other operators of interest in the reservoirs prior to submitting the application to the Supervisor. The application shall specify the well completion number to be used for subsequent reporting purposes.

13. *Gas-Cap Well Completions.* All existing and future wells completed in the gas cap of a reservoir which has been classified and approved as an associated oil reservoir shall be shut in until such time as the oil is depleted or the reservoir is reclassified as a gas reservoir; provided, however, that production from such wells may be approved when (1) it can be shown that such gas-cap production would not lead to waste of oil and gas, or (2) when necessary to protect correlative rights unless it can be shown that this production will lead to waste of oil and gas.

14. *Location of Wells.—A. General.* The location and spacing of all exploratory and development wells shall be in accordance with approved programs and plans required in 30 CFR 250.17 and 250.34. Such location and spacing shall be determined independently for each lease or reservoir in a manner which will locate wells in the optimum structural position for the most effective production of reservoir fluids and to avoid the drilling of unnecessary wells.

B. *Distance from Property Line.* An operator may drill exploratory or development wells at any location on a lease in accordance with approved plans; provided that no well directionally or vertically drilled and completed after the date of this Order in which the completed interval is less than 500 feet from a property line shall be produced unless approved by the Supervisor. For wells drilled as vertical holes, the surface location of the well shall be considered as the location of the completed interval but shall be subject to the provisions of 30 CFR 250.40(b). An operator requesting approval to produce a directionally drilled well in which the completed interval is located closer than 500 feet from a property line, or approval to produce a vertically drilled well with a surface location closer than 500 feet from a property line, shall furnish the Supervisor with letters expressing acceptance or objection from operators of offset properties.

15. *Enhanced Oil and Gas Recovery Operations.* Operators shall timely initiate enhanced oil and gas recovery operations for all competitive and noncompetitive reservoirs where such operations would result in an increased ultimate recovery of oil or gas under sound engineering and economic principles. A plan for such operations shall be submitted with the results of the annual MER review as required in paragraph 3A(3) of this Order.

16. *Competitive Reservoir Operations.* Development and production operations in a competitive reservoir may be required to be conducted under either pooling and drilling agreements or unitization agreements when the Conservation Manager determines, pursuant to 30 CFR 250.50 and delegated authority, that such agreements are practicable and necessary or advisable and in the interest of conservation.

A. *Competitive Reservoir Determination.* The Supervisor shall notify the operators when he has made a preliminary determination that a reservoir is competitive as defined in this Order. An operator may request at any time that the Supervisor make a preliminary determination as to whether a reservoir is competitive. The operators, within thirty (30) days of such preliminary notification or such extension of time as approved by the Supervisor, shall advise of their concurrence with such determination, or submit objections with supporting evidence. The Supervisor will make a final determination and notify the operators.

B. *Development and Production Plans.* When drilling and/or producing operations are conducted in a competitive reservoir, the operators shall submit for approval a plan governing the applicable operations. The plan shall be submitted within ninety (90) days after a determination by the Supervisor that a reservoir is competitive or within such extended period of time as approved by the Supervisor. The plan shall provide for the development and/or production of the reservoir, and may provide for the submittal of supplemental plans for approval by the Supervisor.

(1) *Development Plan.* When a competitive reservoir is still being developed or future development is contemplated, a development plan may be required in addition to a production plan. This plan shall include the information required in 30 CFR 250.34. If agreement to a joint development plan cannot be reached by the operators, each shall submit a separate plan and any differences may be resolved in accordance with paragraph 17 of this Order.

(2) *Production Plan.* A joint production plan is required for each competitive reservoir. This plan shall include (a) the proposed MER for the reservoir; (b) the proposed MPR for each completion in the reservoir; (c) the percentage allocation of reservoir MER for each lease involved; and (d) plans for secondary recovery or pressure maintenance operations. If agreement to a joint production plan cannot be reached by the operators, each shall submit a separate plan, and any differences may be resolved in accordance with paragraph 17 of this Order.

C. *Unitization.* The Conservation Manager shall determine when conservation will be best served by unitization of a competitive reservoir, or any reservoir reasonably delineated and determined to be productive, in lieu of a development and/or production plan or when the operators and lessees involved have been unable to voluntarily effect unitization. In such cases, the Conservation Manager may require that development and/or production operations be conducted under an approved unitization plan. Within six (6) months after notification by the Conservation Manager that such a unit plan is required, or within such extended period of time as approved by the Conservation Manager, the lessees and operators shall submit a proposed unit plan for designation of the unit area and approval of the form of agreement pursuant to 30 CFR 250.51.

17. *Conferences, Decisions and Appeals.* Conferences with interested parties may be held to discuss matters relating to applications and statements of position filed by the parties relating to operations conducted pursuant to this Order. The Supervisor or Conservation Manager may call a conference with one or more, or all, interested parties on his own initiative or at the request of any interested party. All interested parties shall be served with copies of the Supervisor's or Conservation Manager's decisions. Any interested party may appeal decisions of the Supervisor or Conservation Manager pursuant to 30 CFR 250.81. Decisions of the Supervisor or Conservation Manager shall remain in effect and shall not be suspended by reason of any appeal, except as provided in that regulation.

J. B. LOWENHAUPT,
Oil and Gas Supervisor,
Production Control.

APPROVED: May 1, 1974.

RUSSELL G. WAYLAND,
Chief, Conservation Division.

[FR Doc.74–10256 Filed 5–3–74;8:45 am]

National Park Service

INDEPENDENCE NATIONAL HISTORICAL PARK ADVISORY COMMISSION

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Independence National Historical Park Advisory Commission will be held at 10:30 a.m. on May 13, 1974, at 313 Walnut Street, Philadelphia, Pennsylvania.

The Commission was established by Pub. L. 80–795 to render advice on such matters relating to the park as may from time to time be referred to them for consideration.

The members of the Commission are as follows:

Mr. Arthur C. Kaufmann (Chairman), Philadelphia, Pa.
Mr. John P. Bracken, Philadelphia, Pa.
Hon. Michael J. Bradley, Philadelphia, Pa.
Hon. James A. Byrne, Philadelphia, Pa.
Hon. Edwin O. Lewis, Philadelphia, Pa.
Mr. Filindo B. Masino, Philadelphia, Pa.
Mr. Frank C. P. McGlinn, Philadelphia, Pa.
Mr. John B. O'Hara, Philadelphia, Pa.
Mr. Howard D. Rosengarten, Villanova, Pa.
Mr. Charles R. Tyson, Philadelphia, Pa.

Matters to be considered at this meeting include the following:

1. Mall Legislation and the Liberty Bell Pavilion.
2. Bicentennial Activities.
3. Superintendent's Progress Report.

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 desiring further information concerning this meeting, or who wish to submit written statements, may contact Hobart G.

Cawood, Superintendent, Independence National Historical Park, Philadelphia, Pennsylvania, at 215–597–7120.

Minutes of the meeting shall be available for inspection two weeks after the meeting at the office of the Independence National Historical Park, 313 Walnut Street, Philadelphia, Pennsylvania.

Date: April 29, 1974.

ROBERT M. LANDAU,
Liaison Officer, Advisory Commissions, National Park Service.

[FR Doc. 74–10318 Filed 5–3–74; 8:45 am]

Office of Hearings and Appeals

[Docket No. M 74–98]

BLACKWOOD FUEL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Blackwood Fuel Company has filed a petition to modify the application of 30 CFR 75.1405 to its Pardee Mine No. 1 located in Letcher County, Kentucky and Wise County, Virginia.

30 CFR 75.1405 reads as follows:

All haulage equipment acquired by an operator of a coal mine on or after March 30, 1971, shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on March 30, 1970, shall also be equipped within 4 years after March 30, 1970.

To be read concurrently with § 75.1405 is § 75.1405–1 which reads as follows:

The requirement of § 75.1405 with respect to automatic couplers applies only to track haulage cars which are regularly coupled and uncoupled.

In support of its petition, Petitioner states:

(1) In the subject mine, mining is accomplished by conventional equipment, that is cutting machines, loading machines, shuttle cars, rock and coal drills, etc. The mined coal from each operating section is loaded on the section into mine cars which are then pulled by electric locomotives over a rail haulage system to the outside of the mine for dumping.

(2) The mine cars are all bottom-dumping cars. They are delivered to each operating section in strings of from 10 to 30 cars depending on the availability of cars for the particular section, the extent of the mining activity and other logistical factors. On the section, the front car is hooked onto a cable which is affixed to a stationary hoisting device which is electrically operated and which is used to position the cars in turn for loading under the dump into which the shuttle cars have deposited their load of coal. Once loaded, the mine cars are then hauled by electric locomotive to the outside dump where, without being uncoupled, the hinged bottoms of each car automatically open as the car is positioned over the dumping station.

(3) There are currently in use at this mine approximately 150 mine cars. These cars are all of the bottom-dumping type but are not identical in other respects. There are five different makes of cars and their ages vary from 10 to 30 years. All of the mine cars are fitted with standard link-and-pin coupling devices.

(4) Many of the haulage way rail switches leading from the main line into the working areas of the mine were installed when the mine was first being developed and are of shorter radius than those which are now being installed. These switches cannot be replaced with wider-radius switches without removing portions of the adjacent coal pillars which help provide roof support.

(5) Petitioner submits that the application of the foregoing provision of the Act and the foregoing regulations if applied to the petitioner's mine would result in a diminution of safety over the present system in effect. Beyond this, however, in order to better achieve the purposes sought to be achieved by the Act and regulations and thus to provide a standard which provides a better measure of protection to the miner in said mine, petitioner proposes an alternate method, as set forth hereinafter

(6) Approval of this alternate system as a satisfactory replacement of the standard which otherwise would become effective in mandating automatic couplers on mine cars at this mine on and after March 30, 1974, is subject to the following understandings and conditions which are incorporated as parts of the alternate system:

A—All coal cars in use at the captioned mine will be coupled together in units or strings of cars using pin and link couplings and each pin will be drilled with a ¼ inch hole and fixed in position with the appropriate size cotter key. The front end of the front car of each string will be fitted with a coupling lever so designed as to permit an employee to lift or drop the pin through the car bumper to secure or release a link that has been inserted from another haulage unit and to do this without the necessity of positioning himself between the units being coupled or uncoupled. If it becomes necessary in the coupling operation to position the link, this also will be done without the employee positioning himself between the units—he will effectuate this alignment by using a specially designed Hand Link Aligner tool which shall be part of the equipment of all haulage crews. There will be two Hand Link Aligners on each haulage locomotive—the regular size and a shorter more convenient size in the event the motorman wishes to position the link for coupling while remaining seated in the "deck" of the locomotive.

It is presently planned that most, if not all, mine car units or strings will consist of ten cars. However, in the event it becomes more practical to combine cars into strings of more or less than ten cars, each string of cars will nevertheless meet the specifications of fixed pin on all cars and coupling lever on the front car.

B—All employees at the captioned mine will be trained and instructed in the proper operation and use of the Coupling Levers and the Hand Link Aligners and their proper use will be mandatory requirements for coupling and uncoupling of all mine car haulage units at this mine. More specifically in this regard:

(1) All present employees at this mine will, by April 30, 1974, be instructed on the function and use of the Coupling Lever and Hand Link Aligners.

(2) Thereafter, any new employee hired at the mine will be given instruction on the function and use of the Coupling Lever and Hand Link Aligners as part of his orientation before he commences actual work.

(3) This instruction of all employees will again be repeated at six month intervals. The first such re-instruction shall be given during the first five work days in November 1974, the next during the first five work days in May 1975, etc. Employees absent from work during these periods will be re-instructed within the first five work days after they return to work.

(4) The Company will maintain a permanent record of the names and dates when each mine employee received this instruction and re-instruction.

(5) The requirement that, upon conversion of mine cars at this mine, coupling and uncoupling be done by means of Coupling Levers and Hand Link Aligners shall be a mandatory safety rule at this mine and a notice to this effect shall be posted on the regular Company and Union bulletin boards at the mine.

(6) For the period March 30, 1974 through June 30, 1974, as each multiple mine car unit is converted and placed into operation, it will be subject to the modified standard set forth in this petition and such unit will only be coupled and uncoupled by use of the Coupling Lever Hand Link Aligner in accord with the modified standard. Effective July 1, 1974 all mine cars in operation at this mine must have been converted and the modified standard will become fully operative except as an extension of time has been provided by stipulation of all the parties or by order of an administrative law judge of the Interior Department Office of Hearings and Appeals. In the event shortages and/or unavailability of materials or other conditions beyond the control of management prevent completion of full conversion by July 1, 1974 the petitioner will endeavor to arrange by stipulation with the other parties for a mutually agreeable period of extension. Failing such agreement the Petitioner may request from the Office of Hearings and Appeals the assignment of an administrative law judge and conduct of a hearing for the purpose of determining whether an extension of time should be granted and, if granted, the

duration of such extension. The parties by stipulation, or the assigned administrative law judge by order following notice to all parties and conduct of hearing, shall have authority to provide for an appropriate extension if the circumstances make it reasonable to do so.

(7) The alternate method set forth above will provide no less than the same measure of protection to miners at the Pardee No. 1 mine than that sought to be afforded by Section 314(f) of the Act and Interior Department Regulations 30 CFR 75.1405 and 75.1405–1. Under the circumstances at this mine it will actually provide greater protection and thus avoid the diminution of safety that would result if automatic couplers were used.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before June 5, 1974. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015, Wilson Boulevard, Arlington, Virginia. 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

APRIL 23, 1974.

[FR Doc. 74–10328 Filed 5–3–74;8:45 am]

[Docket No. M 74–104]

CANTERBURY COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Canterbury Coal Company has filed a petition to modify the application of 30 CFR 75.1405 to its David Mine located at Avonmore, Pennsylvania.

30 CFR 75.1405 provides as follows:

All haulage equipment acquired by an operator of a coal mine on or after March 30, 1971, shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on March 30, 1970, shall also be so equipped within 4 years after March 30, 1970.

In support of its petition, Petitioner presents the following pertinent information:

1. Rail haulage at David Mine is restricted to supply and employee transportation.

2. Employee transportation is by porta-bus and/or jitney.

3. Only two employees are regularly assigned to rail transportation of supplies.

4. David Mine is a three section mine employing approximately 115 men underground on three shifts.

5. Supplies are normally transported only on the day shift.

6. The thirty cars used for transporting and storing supplies were manufactured by 5 different firms. No coupler presently on the market will work safely and effectively when coupling cars of different height.

7. At least one man has been killed by being crushed between cars equipped with automatic couplers in Western Pennsylvania within the past year.

Canterbury Coal Company requests modification of safety standard 75.1405 by approval of the following procedures:

1. No more than four loaded or empty cars will comprise a trip.

2. Coupling (dropping link pin) and uncoupling will be done only with trip totally stopped, and with the brakes of the locomotive fully applied. At all times coupling or uncoupling between cars will be done with the cars on level ground.

3. If conditions permit, the link pin will be dropped or lifted from within the car or motor.

4. An extension device will be provided to guide the link into the coupling slot.

Canterbury Coal Company believes these procedures will guarantee the safety of our haulage personnel to the same degree as implementation of § 75.1405. These procedures are presently in effect at our David Mine, which has no history of haulage accidents caused by coupling or uncoupling supply cars from other cars or locomotives.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before June 5, 1974. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

APRIL 23, 1974.

[FR Doc.74–10327 Filed 5–3–74;8:45 am]

[Docket No. M 74–75]

DIXIE PINE COAL CO., INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Dixie Pine Coal Company, Inc. has filed a petition to modify the application of 30 CFR 77.1605(k) to its Nos. 1 and 3 strip mines located at Clairfield, Tennessee.

30 CFR 77.1605(k) reads as follows:

Berms or guards shall be provided on the outer bank of elevated roadways.

In requesting a modification of the application of § 77.1605(k) Petitioner proposes the following alternate method:

1. A daily inspection of all coal-hauling vehicles shall be made and any defects detected shall be corrected before the vehicle is put into service. A record of the inspection and repair on each vehicle shall be kept and maintained by a supervisory employee.

2. All rules of the road (traffic system) shall be posted on the bulletin boards throughout the mine area, and such rules of the road shall be made part of the training and retraining programs.

3. Roadway surfaces shall be kept free of debris, excessive water and snow and ice, and maintained as free as practicable of small ditches.

4. A traffic system shall be put into effect for these roads requiring that the loaded trucks have the right-of-way in all no-passing or one-lane traffic areas.

5. Warning signs shall be posted designating curves, steep grades where trucks should shift to a lower gear, and where roadways are reduced to one-lane traffic. Stop signs shall be posted where one road intersects another, giving main haulage road traffic the right-of-way. Signs shall also be posted designating passing points.

6. All equipment operators shall be trained in the use of haulage equipment and the safety of vehicles on haulage roads.

7. All haulage vehicles shall have:

(a) Original manufacturer's brakes

(b) Engine or Jacobs brakes, except on gasoline powered trucks which do not have Jacobs brakes but the engine of which serves as effective brakes

(c) Original manufacturer's parking brakes

8. Adequate supplies of crushed stone or other suitable materials shall be stored at strategic locations along the haulage roads for use when the road surface becomes slippery.

9. A minimum width of 24 feet shall be provided and maintained, the roads shall be designated as single-lane roads.

10. On roads that afford only one traffic lane, a minimum width of 16 feet, except where roads are shot out of solid rock, in which case they shall be 12 feet, shall be maintained, with passing points provided at intervals of not more than 1,000 feet.

Petitioner's alternate method will at all times guarantee no less than the same measure of protection afforded the miners by the application of the mandatory standard.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before June 5, 1974. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

APRIL 23, 1974.

[FR Doc.74–10332 Filed 5–3–74;8:45 am]

[Docket No. M 74–107]

HELEN MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), The Helen Mining Company has

filed a petition to modify the application of 30 CFR 75.1405 to its Homer City Mine located at Homer City, Pennsylvania.

30 CFR 75.1405 reads as follows:

All haulage equipment acquired by an operator of a coal mine on or after March 30, 1971, shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on March 30, 1970, shall also be so equipped within 4 years after March 30, 1970.

To be read concurrently with § 75.1405 is § 75.1405–1 which reads as follows:

The requirement of § 75.1405 with respect to automatic couplers applies only to track haulage cars which are regularly coupled and uncoupled.

In support of its petition, Petitioner states the following:

1. The Homer City Mine utilizes an all-belt conveyor system to transport coal from the underground working sections to the outside coal handling facilities.

2. Use of the track haulage system is limited to transportation of men, supplies and equipment from the surface to the off-track loading point. Men, supplies and equipment may be transported from that point to the faces in vehicles capable of travelling off-track.

3. Men are usually transported on rail (on track) in self-propelled unit vehicles which are not regularly coupled and uncoupled. Off rail (off-track) personnel may be transported in self-propelled, rubber-tired vehicles or on skids pulled by self-propelled, rubber-tired tractors.

4. Supplies and equipment are normally transported on rail (on track) in "rubber/rail" vehicles, equipped with retractable rubber wheels. These vehicles are pulled on track by steel-tired electrical locomotives. By engaging the rubber wheels, the vehicles are able to operate off rail (off-track) where they are pulled by self-propelled, rubber-tired tractors. All of Petitioner's supply cars which travel off rail (off-track) are "rubber/rail" vehicles.

5. Because of the exclusive use of a belt conveyor system to transport coal, the use of automatic couplers on equipment travelling on or off rail (track) will result in a diminution of safety to the miners in the Homer City Mine.

6. The Homer City Mine is characterized by entries having a relatively tighter and narrower radius of horizontal curve and by bottom grades which are more pronounced and undulating than mines using track haulage to transport coal. The uneven bottom contours, tight horizontal curves and the fixed position of the engaged rubber wheels on rubber/rail cars travelling off-track distort the horizontal and vertical alignment needed for reliable functioning of automatic couplers and cause excessive wear to, and/or jamming of, such couplers.

7. Since coal is not transported on Petitioner's tracks, the tracks and track road beds are not constructed to carry the thirty-five to fifty ton locomotives and the ten to thirty ton coal cars typically found in mines using track haulage to transport coal. In such mines, heavy-duty ballasting of the track road bed and track alignment by means of welded plates are designed to accommodate the extremely heavy locomotives and coal cars and contribute substantially to reliable functioning of automatic couplers. The lighter weight track and ballasting, designed to accommodate the relatively lighter rubber/rail supply cars in Petitioner's mines, provide less uniform horizontal and vertical alignment of automatic couplers and cause excessive wear to, and/or jamming of, such couplers.

8. In light of the conditions stated above, use of automatic couplers in Petitioner's mine would present the following hazards to safety:

a. Excessive wear to automatic couplers would result in acidental uncoupling and possible derailment.

b. Automatic couplers which become jammed or accidentally uncoupled would in almost every instance require miners to position themselves between vehicles in order to effect the proper alignment for coupling.

Accordingly, the use of automatic couplers, whether on or off-track, in Petitioner's mine would result in a diminution of safety to the miners.

9. The pin-and-drawbar couplers in use in Petitioner's mine are far less susceptible to excessive wear, jamming or accidental uncoupling from uneven alignment than automatic couplers and can be manipulated with much greater flexibility. These couplers, therefore, guarantee no less than the same measure of protection which would be afforded the miners by the use of automatic couplers in the Homer City Mine.

Petitioner respectfully requests that the Secretary modify the application of Section 314(f) by relieving Petitioner of the requirement to install automatic couplers on equipment in its Homer City Mine.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before June 5, 1974. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

APRIL 23, 1974.

[FR Doc.74–10326 Filed 5–3–74;8:45 am]

[Docket No. M 74–92]

ISLAND CREEK COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Island Creek Coal Company has filed a petition to modify the application of 30 CFR 75.902 to its Crescent, Fies, Fies #9, and Providence No. 1 Mines. Crescent Mine is located in Muhlenberg County; the remaining three mines in Hopkins County, Kentucky.

30 CFR 75.902 reads as follows:

On or before September 30, 1970, low and medium voltage-resistance grounded systems shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of 12 months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

In support of its petition, Petitioner states the following:

(1) Petitioner has invested considerable time and expense to install stationary underground electrical power substations which use either a rigid metal conduit, interlocked flexible metallic conduit, or non-seamed C–L–X flexible metallic conduit to cover and protect ungrounded power conductors.

(2) Safe usage of the resistance grounded power conductor depends wholly upon existence of a grounding path of low impedance from the transformer core and enclosure to the cables and loads which receive power from the source transformer. Standard safety practice under the law requires a ground conductor of certain size to be connected as described. Furthermore, the ground check circuit performs the additional functions of verifying the existence of the ground path. Safety is compromised when the ground wire is broken.

(3) Influences of stray direct currents, parallel ground paths, etc., prevent an easy solution to successful ground checking. At this time a controversy exists as to whether the problem has been satisfactorily solved.

(4) An alternative to ground check circuits is herein proposed which substitutes mechanical strength for the operating uncertainties of using ground check devices. Substantial rigid metal conduit, heavy steel interlocked conduit, or non-seamed C–L–X conduit provides complete metallic covering of the power conductors. This affords superior crushing and abrasion protection. In addition, the conduit would enter metal enclosures through properly designed box fittings to grip and hold the conduit. In addition, Petitioner proposes to use an uninsulated conductor, sized in accordance with normal resistance grounded applications.

(5) The grounding conductor would be carried on the outside of the conduit and taped or otherwise fastened to the conduit at short intervals, and the grounding conductor would be permanently attached to the power substation, all other boxes, and enclosure frames

into which the power circuit enters. Attachment would be effected by means of lugs, bolted to the metal enclosure with set screw wire attachment, or its equivalent.

(6) It is intended that the above construction will provide for stationary substations an alternative to safety standard 75.902. Through the use of steel armoring and easily inspected and verified external substantial grounding wire connections, the alternative course of action would not constitute any diminution of the level of safety engineered into the electrical installation. Additionally, safety would be increased in that it would be increasingly difficult for personnel to contact one or two power wires when using the conduit as opposed to an unshielded trailing cable.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before June 5, 1974. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

APRIL 23, 1974.

[FR Doc.74-10329 Filed 5-3-74;8:45 am]

[Docket No. M 74-77]

PINE BRANCH COAL SALES, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Pine Branch Coal Sales, Inc. has filed a petition to modify the application of 30 CFR 77.1605(k) to its #20 Strip Mine located at Chavies, Kentucky.

30 CFR 77.1605(k) reads as follows:

Berms or guards shall be provided on the outer bank of elevated roadways.

Petitioner asserts that the application of the mandatory standard will result in diminution of safety to miners in the affected mine for the following reasons:

(1) Guardrails are ineffective in preventing a vehicle which is out of control from going over an embankment because:

(a) Most trucks when empty weigh from 10 to 14 tons. Trucks of such weight, even when traveling five miles per hour, would be virtually unchecked by even the sturdiest guardrail.

(b) Guardrails would have to be placed in fill material where there is insufficient anchorage.

(2) To install guards in solid ground would require widening the road thereby creating dangerous high walls.

(3) Berms create a drainage problem causing the roads to rut and wash out. A road with the "wash board" effect is a safety hazard.

(4) Berms and guardrails prevent proper grading of the roads, especially in wet or freezing weather.

(5) Berms would hamper Petitioner in its efforts to gravel its haulage road.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before June 5, 1974. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

APRIL 23, 1974.

[FR Doc.74-10331 Filed 5-3-74;8:45 am]

[Docket No. M 74-91]

PRINCESS SUSAN COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Princess Susan Coal Company has filed a petition to modify the application of 30 CFR 77.1605(k) to its Blakeley Strip Mine located at Hazelton, Pennsylvania.

30 CFR 77.1605(k) reads as follows:

Berms or guards shall be provided on the outer bank of elevated roadways.

By its petition, Petitioner requests a waiver of the foregoing safety standard as it applies to the subject mine. In support of its petition, Petitioner asserts that its haulage roads and ramps are of a temporary nature and it would be impractical to install berms and guards.

As an alternative method, Petitioner proposes that it be allowed to continue to use its present haulage roads without installing berms and guards, asserting that such method will not result in a diminution of safety to the miners.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before June 5, 1974. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

APRIL 23, 1974.

[FR Doc.74-10330 Filed 5-3-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

NATIONAL MEAT AND POULTRY INSPECTION ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Meat and Poultry Inspection Advisory Committee will be held on May 23, 1974, beginning at 9 a.m. in Room 218A, Administration Building, U.S. Department of Agriculture, Washington, D.C.

The purpose of this Committee is to advise and make recommendations to the Secretary of Agriculture regarding operations pertaining to meat and poultry inspection programs pursuant to section 301 of the Federal Meat Inspection Act and section 5 of the Poultry Products Inspection Act. Matters to be discussed include a proposal for a single national meat and poultry inspection system, quality control program, proposed product standards, and other matters relating thereto.

This meeting is open to the public but space and facilities are limited. Comments of interested persons may be filed with the Committee before or after the meeting.

Information pertaining to the meeting may be obtained from James K. Payne, Room 4349-South, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250 (Telephone: 202/447-6313.)

Dated: April 29, 1974.

F. J. MULHERN,
Vice Chairman.

[FR Doc.74-10286 Filed 5-3-74;8:45 am]

Soil Conservation Service

POPLAR RIVER WATERSHED PROJECT, WISCONSIN

Notice of Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, U.S. Department of Agriculture, has prepared a final environmental impact statement for the Poplar River Watershed Project, Clark and Taylor Counties, Wisconsin, USDA-SCS-ES-WS-(ADM)-73-5(F).

The environmental impact statement concerns a plan for watershed protection, flood prevention, and fish and wildlife improvement. The planned works of improvement provide for conservation land treatment, a 1.31-mile dike around Owen with an associated lake outlet structure for Owen Pond, and one mutliple-purpose reservoir with capacity for floodwater retarding and fish and wildlife.

The final environmental impact statement was transmitted to CEQ on April 18, 1974.

A limited supply is available at the following locations to fill single copy requests:

Soil Conservation Service, USDA, South Agriculture Building, Room 5227, 14th and Independence Avenue, SW., Washington, D.C. 20250

Soil Conservation Service, USDA, P.O. Box 4248, Madison, Wisconsin 53711

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services)

Dated: April 26, 1974.

WILLIAM B. DAVEY,
Deputy Administrator for Water Resources Soil Conservation Service.

[FR Doc.74-10289 Filed 5-3-74;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

CHILDREN'S HOSPITAL OF PITTSBURGH, ET AL.

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, by May 27, 1974.

Amended regulations issued under cited Act, as published in the February 24, 1972 issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket number: 74-00403-33-46040. Applicant: Children's Hospital of Pittsburgh, 125 DeSoto Street, Pittsburgh, Pa. 15213. Article: Electron Microscope, Model EM 201. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for the study of pediatric tumors (lymphomas, round cell tumors, soft tissue sarcomas, etc.). These tumors are examined electron microscopically for specific ultrastructural changes that help identify them and provide knowledge about tumor formation. Another part of the research involves concentrated studies of specific viruses: a) Tissue culture material from hepatitis patient's will be searched for the presence of a Hepatitis Associated Viral Antigen, b) Chick embryos will be infected with a pool of New Castle Disease Virus and the chorioallantoic fluid, and various chick organs will be studied to determine sites and rate of viral replication, c) Another project involves the Mammary Tumor Virus in mice. Additional studies will be carried out on various organs to determine the ultrastructural changes that result from the disease process. These include electron microscopic examination of kidney (glomerulonephritis and Bartter's syndrome), adrenal (Cushing's disease), pancreas (Hypoglycemia) and skin fibroblasts (I-cell disease). The article is also to be used for educational purposes in the courses:

Introductory Course to Electron Microscopy—designed to provide a basic knowledge of electron microscopic techniques to the residents and interns.

Fundamentals of Electron Microscopy—to teach all the techniques vital to an anatomic Pathologist.

Application received by Commissioner of Customs: April 2, 1974.

Docket number: 74-00404-33-46040. Applicant: University of Washington, Department of Biological Structure, Seattle, Washington 98195. Article: Electron Microscope, Model EM 201. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used in a broadly directed research program which is intended to acquire a better understanding of the fine structure of tissues in terms of their constituent cell organelles and, whenever possible, to relate their structure to physiological or mechanical function. These research programs include the following:

(1) Relation of structure to function in capillaries and blood vessels by developing and applying a new stain, ruthenium red, to identify extracellular acid mucopolysaccharides.

(2) Investigation of the plasma membrane complex of amoebae.

(3) Examination of cell membranes and cytoplasm components prepared in ways intended to best preserve their normal appearance.

(4) Studies of the pathways of protein uptake in the suckling rat intestine.

(5) Determination of the origin, composition and fate of certain cytoplasmic components unique to germ cells and to analyze their role as well as the role of other factors in the process of germ cell formation and maturation.

(6) Assessment of the response of pituitary somatotrophs cells in the rat pars distalis when incubated with growth hormone-releasing and inhibiting factors.

In addition, investigations are underway to localize the enzyme acid phosphatase in somatotrophs and to correlate its presence with the secretory process.

Application received by Commissioner of Customs: April 2, 1974.

Docket number: 74-00405-33-46040. Applicant: University of Pennsylvania, School of Medicine, 536 Johnson Pavilion, Philadelphia, Pa. 19104. Article: Electron Microscope, Model EM-10. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in an established research program studying the normal morphology and pathology of joint tissues. Specifically to be investigated are:

(1) The nature of changes in synovial small blood vessels in human arthritis,

(2) The further identification of virus like particles being found in the synovium and considered as possible initiating couses of rheumatoid arthritis.

(3) The distribution of immunoglobulins, complement, the two types of lymphocytes (T and B) in the synovium and synovial fluid and comparison of this pattern in arthritis.

Similar studies will be performed in recently identified dogs with rheumatoid like arthritis. The article will also be used in training research fellows interested in learning ultrastructural research techniques to apply to the investigation of arthritis. Application received by Commissioner of Customs: April 1, 1974.

Docket number: 74-00406-56-17500. Applicant: University of Washington, Department of Oceanography, WB-10, Seattle, Washington 98195. Article: Recording Current Meter, Model #4 (4 each). Manufacturer: Ivar Aanderaa, Norway. Intended use of article: The article is intended to be used for studies of circulation and hydrographic structure in the Bering Strait and the Arctic Ocean. Experiments involve the continuous year-long monitoring of currents and gross thermal structure of waters entering the Arctic Ocean through the Bering Strait. Application received by Commissioner of Customs: April 1, 1974.

Docket number: 74-00408-33-90000. Applicant: Washington University School of Medicine, Department of Biological Chemistry, 660 South Euclide Avenue, St. Louis, Missouri 63110. Article: Rotating Anode x-ray Generator. Manufacturer: Elliot Neutron Division, United Kingdom. Intended use of article: The article will be used to obtain x-ray diffraction data from lipoproteins and membranes. All the studies relate to the determination of the molecular structure of biological macromolecules. Application received by Commissioner of Customs: April 1, 1974.

Docket number: 74-00409-33-46070. Applicant: St. Louis University Medical School, Pathology Department, 1402 South Grand, St. Louis, Missouri 63104. Article: Scanning Electron Microscope, Model JSM-35U and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article will be used for a variety of specimens from patients with diseases for diagnostic and investigational purposes and for studies of various experimental models of human diseases as a means toward a better understanding of etiology, pathogenesis and control. The studies include:

(1) Diagnostic studies of human renal and hepatic biopsies.

(2) Diagnostic studies of human lung tissue and of experimental animal lung with emphasis on oxygen toxicity in the newborn.

(3) Diagnostic studies of human blood and bone marrow specimens.

(4) Studies of human tissue upon removal in surgery and freezing in cold stage accessory using low accelerating voltage to reduce specimen damage.

(5) Studies of lung inclusions using x-ray analyzer for elemental analysis of trace elements contained in said inclusions.

The article will also be used in training programs for medical and graduate students in electron microscopy and the use of it in biomedical studies and research. Application received by Commissioner of Customs: April 1, 1974.

Docket number: 74-00410-01-77040. Applicant: University of Minnesota, Department of Chemistry, Minneapolis, 55455. Article: Mass Spectrometer, Model MS-30. Manufacturer: AEI Scientific Apparatus, United Kingdom. Intended use of article: The article is intended to be used as a service instrument for low and high resolution spectra of compounds submitted by the faculty members and their students. Secondly, it will be used as a teaching instrument in a Modern Analytical course, and finally, it will be used by graduate students for special long term studies in organic and biological chemistry. Some of the types of compounds and more specific applications which will be encountered in the use of the article are:

(1) Isotopic scrambling of oxygen-18 used as a mechanistic probe in model systems for enzymatic reactions.

(2) The reaction of the diradical species SO with an unconjugated olefin producing a mixture of complex products often in low yields;

(3) Structural elucidation of the compounds, F-5-3 and F-5-4, which are related to zearalenone,

(4) Determination of location and extent of incorporation of the label by examining the isotopic patterns of fragment peaks in the labeled and unlabeled compounds of the *Cinchona* alkaloids,

(5) Study of the scope and mechanism of the rearrangement of substituted 5-nitronorbornenes and 2-nitronorbornanes under the Nef reaction conditions. The article will also be used extensively for teaching as well as for research analysis in association with graduate research programs. Application received by Commissioner of Customs: March 29, 1974.

Docket number: 74-00411-33-90000. Applicant: University of California—Los Angeles, Center for the Health Sciences, Los Angeles, California 90024. Article: EMI Scanner System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used for diagnostic purposes in neuroradiology to clearly delineate anatomical variations and central nervous system pathology. Medical students will be instructed in the purpose of the article, and demonstrations will be given to them on its appropriate use. Postdoctoral students will be taught use of the article, interpretation of the clinical information provided by the article and application of this knowledge to patient care. Application received by Commissioner of Customs: April 5, 1974.

Docket number: 74-00412-33-46040. Applicant: Carnegie-Mellon University, Department of Metallurgy & Materials Science, Schenley Park, Pittsburgh, Pa. 15213. Article: Electron Microscope, Model JEM 100B and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used in the following research projects:

Direct Observation of Interfacial Microstructure—which entails the growth of single crystal thin films of different materials (e.g. Au-Ag) and varying orientations, the formation of an interface by mechanical contacting and sintering and subsequent dynamical observations on its character and stability.

(2) Interfacial Mobilities—involving observation of continuous grain boundary migration under influence of a known driving force.

(3) Interfacial Reactions in Bimetallic Thin Films—to study effects of electromigration on structure and properties of metallic thin films.

(4) Failure Prevention in Steel Rails—concerned with the relationship between microstructure and fracture toughness of pearlitic steels.

Application received by Commissioner of Customs: April 5, 1974.

Docket number: 74-00413-99-72500. Applicant: Veterans Administration Hospital, 2500 Overlook Terrace, Madison, Wisconsin 53705. Article: Engstrom Respirator System and Engstrom Ultrasonic Nebulizer and Mounting Kit. Manufacturer: LKB Medical AB, Sweden, Intended use of article: The article is intended to be used in the Anesthesia Rotation Service course to instruct third year medical students in the principles of airway management, clinical management of depressant drugs, acute respiratory and cardiovascular resuscitation, and the care of the comatose patient. Application received by Commission of Customs: April 4, 1974.

Docket number: 74-00415-33-90000. Applicant: Scott and White Memorial Hospital, 2401 South 31st Street, Temple, Texas 76501. Article: EMI Scanner. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used to detect the following pathological conditions through investigation of the brain:

(1) Diffused or localized enlargement of the ventricles and cisterns without parenchymal alteration such as found in atrophic and degenerative or congenital hydrocephalic processes; (2) Tumors or hematomas; (3) Unsuspected lesions in patient presumed to have such disorders as multiple sclerosis, infarcts, seizure disorders, headaches, or dementia; (4) trauma; (5) post-operative complications such as edema or hemorrhage.

The article will also be used for educational purposes in the training of radiology residents. Application received by Commissioner of Customs: April 5, 1974.

Docket Number: 74-00416-33-44795. Applicant: Texas Research Institute of Mental Sciences, Texas Medical Center, 1300 Moursund Avenue, Houston, Texas 77025. Article: M/P 40 Fc Electronic Motility Meter with Vertical Detector. Manufacturer: Motron Products, Sweden. Intended use of article: The article is intended to be used to study psychotropic drugs by measuring their effects on the movement of animals to gain further understanding of the property of currently used psychotropic drugs in hopes of developing better therapeutic agents. Application received by Commissioner of Customs: April 8, 1974.

Docket number: 74-00417-00-82600. Applicant: University of California, Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, New Mexico 87544. Article: Lens for AGA Thermovision System Camera. Manufacturer: AGA, AB, Sweden. Intended use of article: The article is an accessory to an AGA Thermovision System Camera being used for studies of radiation in the infrared region of the electromagnetic spectrum from chemicals released in the earth's upper atmosphere. Application received by Commissioner of Customs: April 4, 1974.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

A. H. STUART,
Director,
Special Import Programs Division.

[FR Doc.74-10291 Filed 5-3-74;8:45 am]

ALTON OCHSNER MEDICAL FOUNDATION

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 74-00260-33-90000. Applicant: Alton Ochsner Medical Foundation, 1514 Jefferson Highway, New Orleans, La. 70121. Article: EMI Scanner System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used for a comparative study of the brain lesions detectable with this technic as compared with findings available from isotope brain scans and by more invasive and hazardous technics of carotid arteriograms and pneumoencephalography. The article will also be used for educational purposes by medical students and neurosurgery, neurology, and radiology residents. Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the article was ordered (May 22, 1973).

Reasons: The foreign article is a newly developed system which is designed to provide precise transverse axial x-ray tomography. We find that

the speed and accuracy of the article in the solution of diagnostic problems in teaching students new techniques in neurosurgery and radiology, as well as, in research on the article's accuracy to be pertinent to the applicant's purposes. The Department of Health, Education, and Welfare (HEW) advised in its memorandum dated March 26, 1974 that it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended purposes.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105 Importation of Duty-Free Educational and Scientific Materials.)

A. H. STUART,
Director,
Special Import Programs Division.

[FR Doc.74–10290 Filed 5–3–74;8:45 am]

National Oceanic and Atmospheric Administration

OCEAN WORLD, INC.

Issuance of Permit for Marine Mammals

On December 27, 1973, notice was published in the FEDERAL REGISTER (38 FR 35340) that an application had been filed with the National Marine Fisheries Service by Ocean World, Inc., 17th Street Causeway, Fort Lauderdale, Florida 33316, for a permit to take two (2) Atlantic bottlenosed dolphins (Tursiops truncatus) and one (1) Atlantic harbor seal (Phoca vitulina concolor) for public display.

Notice is hereby given that on April 29, 1974, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit to Ocean World, Incorporated, for the taking of one harbor seal. The request for two bottlenosed dolphins is denied due to the limited capacity of the holding facilities. The activities authorized by this Permit are subject to certain conditions set forth therein. The Permit is available for review by interested parties as follows:

Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235.

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

Dated: April 29, 1974.

JACK W. GEHRINGER,
Acting Director,
National Marine Fisheries Service.

[FR Doc.74–10347 Filed 5–3–74;8:45 am]

WOMETCO MIAMI SEAQUARIUM

Issuance of Permit for Marine Mammals

On January 14, 1974, notice was published in the FEDERAL REGISTER (39 FR 1785), that an application had been filed with the National Marine Fisheries Service by Wometco Miami Seaquarium, 30 Rickenbacker Causeway, Miami, Florida 33149, for a permit to take three (3) Atlantic bottlenosed dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that, on April 30, 1974, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit to Wometco Miami Seaquarium, subject to certain considtions set forth therein.

The Permit is available for review by interested persons in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, and at the Office of the Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33072.

Dated: April 30, 1974.

JOSEPH W. SLAVIN,
Acting Director, National Marine Fisheries Service.

[FR Doc.74–10346 Filed 5–3–74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

CHANGING FOOD SUPPLY IN AMERICA

Notice of Public Meeting

Notice is hereby given that the Food and Drug Administration will sponsor in cooperation with the Consumer Ad Hoc Group a conference on "The Changing Food Supply in America." Five written papers will form the basis for the conference discussion.

The conference will be held Wednesday, May 22, 1974, from 9:30 a.m. to 4 p.m., in the Conference Theater, Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

This meeting is open to the public, and all interested persons are invited to attend. Additional information may be obtained by writing to Office of Consumer Affairs, Food and Drug Administration, Attention: R. A. Grant, Director, Consumer Affairs (HFI–3), 5600 Fishers Lane, Rockville, MD 20852, or by telephoning 301–443–1547.

Dated: May 1, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74–10425 Filed 5–3–74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

KEOKUK BRIDGE TOLLS

Final Order of the Administrator

Pursuant to the notice of the Acting Federal Highway Administrator, issued on May 24, 1973 (38 FR 15092), a further hearing was held on September 25, 1973 before Administrative Law Judge Robert N. Burchmore for the purpose of determining whether the rates of toll now charged by the City of Keokuk for transit over the Keokuk Bridge at Keokuk, Iowa are reasonable and just under section 4 of the Bridge Act of 1906, 33 U.S.C. 494. The hearing was in conformity with the Bridge Toll Procedural Rules of the Federal Highway Administration (49 CFR Part 310) and the Administrative Procedure Act.

After considering the evidence of record and the briefs submitted by the parties, Judge Burchmore rendered his recommended decision on March 4, 1974. Judge Burchmore's recommended decision is reproduced as an appendix hereto. On March 20, 1974, the Administrator issued an order setting April 8, 1974 as the deadline for filing of exceptions to the Administrative Law Judge's recommended decision. No exceptions have been filed.

The Administrator has reviewed the recommended decision of the Administrative Law Judge and has determined that it is correct as a matter of law and fact. Accordingly, the recommended decision of the Administrative Law Judge is adopted as the decision of the Federal Highway Administrator.

In consideration of the foregoing, *it is hereby ordered,* That:

1. The rates of toll now charged by the City of Keokuk for transit over the Keokuk Bridge are reasonable and just within the meaning of section 4 of the Bridge Act of 1906.

2. This proceeding is hereby discontinued.

This final order is issued under the authority of section 4 of the Bridge Act of 1906, 33 U.S.C. 494, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, the delegation of authority by the Secretary of Transportation at 49 CFR 1.48(i), and section 310.13 of the Bridge Toll Procedural Rules, 49 CFR 310.13.

Issued on April 23, 1974.

NORBERT T. TIEMANN,
Federal Highway Administrator.

APPENDIX

Burchmore, Administrative Law Judge:

This is a proceeding under the General Bridge Act of 1906 (33 U.S.C. 491 et seq.) to determine whether the tolls charged for transit over the Keokuk bridge are just and reasonable, and if not, to prescribe just and reasonable tolls. Prior reports contain a statement of the case, which is incorporated herein by reference; the burden of proving the assailed rates to be unjust or unreasonable rests upon the complainants by provision of the Administrative Procedure Act. (5 U.S.C. 556(d)).

The Administrator originally found the tolls to be unjust and unreasonable and ordered the City to submit a new schedule of tolls. In so doing, the Administrator adopted a definition of "just and reasonable" which had recently been applied in a companion case involving the MacArthur Bridge at Burlington, Iowa. That definition contemplated that tolls should be limited to an amount necessary to maintain and operate the bridge and to provide for its amortization. However, the Burlington case was ap-

pealed to the courts, and the Administrator's definition was held to be invalid. City of Burlington v. Turner, 336 F. Supp. 594 (S.D., Iowa, 1972); 471 F. (2d) 120 (8th Cir. 1973). The Court of Appeals directed the Administrator to modify his definition to include the additional factor of a reasonable return on invested capital.[1] The Court also remanded the case with directions to "hold additional hearings and to make a determination of tolls that are reasonable and just pursuant to the trial court's interpretation of the 1906 Bridge Act as modified by this opinion." Accordingly, by notice issued May 24, 1973, the Administrator announced further hearings in both cases to receive evidence as to bridge related costs, invested capital and rates of return.

A prehearing conference was held at the request of the parties on July 19, 1973, at Burlington, Iowa; and the hearing was held at Keokuk, Iowa, on September 25, 1973. The record on further hearing comprises 175 pages of reporter's transcript of testimony and 21 numbered exhibits. Opportunity was afforded for the filing of briefs and replies. Requested findings not adopted herein nor discussed in the report have been considered and found not justified.

INVESTED CAPITAL

The City's invested capital in the Keokuk Municipal Bridge was stipulated by the parties to amount to $1,771,333.40 without taking into account any depreciation. The total just stated was made up of the following items and the year of investment is shown below:

Investment	Year	Amount
Purchase price	1941	$675,000.00
Improvements to	1949	61,258.00
Pier construction	1951	145,182.89
Illinois approach	1954	106,615.26
Sidewalk	1954	71,695.00
Bridge deck	1957	682,685.64
Toll house	1958	28,896.61
Total		1,771,333.40

Depreciation. The City introduced no evidence as to depreciation; its position is that depreciation should not be taken into account because it was not mentioned in the Court's definition of invested capital.[1] However, in my opinion that position is untenable as a matter of law. Lindheimer v. Illinois Bell Telephone Co., 292 U.S. 151, 167 (1934). The question which is to be determined in a case of this kind is what the useful life of the bridge is in years, and how much of that life has expired; when those facts are known, the remaining capital investment can be calculated by ordinary accounting methods.

The City has not taken depreciation into account at any time since it acquired the bridge; and this record contains virtually no evidence as to the remaining useful life of the bridge at the present time. However, there is one exhibit in the record containing a depreciation schedule that was set up by the Keokuk and Hamilton Bridge Co.; it was that company which transferred ownership of the bridge to the City in 1941. This schedule shows both the depreciation reserves and the depreciation taken on tax returns from the time the bridge was built in 1870 until it was transferred in 1941. The City's accounting witness testified that in his opinion the schedule was reasonable.

The considered schedule provided for an original estimated useful life of 200 years on the substructure and 100 years on the superstructure, and the depreciation reserves were calculated on that basis from 1870 to 1941, although higher rates of depreciation were used for tax purposes after 1912. The original cost of the bridge was equally divided between substructure and superstructure, so that the combined depreciation rate was originally .75 percent (i.e., 1 percent on superstructure and .5 percent on substructure). Other effective combined rates of depreciation were calculated from the schedule in an analysis that was submitted on brief by counsel for the Administrator. That analysis arrived at several alternative conclusions as to the depreciated capital investment: (1) $1,275,013, at an annual depreciation rate of 1.2 percent (2) $1,385,466 at a rate of .94 percent, and (3) $1,496,576 at a rate of .67 percent.

An engineering witness for the City testified that the bridge is in an excellent state of repair and capable of carrying greater loads than it was originally designed for. While not claiming that the bridge is immortal, he expressed agreement with the idea that its useful life was of indefinite term. Considering all of the evidence, I find that the depreciated capital investment in the bridge as of December 31, 1972 was not less than $1,450,000.

RATE OF RETURN

The positions of the parties vary greatly as to which constitutes a fair rate of return on invested capital in this case. The State of Illinois, and the Illinois complainants, would hold the City to a 5 percent return while counsel for the Federal Highway Administration suggests a return of 8 percent; the City of Keokuk seeks a return of 10 percent.

The accounting witness for the City testified that the historic return on the bridge since acquisition by the City was "about six and two-thirds percent annually". However, the calculation included about three years when the bridge was toll free, and if those years were excluded the witness estimated the rate would have been seven and a half percent. Moreover, the calculation was on undepreciated capital and the rate would have been still higher had depreciation been taken into account. Referring to possible rates of return on investment of idle funds, he said U.S. Government issues would return "somewhere between eight and nine percent". At the time of the hearing the bank prime rate was at a very high level of almost ten percent. Earlier investments by the City in 1972 brought only 4.05 percent return, although the witness said that at the time of the hearing the return would probably be twice as much, or 8.1 percent. He testified that recent certificates of deposit had earned as high as ten and a half percent in banks.

An exhibit was introduced containing excerpts from the Wall Street Journal which supported the witness' testimony as to current yields on governments. The exhibit also showed current yields on high grade corporate bonds as high as 8 percent. No evidence was offered by other parties in rebuttal of the witness' stated opinion that a return of 10 percent on the bridge would be reasonable.

In my opinion, an equity investment in the assets of a public utility is entitled to a return at least as high as is realized from interest on fixed obligations. A return that is not as high as the current prime bank rate (the rate which banks charge preferred customers for short term loans) cannot be said to be excessive. To the extent that inflation has driven such rate as high as shown on this record, the same forces affect the revenue need of the bridge owners, and their right to real earnings. Accordingly, I find that a rate of return of eight percent is reasonable and not excessive at the present time. Tolls that produce such a return today may well fall short in the not distant future; if on the other hand they later become excessive they are subject to re-examination and adjustment. Today, anything less would approach the confiscatory. Eight percent of $1,450,000 is $116,000, which I find to be a fair return on the bridge for the foreseeable future.

REVENUES AND EXPENSES

The City introduced evidence showing its bridge related revenue and expenses for the years 1968 through 1972 inclusive. For the latest full year, 1972, its revenues were:

Highway revenues	$287,362
Railroad revenues	67,157
Other revenues	5,428
Total	359,947

The total expenses claimed to have been incurred for the year 1972 are $282,587 (Exhibit A–1 plus items shown at pages 15–16 of the 1973 hearing transcript (R. 15–16)). To the claimed expenses should be added a depreciation charge for the year, because no depreciation was taken in the year 1972, and in accordance with the finding herein as to depreciation, a charge should be made in 1972 on that account. In my opinion the amount should be $13,285 (.0075 times $1,771,333). When this is done, the total of claimed expenses for 1972 becomes $295,872. However, the expenses claimed by the City include certain items as to which objections were raised and some of the items cannot be justified.

Lee County property tax. The 1972 expenses claimed by the City include $43,812 paid to Lee County, Iowa, for property tax. All of the other parties contend that this is not a proper charge to bridge costs. Their contention rests upon section 382.7 of the Iowa code which provides:

Notwithstanding any provisions of the Code, interstate bridges owned by a city or town may be subject to assessment and taxation in the discretion of the governing body of the city or town owning such bridge.

Complainants argue that the Lee County tax is not an enforceable bridge cost since under the quoted statute it is discretionary with the city whether to allow the assessment and taxation.

On brief the City points out that section 382.7 gives discretion to the City only with respect to a bridge which would otherwise be exempt; manifestly if taxation is mandatory under other provisions of the Code, there would be no room for exercise of discretion by the City in the matter. As to this, counsel directs our attention to the following provisions of section 427.1 of the Code:

Section 427.1 Exemptions: The following classes of property shall not be taxed:

* * * * *

2. *Municipal and military property.* The property of a county, township, city, town, school corporation, levee district, drainage district or military company of the state of Iowa, when devoted to public use and not held for pecuniary profit.

The Keokuk bridge is unquestionably City property, but it is clearly held for pecuniary profit and is therefore not exempt under the foregoing section of the Code. Accordingly, it appears that the governing section of the Code is section 427.13 which provides:

[1] "Invested capital as used herein shall include the amount, if any, which the City paid in acquiring the bridge in 1923, plus the amounts which it has paid subsequent to that date for additions to and reconstruction of the bridge; it shall not include amounts spent for interest on revenue bonds or for normal maintenance and repair since acquisition, and replacement cost shall not be a factor in such determination." 471 F. (2d) 123.

Section 427.13 What taxable. All other property, real or personal, is subject to taxation in the manner prescribed, and this section is also intended to embrace:

1. Ferry franchises and toll bridges, which, for the purpose of this chapter are considered real property.

Reading all of the quoted provisions of the Iowa Code in context, it seems clear that the Code in effect gives the City the discretion to permit taxation of a bridge if such bridge is otherwise exempt from taxation, but the Code does not exempt bridges which are held for profit; rather the Code specifically includes as taxable real property all bridges except those municipally owned and not held for profit. I conclude that the taxes paid to Lee County constitute an item that is properly chargeable as a bridge expense.

Although the tax is clearly chargeable as a bridge cost, the amount of the expense should be reduced to the extent that the tax was actually refunded to the City. For it is shown in the City brief that 32.5 percent of the 1972 levy was paid over to the City, thereby constituting an effective refund of that much of the expense. Accordingly, the claimed expense should be reduced in the amount of $14,239.

Other expenses. The claimed expenses include an item of $3,600 which was a contribution to a recreation fund and is clearly not an expense properly chargeable to the bridge. The Federal Highway Administration also criticized an expense item of $6,042 in attorney's fees. The record does not show how much, if any, of said fees were for the nonrecurring expense of prosecuting this case. No other basis is shown for excluding what is otherwise uncontested as an actual expenditure; I conclude that it is properly chargeable as an expense.

The complainants argue generally what is unassailable in theory, i.e., that funds spent for non-bridge purposes cannot be considered as expenses when fixing rates. However, with the exceptions already listed, complainants pointed to no item of the claimed expenses in Exhibit A–1 which constitute such an expenditure for non-bridge purposes. Accordingly, I find that the properly chargeable bridge related costs for the year 1972 were as follows:

Claimed expenses	$282,587
Add: Depreciation expense	13,285
Total	295,872
Less: Refund of Lee County	17,839
Tax paid	14,239
Recreation fund	3,600
Total bridge related costs	278,033

The City introduced an exhibit summarizing its claimed costs during recent years and points out that those costs have been increasing steadily while revenues have remained almost constant. On the basis of this showing, the City argues that in fixing rates for the future, it is not reasonable to consider only past costs and that some consideration should be given to anticipated increases. Accordingly, the City accounting witness projected future costs based upon an assumed continuing of the same rate of increase as has been experienced in the recent past. In my opinion this projection is too speculative to be given effect in definite findings herein.

REASONABLENESS OF TOLLS

The total, reasonable bridge revenue needs of the City for the present are ascertained by adding to the total 1972 costs, $278,033, the return on investment found herein to be reasonable, $116,000. The combined total is $394,033.

As already stated, the total revenues received in 1972, both from highway and from railroad tolls, as well as miscellaneous income, amounted to only $359,947, and that sum was insufficient to provide the return found herein to be reasonable. Accordingly, it must be considered that the present toll structure is not excessive.

Upon all the evidence I find that the assailed rates of toll for the transit of the Mississippi River via the Keokuk bridge have not been shown to be unjust or unreasonable within the meaning of the General Bridge Act of 1906.

[FR Doc.74–10335 Filed 5–3–74;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50–412A]

DUQUESNE LIGHT CO., ET AL.

Assignment of Members of Atomic Safety and Licensing Appeal Board

In the matter of Beaver Valley, Unit 2. Notice is hereby given that, in accordance with the authority in 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this anti-trust proceeding:

Alan S. Rosenthal, Chairman
Michael C. Farrar, Member
William C. Parler, Member

Dated: April 30, 1974.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc.74–10285 Filed 5–3–74;8:45 am]

[Docket Nos. 50–461A and 50–462A]

ILLINOIS POWER CO.

Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters

The Commission has received, pursuant to section 105c. of the Atomic Energy Act of 1954, as amended a letter of advice from the Attorney General of the United States, dated April 29, 1974, a copy of which is attached as Attachment 1.

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by June 5, 1974, either (1) by delivery to the AEC Public Document Room at 1717 H Street, NW., Washington, D.C., or (2) by mail or telegram addressed to the Secretary, U.S. Atomic Energy Commission, Washington, D.C., 20545, Attn: Chief, Public Proceedings Branch.

For the Atomic Energy Commission.

ABRAHAM BRAITMAN,
Chief, Office of Antitrust & Indemnity, Directorate of Licensing.

ATTACHMENT 1

APRIL 29, 1974.

Illinois Power Company, Clinton Power Station, Units 1 and 2; AEC Docket Nos. 50–461A and 50–462A; Department of Justice File No. 60–415–67.

You have requested our advice pursuant to the provisions of section 105 of the Atomic Energy Act, as amended, in regard to the above-cited application.

Introduction. This is an application to construct two nuclear electric generating units, each with a nominal rating of 950 megawatts of capacity, to be located at a site in Harp Township, DeWitt County, Illinois. Units 1 and 2 are tentatively scheduled to commence commercial operation in 1980 and 1982, respectively. The units are to be integrated with Applicant's electric bulk power supply system and the power marketed as a portion of its system output.

Applicant. Applicant is the second largest electric utility in the state of Illinois. Its 1972 peak load was 2,127 mw; its generating capacity at that time consisted of 2.4 mw dependable capacity of hydroelectric generating resources and 2,193.6 mw dependable capacity of thermal generating resources.

Applicant's peak load is expected to double in the next 10 years, and it has planned or under construction additional generating capacity to increase its dependable system capacity to 5,756 mw by 1982. Clinton Units 1 and 2 form the major part of this projected increased capacity.

Applicant has high voltage or extra high voltage (ehv) interconnections to a number of major systems adjacent to its service area, including Commonwealth Edison Co., Union Electric Co., Central Illinois Public Service Co. (CIPS), and Central Illinois Light Co. Together with Union Electric Co., and Central Illinois Public Service Co., Applicant participates in the Illinois-Missouri Pool (Ill-Mo). Through Ill-Mo and other interconnection and coordination agreements, Applicant engages in a significant degree of coordinated planning, operation, and development of its bulk power supply system.

Applicant is also a member of the Mid-American Interpool Network (MAIN), a regional reliability council.

Structure of the Bulk Power Market in Illinois. Commonwealth Edison, serving principally in the northern one-third of Illinois, is by far the largest supplier of electricity in the state.[1] With a 1972 peak load of 11,750 mw, Commonwealth Edison is more than five times as large as Applicant, its nearest Illinois competitor.

Applicant and Central Illinois Public Service Co. (peak load 1,394 mw) through a patchwork design of service areas, are the dominant suppliers of electricity, both at wholesale and retail, in the lower two-thirds of Illinois. Each system is fully integrated with high voltage and ehv interconnections with each other and with neighboring systems. The two systems maintain a dominant position in generation and transmission, in their service areas. A smaller privately-owned utility, Central Illinois Light Co. (peak load 791mw), serves in two areas in the central part of the state.

[1] See the Department's Letters of Advice to the Commission concerning Commonwealth Edison's LaSalle County Units 1 and 2, AEC Docket Nos. 50–373A and 50–374A, Department of Justice File No. 60–415–41, December 20, 1972, and Byron Station, Units 1 and 2, Braidwood Station, Units 1 and 2, AEC Docket Nos. 50–454A, 50–455A, 50–556A, and 50–557A, March 4, 1974.

Union Electric Co. (a large Missouri-based utility), Interstate Power Co., Sherrard Power System, and Iowa-Illinois Gas and Electric Co. serve small geographical areas along the western border of Illinois.

Rural electric cooperatives cover all of Illinois geographically but serve mainly in rural areas in the southern three-quarters of the state. Twenty-seven distribution cooperatives and two generation and transmission cooperatives (Western Illinois Power Cooperative and Southern Illinois Power Cooperative) comprise the membership of the Association of Illinois Electric Cooperatives.

Western Illinois Power Cooperative serves several distribution cooperatives in the western-central portion of the state. Its generation is sufficient to supply approximately 20–25 percent of its load. The remainder is purchased at wholesale from Applicant and CIPS in approximate ratios of 40 percent and 60 percent respectively.

Southern Illinois Power Cooperative generates roughly 100 mw from three units. This G&T serves exclusively the three southernmost cooperatives with their entire supply of bulk power.

Other distribution cooperatives purchase bulk power entirely from Applicant, entirely from CIPS, or partially from both.

Illinois contains a number of municipal electric systems, many of which are located in or adjacent to Applicant's service area. Applicant supplies the total bulk power requirements of two such municipal systems, the Oglesby Light and Power Department and the Village of Ladd Electric Department.[2] Several other municipal systems presently operate on an isolated basis, each supplying its total requirements from small generating units.[3]

Results of Antitrust Review. In the course of our antitrust review, certain allegations were received by the Department the general import of which was that Applicant has used its dominant position in generation and transmission in its service area to restrain the competitive opportunities of smaller systems. For its part, Applicant has denied that its policies and practices have been or are inconsistent with the antitrust laws. However, in order to eliminate any questions as to the policies that it intends to follow during the period of the Clinton license, Applicant has formalized its policies and indicated its willingness to have them included as conditions to the license. These policies are set out in the attachment to the letter of Applicant's vice president, dated April 5, 1974, which is attached hereto.

In our opinion, these policy commitments should provide competitors of Applicant with competitive alternative sources of bulk power supply and substantially eliminate the grounds on which complaints made to the Department by smaller systems were based. On the strength of these policy commitments, and with the expectation that the Commission will include them as conditions to the license, we conclude that an antitrust hearing will not be necessary with respect to the instant application.

APRIL 5, 1974.

Illinois Power Company, Clinton Power Station, Units 1 and 2; AEC Docket Nos. 50–461A and 50–462A; Department of Justice File No. 60–415–67.

We set forth as Appendix A to this letter a statement of policy of Illinois Power Company concerning bulk power supply arrangements with neighboring electric systems which it is prepared to make in connection with its Clinton Power Station Units 1 and 2. (The definitions contained in the statement are intended to apply also to the text of this letter.) This commitment is made by the Company with the understanding that the Department of Justice will recommend to the Atomic Energy Commission that an antitrust hearing will not be required in connection with the licensing of the Company's Clinton Power Station Units 1 and 2. On this basis, the Company agrees that its policy statements may be included as conditions to the construction permits and operating licenses to be issued by the Atomic Energy Commission with respect to these units.

The Company believes and maintains that its rate and service policies and practices have been and are consistent with antitrust laws as they may be applied to the Company. The Company understands that certain information has been received by and allegations have been made to the Antitrust Division which may raise certain possible antitrust questions. While the Company is confident that any such questions can be satisfactorily answered, the Company desires to avoid the possibility of having to seek their resolution in an antitrust hearing. It therefore has determined to make the statement of policy and commitment expressed herein.

Paragraph 7 of the statement of policy applies to any additional nuclear generating unit of the Company which, in an application to the Atomic Energy Commission, is scheduled to commence commercial operation prior to January 1, 1989. The Company does not, however, have any present plans for any nuclear generating units in addition to Clinton Power Station Units 1 and 2.

A question has been raised concerning the application of the Company's Service Classification 40 (Wholesale Electric Service for Resale). The Company does not regard a wholesale customer to be limited by that rate as to the areas in which it furnishes electric service or as to the number and location of delivery points for receiving service. If the Company were to receive a request from a neighboring electric system for the purchase of electric service for resale which is not presently a customer of the Company, the Company would sell power to that system either pursuant to Service Classification 40 as it may be amended in the particular circumstances or pursuant to new rate schedules as may be accepted or approved by the Federal Power Commission and any other regulatory authority having jurisdiction.

APPENDIX A

ILLINOIS POWER COMPANY

Statement of Policy Concerning Bulk Power Supply Arrangements with Neighboring Electric Systems in Connection with Clinton Power Station Units 1 and 2

APRIL 5, 1974.

1(a). "Company" means Illinois Power Company and includes each present or future wholly-owned subsidiary of the Company and any successor to it.

1(b). "Costs" means all operating and maintenance expenses, capital costs and a reasonable return on investment which are properly applicable to the particular transaction and the facilities involved in that transaction.

1(c). "Neighboring electric system" means (i) a financially responsible business corporation, not-for-profit corporation, rural electric cooperative, municipal corporation organized under the laws of the State of Illinois, company, association, joint stock company, firm, partnership, or person owning or operating, or proposing bona fidely and in good faith to own or operate, facilities for the generation, transmission or distribution of electricity for bulk power supply, (ii) whose facilities are or will be located in the State of Illinois, (iii) whose facilities are interconnected, or are proposed to be interconnected, for the purpose of carrying out one or more of the transactions referred to herein with facilities of the Company (provided that any proposed interconnection shall be lawful and feasible), and (iv) which is or will be a public utility under the laws of the State of Illinois or the Federal Power Act and is or will be providing electric service under a contract or rate schedule on file with and subject to the regulation of the Illinois Commerce Commission or the Federal Power Commission. The requirement that a neighboring electric system shall be a public utility does not apply to a rural electric cooperative or a municipal corporation but will apply to a rural electric cooperative or a municipal corporation if at a future date it is included within the definition of "public utility" under the Illinois Public Utilities Act or under a similar act. (The definition of neighboring electric system includes systems which meet the above requirements either now or in the future.)

1(d). "Neighboring entity" means a neighboring electric system owning or operating, or proposing bona fidely and in good faith to own or operate, facilities for the generation of electricity for bulk power supply.

2. The broad purposes of any interchange or other arrangement for bulk power supply transactions between the Company and a neighboring electric system are to improve the reliability and quality of service, to avoid the duplication of facilities, and to minimize costs. Any such arrangement will involve planning by the parties and should be technically and economically feasible and practical. The arrangement should also be reciprocal as nearly as may be although it is recognized that, in any particular arrangement, the benefits may not be equal or identical for each party and that a smaller electric system may realize benefits which are greater than those realized by a larger system. No party should be obligated to enter into an arrangement if it would realize no net benefits from the arrangement, or if the arrangement would result in net burdens to the party. The policies herein expressed cannot be implemented unilaterally by the Company. If an arrangement between the Company and a neighboring electric system is to be successful and is to operate in the public interest, it must be negotiated and performed in good faith and with full cooperation by the parties to it. No party should capriciously reject a proposal submitted by another party and the Company and neighboring electric systems should give reasonable consideration to proposals made by each other.

3. The Company will interconnect with any neighboring entity in order that the parties may seek and realize all benefits practicable to be effected through the coordination and development of their respective systems and in carrying out various interconnection services and transactions. The Company will assist to the fullest extent feasible any neigh-

[2] Applicant also supplies the entire bulk power requirements of the Cedar Point Light and Water Co., a small privately-owned utility (peak load 378 kw).

[3] These municipal systems include the Cities of Peru, Altamont, Breese, Bushnell, Carlyle, Freeburg, Highland, Mascoutah, Princeton, Red Bud, Sullivan, and Waterloo, Illinois, which are presently complainants in a proceeding before the Federal Power Commission (City of Peru, *et al.*, FPC Docket No. E–7514, filed December 5, 1969) in which they are seeking an order from the FPC directing Applicant or CIPS to interconnect with their facilities.

boring entity in the coordination of reserves through the sale and purchase of emergency energy and maintenance power upon terms that will provide for the full compensation of the Company's costs. No party shall be required to provide emergency energy or maintenance power if to do so will impair the supplying party's ability to render adequate and reliable service to its customers or to discharge its prior commitments, if any, to other electric systems.

4. The Company and the neighboring entity shall each provide sufficient capacity (which may include firm contracted for capacity) in its system to enable it to carry its planned for peak demand plus an adequate reserve. An adequate minimum reserve requirement shall be mutually determined from time to time as a percentage of planned for peak demand (unless otherwise agreed) and shall take into account such reserve criteria as the nature of the respective systems and planned for peak demand require in order to assure reliability of service and an equitable sharing of reserve responsibility. Each party shall provide such amount of spinning reserve as shall avoid the imposition of an unreasonable demand on the system of the other party. However, such spinning reserve requirement shall not exceed the minimum installed reserve requirement. If over a reasonable period, a party has failed to deliver emergency energy, or if a party has appeared to make excessive calls for emergency energy, the parties shall jointly study the matter for the purpose of determining the adequacy or inadequacy of the reserve generating capacity and transmission facilities being provided to meet the requirements of the interconnected systems and of determining the manner of correcting any deficiencies.

5. The agreement for the interchange arrangement between the Company and a neighboring entity will not include restrictive provisions which would preclude a party from engaging in interconnection and coordination arrangements with others, but may include appropriate provisions to assure (i) that the Company receives adequate notice of such additional interconnection or coordination, (ii) that the parties will jointly consider and agree upon such measures, if any, as are reasonably necessary to protect the reliability of the interconnected systems and to prevent undue burdens from being imposed on any system, and (iii) that the Company will be fully compensated for its costs. Good industry practice as developed in the area from time to time (if not unreasonably restrictive) will satisfy this provision.

6. Interconnections will be available for a neighboring electric system on any of the Company's installed transmission and subtransmission facilities if the proposed interconnection is technically and economically feasible and the Company is fully compensated for its costs. Interconnections will not be limited to low voltages when higher voltages are available from the Company's installed facilities in the area where the interconnection is desired. Control and telemetering facilities shall be provided as required for the safety and reliability of the interconnected systems.

7. The Company will afford an opportunity to participate to any neighboring electric system that makes a timely request therefor in the ownership of, or purchase of unit participation power from, Clinton Power Station Units 1 and 2, and any additional nuclear generating unit which the Company may construct, own, and operate and which in the application filed with the Atomic Energy Commission, or any successor agency, is scheduled for commercial operation prior to January 1, 1989, to a reasonable extent and on reasonable terms and conditions and on a basis that will fully compensate the Company for its costs incurred and to be incurred and that will not adversely affect the financing of such power station. The request shall be deemed timely with respect to Clinton Power Station Units 1 and 2 if received by June 30, 1974, and with respect to any additional generating unit if received within a reasonable period of time from a planning and operating standpoint after the public announcement by the Company of the proposed installation of any such unit. As a part of any arrangement that may be reached with respect to such participation, the Company will interconnect with and deliver any power to which the neighboring electric system may be entitled under such arrangement at a delivery point or points on the Company's system on a basis that will fully compensate the Company for its costs.

8. The Company will sell bulk power to any neighboring electric system in accordance with rates, terms and conditions which fully compensate the Company for its costs, and which do not restrict use or resale except as may be necessary to protect the reliability of the Company's system, and as are accepted or approved by the appropriate regulatory body or bodies. The Company shall not be required to make any such sale if the Company does not have available sufficient generation to provide the requested service or if the sale would impair the Company's ability to render adequate and reliable service to its customers or to discharge its prior commitments, if any, to other electric systems.

9. The Company will work with neighboring electric systems to facilitate the exchange of bulk power by transmission over its transmission facilities between or among two or more neighboring electric systems and between any neighboring electric system and any other electric system engaging in bulk power supply outside the Company's service area between whose facilities the Company's transmission lines and other transmission lines would form a continuous electrical path, provided that (i) permission to utilize such other transmission lines has been obtained by the proponent of the arrangement, and (ii) the arrangements reasonably can be accommodated from a functional and technical standpoint. Such transmission shall be on terms that fully compensate the Company for its costs. Any neighboring electric system requesting such transmission arrangements shall give reasonable advance notice of its schedule and requirements. The Company shall not be required to enter into any arrangement which would impair system reliability or emergency transmission capacity, it being recognized that while some transmission facilities may be operated fully loaded, other transmission facilities may be for emergency use and operated either unloaded or partially loaded.

10. The Company shall include in its planning and construction programs sufficient transmission capacity as required for the transactions referred to in paragraph 9, provided any neighboring electric system gives the Company sufficient advance notice as may be necessary to accommodate its requirements from a functional and technical standpoint and that such neighboring electric system fully compensates the Company for its costs. The Company shall not be required to construct transmission facilities if it finds construction of such facilities infeasible, or if its costs in connection therewith would exceed its benefits therefrom, or if it finds such facilities would impair system reliability or emergency transmission capacity.

11(a). This statement of policy is not intended to affect in any way the franchises, certificates of public convenience and necessity, or other rights of the Company or of any neighboring electric system to render electric service in the State of Illinois.

11(b). Nothing herein shall be construed as a waiver by the Company of its right to contest whether or not and the extent to which a particular factual situation may be covered by this statement of policy or preclude the Company from contesting an alleged act of unfair competition.

11(c). The Company recognizes that the carrying out of some of the policies expressed herein in particular circumstances may not be in the mutual interest of the Company and a neighboring electric system. Nothing herein is intended to preclude the Company and a neighboring electric system from reaching an agreement which extends, varies or supplements the provisions of the foregoing paragraphs in a manner not inconsistent with the broad purposes expresesd in paragraph 2 and applicable law.

11(d). The Company does not intend by this statement of policy to become a common carrier.

12. The foregoing policies are to be implemented and applied in a manner consistent with Federal, State and local laws, regulations and orders. All rates, charges, conditions, terms and practices are and will be subject to the acceptance or approval of any regulatory agencies or courts having jurisdiction over them. To the extent that such action may at the time be required in order to effect any such changes, the Company and any neighboring electric system affected by any of the foregoing policies reserve the right of recourse to the appropriate forum to seek such changes therein as may at the time be appropriate in accordance with law, the public interest, or good industry practices.

[FR Doc.74-10372 Filed 5-3-74;8:45 am]

[Docket No. PRM-50-10]

STATE OF NEW JERSEY—NUCLEAR ENERGY COUNCIL

Filing of Petition for Rule Making

Notice is hereby given that the State of New Jersey through its Nuclear Energy Council, by letter dated March 27, 1974, has filed with the Atomic Energy Commission a petition for rule making.

The petitioner requests that the requirements in Appendix E of 10 CFR Part 50 for emergency planning and interfacing by Commission licensees with State and local governments be adapted and applied to Commission licensees who are not otherwise subject to Appendix E and who receive, store, process, and/or distribute large quantities of radioactive materials routinely (e.g. firms which process radioactive drugs or kilocurie irradiators). The petitioner requests that rules be developed which will require clear identification of critical nuclides, critical pathways, and critical segments of the population potentially at risk with provisions made for chemical form and variability of critical nuclides as a function of varying product mix. The petitioner requests that the requirements of the Commission's "Reactor Site Criteria," 10 CFR Part 100 be suitably modified and incorporated into the proposed rule, and that the zone definitions be reviewed and Protective Action Levels,

to be set as either standards or guides by the USEPA or the State concerned, be adopted by reference.

The petitioner also requests that the exclusion of the "Class 9 accident" from consideration in licensing procedures currently in force be eliminated when new or novel siting or design considerations are involved and due consideration be given to countermeasures for the "Class 9 accident." The petitioner states that the following examples involve new or novel siting considerations: offshore floating nuclear plants; new reactor types such as the liquid metal fast breeder reactor; high temperature gas reactor; and metropolitan sites.

The petitioner states that its request is not intended to apply to light water reactors at land sites in operation, under construction, in the licensing stage or planned. Instead the request applies to the future and new or novel conditions only.

The petitioner also requests that the Commission's regulation "Operators' Licenses," 10 CFR Part 55 be amended to require periodic reexamination, and simulator training of reactor operators and senior reactor operators under reactor accident conditions, and that the scope of Part 55 be extended to include examination and licensing of professional and paraprofessional health physicists assigned to nuclear power stations and operators of facilities for disposal of liquid and solid radioactive wastes.

A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the petition may be obtained by writing the Rules and Proceedings Branch at the below address.

All interested persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Rules and Proceedings Branch, Office of Administration-Regulation, U.S. Atomic Energy Commission, Washington, D.C., on or before July 5, 1974.

Dated at Germantown, Maryland this 30th day of April, 1974.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.74-10323 Filed 5-3-74;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Supplemental Notice of Meeting

MAY 2, 1974.

This supplement to the meeting notice for the 169th ACRS Meeting, to be held on May 9-11, 1974 (FR Vol. 39, No. 82, April 26, 1974), adds to the agenda a matter related to the Vermont Yankee Nuclear Power Station.

This matter will include presentations by and Committee discussions with representatives of the AEC Regulatory Staff, the Vermont Yankee Nuclear Power Corporation, and the General Electric Company, regarding provisions to operate the plant with modified inerting requirements for the reactor containment.

This will result in the modified meeting schedule as noted below:

THURSDAY, MAY 9, 1974

11:30 a.m.-12:30 p.m.—Vermont Yankee Nuclear Station (Open): The Committee will hear presentations by and hold discussions with representatives of the AEC Regulatory Staff, the Vermont Yankee Nuclear Power Corporation and the General Electric Company.

1:30 p.m.-6:30 p.m.—Grand Gulf Nuclear Station Units 1 and 2 (Open): The Committee will continue its review of the construction permit application for this facility. This will include presentations by and discussions with representatives and consultants of the AEC Regulatory Staff and the Mississippi Power and Light Company.

(NOTE: Closed sessions will be held during this period, if required, to discuss proprietary information related to the design, fabrication, and operation, and to the security provisions of this plant.)

All other provisions of the FEDERAL REGISTER notice remain unchanged and apply, where applicable, to the discussion of the Vermont Yankee Nuclear Station.

JOHN C. RYAN,
Advisory, Committee Management Officer.

[FR Doc.74-10470 Filed 5-3-74;10:47 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON MILLSTONE NUCLEAR POWER STATION, UNIT 2

Notice of Meeting

MAY 2, 1974.

In accordance with the purposes of section 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards Subcommittee on the Millstone 2 project will hold a meeting on May 22, 1974, in Room 1046, 1717 H Street NW., Washington, D.C. The purpose of this meeting will be to review the application for an Operating License for Millstone Nuclear Power Station, Unit 2. This facility is located in the Town of Waterford, New London County, Connecticut.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

Wednesday, May 22, 1974, 9 a.m.-5 p.m. The Subcommittee will hear presentations by Regulatory Staff and personnel of the Millstone Point Company and their representatives and hold discussions with these groups pertinent to issuance of an Operating License for Millstone Nuclear Power Station, Unit 2.

In connection with the above agenda item, the Subcommittee will hold an executive session beginning at 8:30 a.m. which will involve a discussion of its preliminary views, and an executive session at the end of the day, consisting of an exchange of opinions of the Subcommittee members present and internal deliberations for the purpose of formulation of recommendations to the ACRS. In addition, the Subcommittee may hold closed sessions with the Regulatory Staff and Applicant to discuss privileged information relating to plant security and fuel design, if necessary.

I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that the executive sessions at the beginning and end of the meeting will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b) and that closed sessions may be held, if necessary, to discuss certain information relating to site security and fuel design which is privileged and falls within exemption (4) of 5 U.S.C. 552(b). It is essential to close such portions of the meeting to protect such privileged information and protect the free interchange of internal views and to avoid undue interference with agency or Committee operation.

Practical considerations may dictate alternations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda item may do so by mailing 25 copies thereof, postmarked no later than May 15, 1974, to the Executive Secretary, Advisory Committee on Reactor Safeguards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Such comments shall be based upon the Preliminary Safety Analysis Report for this facility and related documents on file and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545 and the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statement and its usefulness to the Subcommittee. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements during a period of no more than 30 minutes at an appropriate time, chosen by the Chairman of the Subcommittee, during the afternoon portions of the meeting.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Subcommittee who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting has been cancelled or rescheduled and in regard to the Chairman's ruling on requests for the opportunity to

present oral statements, and the time allotted, can be obtained by a prepaid telephone call on May 20, 1974, to the Office of the Executive Secretary of the Committee (telephone 301–973–5651) between 8:30 a.m. and 5:15 p.m., Eastern Daylight Time.

(e) Questions may be propounded only by members of the Subcommittee and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(h) Persons desiring to attend portions of the meeting where proprietary information is to be discussed may do so by providing to the Executive Secretary, Advisory Committee on Reactor Safeguards, 1717 H Street NW., Washington, D.C. 20545, 7 days prior to the meeting, a copy of an executed agreement with the owner of the proprietary information to safeguard this material.

(i) A copy of the transcript of the open portion of the meeting will be available for inspection during the following workday at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545 and within nine days at the Waterford Public Library, Rope Ferry Road, Route 56, Waterford, Connecticut 06385. Copies of the transcript may be reproduced in the Public Document Room or may be obtained from Ace Federal Reporters, Inc., 415 Second Street NE., Washington, D.C. 20002 (telephone 202–547–6222) upon payment of appropriate charges.

(j) On request, copies of the Minutes of the meeting will be made available for inspection at the Atomic Energy Commission Public Document Room, 1717 H Street NW., Washington, D.C. 20545 after July 23, 1974. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.74–10471 Filed 5–3–74;10:48 am]

[Docket No. 50–424—50–427]

GEORGIA POWER CO.

Notice of Supplemental Hearing

MAY 2, 1974.

In the matter of Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1, 2, 3 & 4).

By motion dated April 30, 1974, the Georgia Power Company ("the Applicant") requested the Atomic Safety and Licensing Board ("the Board") to reconvene the evidentiary hearing in the captioned matter to hear additional evidence so as to enable the Board to make a newly-required determination pursuant to 10 CFR 50.10(e)(2)(ii) of the Commision's newly-enacted regulations concerning on-site pre-construction permit activities.

This Board has already conducted the environmental portion of the construction permit proceeding (evidentiary hearing in Waynesboro, Georgia on April 16, 1974), although an Initial Decision has not yet been rendered. Prior to said hearing, the AEC Regulatory Staff had already completed and issued the final environmental impact statement (FES) on the issuance of a construction permit for this facility, as required by 10 CFR Part 50, Appendix D. The findings required by paragraph A.11 of 10 CFR Part 50, Appendix D, will be covered by the forthcoming Initial Decision, taking into consideration the evidence adduced at the April 16 public hearing.

However, under the Amendments to the Commission's Regulations published on April 24, 1974 (39 FR 14506), concerning procedures for authorization of certain on-site activities to be undertaken prior to grant of a construction permit, before the Director of Regulation may authorize such activities the Presiding Officer (here, the Board) must first determine that "based upon the available information and review to date, there is reasonable assurance that the proposed site is a suitable location for a nuclear power reactor of the general size and type proposed from the standpoint of radiological health and safety considerations" under the Act and the Commission's Regulations. Evidence at the April 16 hearing in Waynesboro did not concern this last determination. Because of this, the Applicant has made the subject motion for a supplemental hearing, and the Regulatory Staff supports this motion.

The Applicant's Motion is Granted, and interested members of the public and all parties are hereby placed on notice that the additional evidentiary hearing session will convene at 9:30 a.m. on Thursday, May 9, 1974 in the hearing room of the Atomic Safety and Licensing Board, 12th floor (Rm. 1202), Landow Building, 7910 Woodmont Avenue, Bethesda, Maryland 20014.

All interested members of the public are invited to attend this evidentiary hearing session.

It is so ordered.

Issued this 2nd day of May, 1974 at Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

THOMAS W. REILLY, Esq.,
Chairman.

[FR Doc.74–10507 Filed 5–3–74;10:51 am]

CIVIL AERONAUTICS BOARD

AIR TRANSPORT ASSOCIATION OF AMERICA

Notice of Meeting

Notice is hereby given that a presentation will be made by the above Association on May 17, 1974, at 10 a.m. (local time in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., regarding the cost and productivity trends in the airline industry.

Dated at Washington, D.C., April 30, 1974.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74–10341 Filed 5–3–74;8:45 am]

[Docket No. 26662; Order 74–4–156]

JET AIR FREIGHT

Order of Suspension and Investigation

By tariff revision bearing the issue date of April 3 and marked to become effective May 3, 1974, Jet Air Freight (Jet), an air freight forwarder, proposes to modify its tariff to include shipments of watches when the declared value exceeds $1,000 per shipment under shipments not acceptable for carriage.

In support of its proposal, Jet asserts, inter alia, that the highly pilferable nature of watch shipments requires the imposition of a limit on liability; that, during calendar year 1973, Jet paid claims amounting to $15,205 on domestic watch shipments; and that many other forwarders have similar provisions in effect. The forwarder further states that a survey of customers tendering watch shipments revealed that none of these shippers would stop using Jet's service.

A complaint requesting suspension and investigation of Jet's proposal has been filed by the American Watch Association, Inc. (AWA). The complaint asserts, inter alia, that AWA's member shippers will be injured by the revision; that the forwarder has made no showing of a need to impose an embargo on watch shipments valued in excess of $1,000; that the Board has suspended similar proposals by other forwarders; and that the forwarder has failed to justify its discriminatory treatment of watch shippers.

Upon consideration of all relevant factors, the Board finds that the proposed rule may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the proposal should be suspended pending investigation.

By proposing to limit the acceptance of watches to shipments with a declared value not exceeding $1,000 per shipment, Jet would limit its liability accordingly, without offering the shipper a choice of higher liability at additional rates. The Board, in Order 72–8–55, dated August 11, 1972, suspended a substantially similar proposal by CF Air Freight, Inc., another forwarder, stating, inter alia, "This is contrary to the common law concept that the validity of a limitation on liability (or a released rate) is dependent upon the shipper having an option for greater liability at greater rates."

Further, the Board, in Order 71–2–36, in connection with a direct carrier's charter liability, and in Order 70–1–34 covering the suspension of non-acceptance of parcel post shipments valued in

excess of $200 proposed by WTC Air Freight, stated that, "A choice of rates and liability is considered essential to the validity of a carrier's limitations on its common carrier responsibilities."

While some forwarders currently have in effect similar provisions to those here proposed by Jet, we cannot find that such circumstances warrant that the Board permit this proposal to become effective.[1]

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a) and 1002 thereof,

It is ordered, That:

1. An investigation is instituted to determine whether the provisions in Rule No. 45(D) on 5th Revised Page 8 of Jet Air Freights C.A.B. No. 1 (Jet Transportation, Inc., d/b/a Jet Air Freight Series), and rules, regulations, or practices affecting such provisions are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful provisions and rules, regulations, and practices affecting such provisions;

2. Pending hearing and decision by the Board, Rule No. 45(D) on 5th Revised Page 8 of Jet Air Freights C.A.B. No. 1 (Jet Transportation, Inc., d/b/a Jet Air Freight Series) is suspended and its use deferred to and including July 31, 1974, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The complaint of the American Watch Association, Inc., in Docket 26606 is dismissed, except to the extent granted herein;

4. The proceeding herein designated Docket 26662, 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 shall be filed with the tariff and served upon Jet Air Freight and the American Watch Association, Inc., which are hereby made parties to Docket No. 26662.

By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-10342 Filed 5-3-74;8:45 am]

UNITED AIR LINES, INC.

Notice of Meeting

Notice is hereby given that a presentation will be made by the above carrier on May 16, 1974, at 10 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., regarding systems operations control.

[1] Jet was permitted to file a telegraphic answer to the complaint, in which it noted that the same or similar provisions are in effect for other forwarders, and that shippers have accepted the limitations proposed.

Dated at Washington, D.C., April 30, 1974.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-10340 Filed 5-3-74;8:45 am]

COMMITTEE FOR PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1974

Notice of Proposed Addition

Notice is hereby given pursuant to section 2(e)(2) of Pub. L. 92-28; 85 Stat. 79, of the proposed additions of the following commodity and service to Procurement List 1974, November 29, 1973 (38 FR 33038).

COMMODITY

Class 5340
Strap, Tie Down
5340-235-4434

SERVICE

Sewing, Customized, Heavy Duty
Redstone Arsenal
Huntsville, Alabama

Comments and views regarding these proposed additions may be filed with the Committee not later than June 5, 1974. Communications should be addressed to the Executive Director, Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.74-10281 Filed 5-3-74;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Availability

Environmental Impact Statements received by the Council on Environmental Quality from April 22 through April 26, 1974. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines, the minimum period for public review and comment on draft environmental impact statements is forty-five (45) days from this FEDERAL REGISTER notice of availability. (June 17, 1974)

Copies of individual statements are available for review from the originating agency. Back copies will also be available from a commercial sourse, the Environmental Law Institute, of Washington, D.C.

DEPARTMENT OF AGRICULTURE

Contact: Dr. Fred H. Tschirley, Acting Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 331-E, Administration Building, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Pisgah National Forest, N.C., April 22: The statement refers to a proposed 10 year management plan for the North and West Fork French Broad Unit and the Davidson River Unit of the Pisgah National Forest. The 61,363 acres of National Forest land will be managed for wildlife, timber harvest, and recreational values. There will be impact upon scenic values, soils and water quality, and wildlife habitat (138 pages). (ELR Order No. 40638.)

Timber Plan Gifford Pinchot National Forest, Wash., April 22: The statement refers to a proposed revised timber management plan for the Gifford Pinchot National Forest. The plan will cover the period July 1, 1974 through June 30, 1984. A potential yield of 5,274.5 million board feet is proposed for the 10 year period; the program harvest schedule is 345.5 million board feet. There will be some road construction, including some in presently roadless areas. There will be impact to air, soil, water, and wildlife values (261 pages). (ELR Order No. 40626.)

Final

Recreation Cabins, Ketchikan Area, Tongass National Forest, Alaska, April 22: Proposed is the construction and operation of seven recreation cabins on salt water access in roadless areas of the Ketchikan Area, Revillagigedo Island, Tongass National Forest. The cabins will primarily serve the boating public, providing shelter for both normal and emergency boating conditions. Impact will include the clearing of one-sixteenth acre of ground for each cabin, and pollution from cabin use (48 pages). Comments made by: EPA, DOI, HUD, DOT, and citizens. (ELR Order No. 40640.)

Westside Timber Sale, Tongass National Forest, Alaska, April 24: The statement refers to a proposed timber sale on the north side of Montague Island, Tongass National Forest. The sale consists of six clearcut units totalling 382 acres. The gross sale area is 1,100 acres, and the total volume is 11,068 MBF. An estimated 4.4 miles of road would be constructed for log trucking; the area is currently roadless and undeveloped (65 pages). Comments made by: DOI, HUD, EPA, USCG, and DOT. (ELR Order No. 40646.)

White Pine Planning Unit, Clearwater National Forest, Latah and Benewah Counties, Idaho, April 22: The statement refers to the proposed implementation of a multiple use plan for the 16,750 acre White Pine Planning Unit of the Clearwater National Forest. The Unit is broken into seven areas which will be managed for such values as timber, browse production, and recreation. Adverse impact will include soil disturbance and possible stream siltation (118 pages). Comments made by: DOI and EPA. (ELR Order No. 40624.) (NTIS Order (none).)

West Creek Timber Sale, Nezperce National Forest, Idaho County, Idaho, April 22: The statement refers to the proposed sale of eleven million board feet of mature and overmature sawtimber of the West Fork Race Creek, Nezperce National Forest. The proposed harvest is within the exterior boundaries of the proposed National Recreation Area of Senate Bill S2233. Adverse impact resulting from the action would be to air quality, scenery, solitude, and watershed (27 pages). Comments made by: EPA. (ELR Order No. 40627.)

Big Game Habitat Improvement, Idaho, April 22: The statement refers to the prescribed burning of brushfield in northern Idaho during fiscal years 1974 and 1975. The purpose of the program is that of maintaining the brushfield stage of plant succession in

order to provide forage for Rocky Mountain elk, moose, mule deer and white tail deer, and to sustain their respective populations within the productive capabilities of the land. The project areas are located within the Clearwater and Spokane River drainages. Comments made by: EPA, DOI, State and local agencies, and concerned citizens. (ELR Order No. 40630.)

Soldier Mountain Ski Area, Sawtooth National Forest, Camas County, Idaho, April 26: The statement refers to the proposed expansion and development of the Soldier Mountain Ski Area of the Sawtooth National Forest. Expansion would be from 235 acres to 1240 acres, with five new chair lifts and support facilities being constructed. Ultimate Area capacity is planned at 1500 skiiers per day. Major impact will be to soil, water, and aesthetic values (40 pages). Comments made by: EPA, USDA, DOT, FPC, COE, DOI, State and local agencies, and concerned citizens. (ELR Order No. 40672.)

Spanish Peaks, Gallatin National Forest, Gallatin and Madison Counties, Mont., April 22: Proposed is the implementation of a multiple use plan for the Spanish Peaks Management Unit of the Gallatin National Forest. The 82,000 acre Unit includes the 50,000 acre Spanish Peaks Primitive Area. The existing Primitive Area and an additional 15,000 acres will be managed as wilderness, another 13,000 acres will be managed as a roadless dispersed recreation area until Congress establishes a new wilderness boundary. Timber harvest and roads will be prohibited in most of the unit, and severely restricted in the area adjacent to the Gallatin River. Restrictions will be placed on visitors to the Spanish Peaks. Comments made by: USDA, EPA, DOI, and citizens. (ELR Order No. 40623.)

South Cottonwood Planning District, Gallatin National Forest, Gallatin County, Mont., April 22: Proposed is the implementation of the revised multiple use plan for the 16,400 acre South Cottonwood Planning Unit, Gallatin National Forest. Approximately 50% of the Unit will be maintained in a roadless state; 20% is presently roaded. The remaining 30% of the Unit will be developed for timber harvest activities, with road construction. Three minimum developed end-of-road facilities will be constructed. Opportunities for solitude and primitive type recreation will be reduced on portions of the area previously unroaded. Impact will occur due to alteration of the landscape and disturbance to vegetation, soil, water, and wildlife (242 pages). Comments made by: DOI, EPA, State and local agencies, and concerned. (ELR Order No. 40631.)

SOIL CONSERVATION SERVICE

Draft

Poplar River Watershed, Clark and Taylor Counties, Wisc., April 24: The statement refers to an erosion and flood control project which will involve conservation land treatment measures, the construction of an earthfill dam and 285 acre wildlife pool with nesting islands; a 452 acre floodwater retarding pool; recreation areas; a 1.31 mile dike around the city of Owen, and related work. A 1,620 acre park and wildlife area will be established. A total of 1140 acres, including wetland, forest, and agricultural land, will be either permanently or temporary effected by project construction. (26 pages). (ELR Order No. 40644.)

DEPARTMENT OF DEFENSE

AIR FORCE

Contact: Dr. Billy Welch, Room 4D 873, The Pentagon, Washington, D.C. 20330, (202) OX 7-9297.

Draft

F-15 Beddown, Luke AFB, Maricopa County, Ariz., April 26: The statement refers to the proposed basing of the first squadron of F-15 fighter aircraft at Luke AFB, in order to provide combat crew training in terms of operation and weapons delivery. The major impacts associated with the action are those relating to operational noise and engine emissions; the noise of the F-15 is approximately equivalent to that of the F-4. Future operations will be similar to those which are presently conducted with F-4 and F-104 aircraft; there will be some new construction to support the aircraft. (ELR Order No. 40690.)

The following statement was distributed by the Department of the Army on August 30, 1973. Comments on the statement have been filed by Federal, state, and local agencies, and concerned citizens. The statement was not filed with CEQ, however, and notice of the statement was not placed in the FEDERAL REGISTER. Notice of the statement therefore follows.

ARMY

Contact: Mr. William P. Gardiner, Colonel, CE, Chief, Environmental Office, Room 1E673, Pentagon, Washington, D.C. 20301, (202) OX 4-4269.

Draft

South Approach, Golden Gate Bridge, Presidio, San Francisco County, Calif., August 30, 1973: The statement refers to the proposed reconstruction of State Routes 480, 101, and Junction State Route 1, the south approach to the Golden Gate Bridge. All construction is located within the Presidio. The action will involve the reconstruction of 1.5 miles of highway to an eight-lane, positive median barrier facility. Impact will include infringement upon open space, the relocation of some housing units, the diminishment of scenic resources of the Presidio, and the relocation of a portion of a "pet cemetery". (ELR Order No. 40691.)

ARMY CORPS

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs, Attn: DAEN-PAP, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-7168.

Draft

Ta'u Boat Harbor, Ta'u Island, American Samoa, April 22: Proposed is the construction of a boat harbor in the vicinity of Fusi, on the west coast of the Island of Ta'u. The project includes an entrance channel, a turning basin, a breakwater, a groin, a revetted mole, and navigational aids. Other features would be provided by the government of American Samoa. Construction activities would extend over 9.8 acres of reef flat; 2.7 acres of reef flat would be converted to land. There will be impact on marine biota, vegetation, wildlife habitat, and the tranquility of village communities (Pacific Ocean Division) (34 pages). (ELR Order No. 40642.)

Chatfield Lake, Colorado Project, Colorado, April 22: The statement refers to a dam and lake that are being constructed just downstream from the confluence of the South Platte River and Plum Creek. The dam is a rolled earthfill structure, over 13,000 feet long. The lake will have a permanent pool of 1,150 acres; a total of 6,919 acres will be committed to the project. Project purposes are flood control and recreation. There will be some loss of fish habitat, riparian vegetation, and hunting opportunity (Omaha District) (98 pages). (ELR Order No. 40636.)

Trinidad Lake Project, Purgatoire River, Colo., April 25: The statement refers to the Trinidad Lake, which is under construction on the Purgatoire River, 4 miles west of the City of Trinidad. The project is intended to provide flood control, irrigation storage, sediment retention, and fish and wildlife habitat. Approximately 3,658 acres of land have been acquired for project purposes; six small communities, with a combined population of 1500, have been displaced (Albuquerque District). (ELR Order No. 40653.)

Draft

Fernandina Harbor, Maintenance Dredging, Florida, April 25: The statement refers to the proposed maintenance to the authorized depths of the Fernandina navigation channels. About 1,200,000 cubic yards of material will be removed and placed in upland and open sea disposal areas. Adverse impacts include loss of some benthic organisms, temporary siltation and turbidity caused by dredging, and some loss and temporary displacement of wildlife habitat on the upland disposal areas (Jacksonville District) (30 pages). (ELR Order No. 40657.)

Canaveral Harbor, Maintenance Dredging, Brevard County, Fla., April 25: The project involves the maintenance of required depths of the navigation channel at Canaveral Harbor by removing shoaled materials from the channel. Approximately 600,000 cubic yards of material is scheduled to be removed in 1974. Adverse impacts of the project are the loss of some benthic organisms, and temporary turbidity and siltation caused by dredging (Jacksonville District) (14 pages). (ELR Order No. 40664.)

Kaskaskia Navigation Project, Illinois, April 24: Proposed is the operation and maintenance of the Kaskaskia Navigation Project, from the mouth of the Kaskaskia River to Fayetteville, Illinois. There will be dredging of the river channel and deposit of spoils on riparian project lands; stabilization and maintenance of banks; regulation of the pool level; and operation and maintenance of the lock and dam. There will be impact on water quality and the riparian environment (St. Louis District) (195 pages). (ELR Order No. 40645.)

Perry Lake Multi-Purpose Project, Jefferson County, Kans., April 25: The statement refers to the impact of continued operation and maintenance of Perry Lake, a multipurpose project on the Delaware River. Impact results from heavy recreational use and from lake fluctuations due to water regulation (Kansas City District) (77 pages). (ELR Order No. 40661.)

Duluth Superior Harbor, Minn. and Wis., April 25: Proposed is the continued maintenance dredging of Duluth-Superior Harbor with disposal of spoil in diked disposal areas. There will also be some breakwater repair. Ninety acres of shoreline and shallow water would be committed to the disposal sites; there would be adverse impact to marine biota (St. Paul District) (241 pages). (ELR Order No. 40659.)

Okatibbee Dam and Lake, Operation and Maintenance, Lauderdale County, Miss., April 25: The statement refers to the continuation of operation and maintenance of an existing multipurpose dam and reservoir located on Okatibbee Creek in Lauderdale County. The project provides flood control, water quality control, water supply, and recreation. The major adverse impact is that operation of the project creates an oxygen sag in Okatibbee Creek downstream from the dam (Mobile District) (20 pages). (ELR Order No. 40658.)

Eufala Lake, Canadian River, Okla., April 25: The statement evaluates operation and maintenance activities at Eufala Lake, a

multi-purpose project on the Canadian River. The major impacts of project operation are those which result from heavy recreational use and from lake fluctuations (Tulsa District) (84 pages). (ELR Order No. 40660.)

McClellan-Kerr Arkansas River System, Oklahoma, April 25: The statement refers to operation and maintenance activities associated with the McClellan-Kerr Arkansas River Navigation System. Included are the operation of locks; maintenance of project structures; hydroelectric power generation; and control of erosion. Adverse impacts include those associated with dredging; and the disturbance of waterfowl (Tulsa District). (ELR Order No. 40662.)

Deep Creek Navigation, Accomack County, Va., April 25: Proposed is the maintenance dredging of an existing channel and turning basin in Deep Creek, on the Pocomoke Sound of the upper Chesapeake Bay. Dredging would destroy most benthic species within the dredging area; spoil would be deposited on previously used high marsh sites (Norfolk District) (16 pages). (ELR Order No. 40656.)

Kaneohe-Kailua Area, Hawaii, April 25: The statement refers to the proposed con-

Final

struction of a detention dam and reservoir in the headwaters of Kaneohe Stream, for the purpose of flood control. One thousand feet of stream will be channelized. Approximately 295 acres will be acquired for the project. Salvage work on four archeological sites will be completed before inundation (80 pages). Comments made by: USDA, DOC, HEW, DOI, EPA, DOT, and State and local agencies. (ELR Order No. 40655.)

NAVY

Contact: Mr. Joseph A. Grimes, Jr., Special Civilian Assistant to the Secretary of the Navy, Washington, D.C. 20350, 202-697-0892.

Final

Bomb Loading Plant Modernization, McAlester, Pittsburg County, April 24: Proposed is the modernization and reactivation of an inactive bomb loading plant (Loading Plant "A") at the Naval Ammunition Depot at McAlester, Oklahoma. The new loading plant is designed to provide a greater bomb loading capacity using fewer production personnel. The principal adverse environmental effect associated with the project is the risk of an accidental explosion with resultant injury and damage to personnel, equipment, and the surrounding area. (117 pages). Comments made by: EPA, DOI, USDA, DOC, HEW, and State agencies. (ELR Order No. 40649.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-967-4335.

Draft

Estuarine Sanctuary, Coos Bay, Coos County, Oreg., April 26: Proposed is the granting of funds to the State of Oregon, pursuant to P.L. 92-583, in order to allow the acquisition, development, and operation of an estuarine sanctuary in Coos Bay. A total of 4,500 acres would be acquired. The action would restrict uses of the land, and may result in restriction upon motorboat access; timber harvest in the proposed sanctuary would be prohibited (54 pages). (ELR Order No. 40665.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Sheldon Meyers, Director, Office of Federal Activities, Room 3630 Waterside Mall, Washington, D.C. 20460, 202-755-0940.

Final

Indian Creek Main Sewer District No. 1, Johnson County, Kans., April 22: The statement refers to the proposed improvement of an existing treatment plant site, including creek relocation, access driveway, storm sewer, and miscellaneous site work. The project is the preliminary stage in preparing for expansion from 70,000 PE to 110,000 PE. Ultimate development will increase average daily flow from 7 mgd to 42.8 mgd. There may be additional odor problems at the site (223 pages). Comments made by: DOI, USDA, HUD, COE, GSA, DOT, and citizens. (ELR Order No. 40639.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director of Environmental Affairs, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, 202-343-4161.

Draft

Federal Office Building, Topeka, Shawnee County, Kans., April 22: Proposed is the construction of an eight story Federal Office Building, with a four story open parking structure in Topeka. The facility will have a gross area of 361,000 square feet, and will house 690 employees. The primary impact anticipated is that of construction disruption (73 pages). (ELR Order No. 40633.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

NATIONAL PARK SERVICE

Draft

Mammoth Cave National Park, Master Plan, Kentucky, April 22: The statement refers to a proposed master plan for the Mammoth Cave National Park. Among the aspects of the plan are: the construction of a new staging area for visitor parking; the development of an orientation facility, the bridging of the Green River, the construction of a cross-park road, in order to make the scenic hilly country more accessible; and the restoration of a natural flow of water to the cave system on Flint Ridge. Overnight accommodations at the park would be phased out (two volumes). (ELR Order No. 40637.)

Final

Point Reyes National Seashore, Calif., April 26: The statement, a revised draft, proposes the legislative designation of 10,600 acres of the Point Reyes National Seashore as wilderness within the National Wilderness Preservation System. Various land and marine life systems will thereby be protected; there will be restrictions on certain consumptive types of visitor use (168 pages). Comments made by: USDA, COE, DOI, EPA, State agencies, and concerned citizens. (ELR Order No. 40667.)

BUREAU OF RECLAMATION

Draft

Elwood Dam and Reservoir, Gasper and Phelps Counties, Nebr., April 22: Proposed is the construction of Elwood Dam and Reservoir, which will provide a 40,500 acre-foot capacity pump storage conservation reservoir, and provisions for a 9,600 acre-foot capacity for flood storage. Other construction includes enlargement of 27 miles of main canal; enlargement or replacement of 30 canal structures; automation of 39 checks and one telemetry station; and lining of 170 miles of canal. The project would provide supplemental irrigation water to 33,700 acres and full water supply to an additional 9,100 acres. Nearly 1,180 acres would be inundated by the project; a total of 1,930 acres of private land would be acquired for project measures, with adverse impact upon the economic viability of ranch or farm units (168 pages) (40641).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Quality, 400 7th Street SW., Washington, D.C. 20500. 202-426-4357.

FEDERAL AVIATION ADMINISTRATION

Draft

City-County Airport, Tulia, Swisher County, Tex., April 22: The statement refers to the proposed development of the City-County Airport in Tulia, Texas. The project consists of acquisition of 230 acres of land, construction and installation of lighting on a new NE/SW runway and associated taxiways, and installation of fencing, segmented circle, lighted wind cone, and beacon. There will be a slight increase in noise levels (15 pages). (ELR Order No. 40643.)

FEDERAL HIGHWAY ADMINISTRATION

Draft

Colbert-Lawrence County Road, Colbert and Lawrence Counties, Ala. April 26: The statement refers to construction of a highway section beginning at a point in Colbert County Road #70 and running easterly crossing the Colbert-Lawrence town line reaching its terminus east of Big Nance Creek on Lawrence County Road #29. The two lane facility will have a length of 3.20 miles. Adverse impacts include acquisition of 78 acres of rural land, increased levels of air, water, and noise pollution, and the displacement of 5 families (30 pages). (ELR Order No. 40671.)

F.A.P. 409, St. Claire and Clinton Counties, Ill., April 22: The statement refers to the construction of a portion of a highway facility identified as FAP Route 409. This four lane facility will begin at U.S. 50 and continue easterly for 18.8 miles reaching its terminus at Township Road 104. Adverse impacts include the use of 820 acres for right-of-way, increased noise, air and water pollution, and displacement of 5 families and 1 business (175 pages). (ELR Order No. 40634.)

F.A. 412, La Salle and Lee Counties, Ill., April 22: The project consists of the construction of a portion of F.A. 412, a 4 lane freeway, from I-80 in La Salle County to the East-West Tollway in Lee County. The total length of the project is 37 miles. Three alignments, plus a do-nothing alternate have been studied within the corridor. Adverse impacts include increased levels of water, air and noise pollution, and displacement of people. The number of displacements varies by alternative (114 pages). (ELR Order No. 40635.)

U.S. 71, Sac and Buena Vista Counties, Iowa, April 25: The statement refers to the construction of a portion of U.S. 71. The highway, which is to be built to expressway standards, will be at least partially relocated. The project will extend north from the north junction of U.S. 71 and U.S. 20 in Sac County, through its junction with Iowa 3 in Buena Vista, a distance of 19.0 miles. Adverse impacts include removal of quality farmland, displacement of farmsteads, and increased noise levels (125 pages). (ELR Order No. 40654.)

U.S. 62, McClain County, Okla., April 24: The statement refers to the proposed upgrading of a section of U.S. 62 from S.H. 9 northerly 6.7 miles to the H. E. Bailey Turnpike. The project also includes a bypass facility at Newcastle. Adverse impacts are the displacement of 10 families and 1 business, and the

reduction of 250 acres of private rural lands (43 pages). (ELR Order No. 40651.)

S.R. 9, Horry County, S.C., April 25: The statement refers to the proposed multi-lane widening of S.C. Route 9 in Horry County. The 30-mile project would extend from U.S. 17 near the Intracoastal Waterway to west of Green Sea. Adverse impacts include loss of some farm and woodland, temporary affects on wildlife, and displacement of families and businesses (22 pages). (ELR Order No. 40652.)

Final

Chena Hot Springs Road, Alaska, April 22: The statement refers to the proposed reconstruction of 34 miles of the Chena Hot Springs Road. The project includes roadway repair, bank protection, bridge lengthening, dikes and other necessary minor construction. The reconstruction is necessary as a result of damage caused by a flood in August of 1967. A Section 4(f) determination for encroachment on the Chena River Recreation Area has been filed (100 pages). Comments made by: HUD, HEW, DOI, USDA, EPA, USCG, and State and local agencies. (ELR Order No. 40629.)

U.S. 278, Cullman County, Ala., April 26: Proposed is the reconstruction and conversion of 1.51 miles of U.S. 278 from two lanes to four lanes. The project begins east of I-65 and extends to Main Street in Cullman. Adverse impacts of the action are the acquisition of land for right of way and the displacement of three families and four businesses (60 pages). Comments made by: COE, USDA, HEW, DOT, HUD, DOI, EPA, and State and local agencies. (ELR Order No. 40675.)

U.S. 38, Bannock and Caribou Counties, Idaho, April 22: The statement refers to the proposed construction of U.S. 30 from Lava Springs to Bancroft, a total distance of approximately 20.7 miles. Adverse impacts of the project consist of the use of 525 acres of land, the displacement of 1 family, relocation of some underground water supply lines, increased noise levels, and disruption to deer migration routes. A 4(f) determination is necessary concerning Lava Hot Springs (120 pages). Comments made by: HEW, DOI, EPA, USDA, HUD, State and local agencies, and concerned citizens. (ELR Order No. 40625.)

U.S. 81, Sedgwick County, Kans., April 24: Proposed is the improvement of three miles of U.S. 81, including right-of-way acquisition, drainage, grading, bridge construction, and landscaping. Adverse impacts include temporary air and surface water pollution; displacement of families and businesses; and loss of natural growth (77 pages). Comments made by: HUD, USCG, COE, USDA, DOI, DOC, State and local agencies, and concerned citizens. (ELR Order No. 40648.)

S.R. 14, Bernalillo County, N. Mex., April 24: The project consists of widening and realigning SR 14 from U.S. 66 north approximately 6 miles to the junction with S.R. 44 and, then northwesterly on S.R. 44 for 0.6 mile. The new facility will have 4 lanes. Adverse impacts are increased air pollution, loss of several hundred pinon and juniper trees, and the displacement of 7 families and three businesses (56 pages). Comments made by: EPA, DOI, USDA, and State and local agencies. (ELR Order No. 40650.)

Charlotte Avenue Extension, Monroe, Union County, N.C., April 26: The proposed project is the construction of a four-lane curb and gutter extension of Charlotte Ave. Length is 0.3 mile. Sixteen families will be displaced and two acres will be acquired for right-of-way. Increases in noise and air pollution will occur (55 pages). Comments made by: USDA, COE, DOC, GSA, HEW, DOI, EPA, and State and local agencies. (ELR Order No. 40674.)

U.S. 281, Hidalgo County, Tex., April 26: The project involves the construction of a four-lane full control access highway (U.S. 281) with interchanges and frontage roads, from existing U.S. 281, two miles north to Edinburg to U.S. 83 in Pharr. Length is 10.6 miles. Adverse impact will be the use of a large amount of agricultural land (90 pages). Comments made by: HEW, HUD, COE, USDA, DOI, EPA, and State and local agencies. (ELR Order No. 40678.)

Monroe Boulevard Extension, Ogden, Weber County, Utah, April 24: The proposed project is the initial 1.6 miles extension of Monroe Boulevard and a future 1.2 mile extension to the rout. The facility will displace five homes. Increases in air, noise, and water pollution will occur; soil erosion and siltation to the Ogden River will affect fish (239 pages). Comments made by: DOI, USDA, EPA, HUD, DOC, and State agencies. (ELR Order No. 40647.)

Southeast Boulevard, Spokane, Spokane County, Wash., April 22: The proposed project is the improvement of Southeast Boulevard in the City of Spokane. The action consists of widening the existing road to a minimum 44-foot width for a length of 1.63 miles beginning at 29th Avenue and terminating at 14th Avenue. Increased traffic volumes on the facility will cause increases in air and noise pollution levels (200 pages). Comments made by: DOI, USDA, HUD, EPA, State and local agencies, and concerned citizens. (ELR Order No. 40632.)

The following environmental impact statements were also received during the week of April 22 to April 26, 1974 and the commenting period for them begins with this FEDERAL REGISTER notice of public availability. Full summaries of these statements will appear in the Council's next FEDERAL REGISTER notice.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

Draft

Elkhorn Planning Unit, Montana, April 22.

Final

Bitterroot National Forest, Mont., April 29.

DEPARTMENT OF INTERIOR

NATIONAL PARK SERVICE

Draft

Bombay Hook Wilderness Area, Del., April 29.

Buffalo National River, Ark., April 29.

Klondike Gold Rush National Historical Park, Alaska and Wash., April 29.

Final

Transpark Road, Bighorn Canyon, Mont. and Wyo., April 29.

Gila Project, Arizona, April, 29.

DEPARTMENT OF DEFENSE

CORPS OF ENGINEERS

Draft

Startings Creek Navigation Project, Accomack County, Va., April 25.

INTERNATIONAL BOUNDARY WATER COMMISSION

Draft

Tijuana River Flood Control Project, California, April 29.

DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

Final

S.T. Highway 70, Oneida and Vilas Counties, Wis., April 29.

GARY L. WIDMAN,
General Counsel.

[FR Doc.74-10324 Filed 5-3-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

CROWN ZELLERBACH CORP.

Notice of Filing of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a petition (PP 4F1486) has been filed by Crown Zellerbach Corp., Chemical Products Division, Camas, WA 98607, proposing establishment of an exemption from the requirement of a tolerance (40 CFR Part 180) for residues of dimethyl sulfoxide when used as a solvent or cosolvent in pesticide formulations not to be applied within 24 hours of harvest.

The analytical method proposed in the petition for determining residues of the solvent or cosolvent is a gas chromatographic procedure utilizing a flame ionization detector.

Dated: April 30, 1974.

JOHN B. RITCH, Jr.,
Director,
Registration Division.

APRIL 30, 1974.

[FR Doc.74-10364 Filed 5-3-74;8:45 am]

[OPP-32000/52]

RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 979), and its procedures for implementation. This policy provides that EPA will, upon receipt of every application, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available for examina- at the Environmental Protection Agency, Room EB-37, East Tower, 401 M Street SW., Washington, D.C. 20460.

By July 5, 1974, any person who (a) is or has been an applicant, (b) desires to assert a claim for compensation under section 3(c)(1)(D) against another applicant proposing to use supportive data previously submitted and approved, and (c) wishes to preserve his opportunity for determination of reasonable compensation by Administrator must notify the Administrator and the applicant named in the FEDERAL REGISTER of his claim by certified mail. Every such claimant must include, at a minimum, the information listed in this interim policy published on November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy in regard to usage of existing supportive data for registration will be processed in accordance with existing procedures. Applications submitted under 2(c) will be held for the 60-day period before commencing processing. If claims are not received, the application will be processed in nor-

mal procedure. However, if claims are received within 60 days, the applicants against whom the particular claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after July 5, 1974.

APPLICATIONS RECEIVED

EPA Reg. No. 8590-395. Agway Inc., Chemical Division, Box 1333, Syracuse, New York 13201. *Agway Dursban 2EC Lawn Insecticide.* Active Ingredients: Chlorpyrifos [O,O-diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate] 22.4 percent; Aromatic petroleum derivative solvent 44.1 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 8590-GOU. Agway Inc., Fertilizer-Chemical Division, Box 1333, Syracuse, New York 13201. *Agway Dursban 2 EC.* Active Ingredients: Chlorpyrifos [O,O-diethyl O-(3,5,6,-trichloro-2-pyridyl) phosphorothioate] 22.4 percent; Aromatic petroleum derivative solvent 44.1 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 8991-10. Ayerst Laboratories Inc., 685 3rd Avenue, New York, New York 10017. *Aerosol Turgasept Air Sanitizer and Deodorizer.* Active Ingredients: Paradiisobutylphenoxyethoxyethyl dimethyl benzyl ammonium chloride 0.2 percent; Triethylene glycol 3.4 percent; Dipropylene glycol 3.4 percent; Isopropyl alcohol 9.6 percent; Methyl p-hydroxy-benzoate 0.2 percent; Sorbic acid 0.05 percent; Essential oils 0.64 percent. Method of Support: Application proceeds under 2(a) of interim policy.

EPA File Symbol 5667-IT Barrett Chemical Company, H & Luzerne Streets, Philadelphia, Pennsylvania 19124. *Barrett's Industrial Insecticide.* Active Ingredients: Pyrethrins 0.3 percent; Piperonyl Butoxide, Technical 1.5 percent; Petroleum Distillate 98.2 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5667-IA. Barrett Chemical Company, H & Luzerne Streets, Philadelphia, Pennsylvania 19124. *Barrett's Roach & Ant Spray Pressurized Contains Diazinon.* Active Ingredients: O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate 0.500 percent; Pyrethrins 0.052 percent; Piperonyl Butoxide, Technical 0.261 percent; Petroleum Distillate 68.608 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5667-IO. Barrett Chemical Company, H & Luzerne Streets, Philadelphia, Pennsylvania 19124. *Barrett's Residual Spray Liquid.* Active Ingredients: O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate 0.500 percent; Pyrethrins 0.052 percent; Piperonyl Butoxide, Technical 0.261 percent; Petroleum Distillate 98.608 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5667-II. Barrett Chemical Company, H & Luzerne Streets, Philadelphia, Pennsylvania 19124. *Barrett's General Purpose Spray.* Active Ingredients: Pyrethrins 0.1 percent; Piperonyl Butoxide, Technical 0.5 percent; Petroleum Distillate 99.4 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 31521-RO. Biotech Products Corporation, Lapp Road, Waterford, New York 12188. *Biotech Surface Disinfectant Spray Q500.* Active Ingredients: Triethylene Glycol 8.000 percent; n-Alkyl (60 percent C14, 30 percent C16, 5 percent C12, 5 percent C18) dimethyl benzyl ammonium chlorides 0.250 percent; n-Alkyl (68 percent C12, 32 percent C14) dimethyl ethylbenzyl ammonium chlorides 0.250 percent; n-Ethyl Morpholinium Ethyl Sulfates 0.035 percent; Isopropanol 50.300 percent. Method of Support: Application proceeds under 2(a) of interim policy.

EPA File Symbol 31521-RU. Biotech Products Corporation, Lapp Road, Waterford, New York 12188. *Biotech Dual Treatment Carpet Sanitizer Shampoo.* Active Ingredients: O-Benzyl-p-Chlorophenol 0.68 percent; O-Phenylphenol 0.65 percent; Tetrasodium Ethylenediamine Tetraacetate 0.38 percent. Method of Support: Application proceeds under 2(a) of interim policy.

EPA File Symbol 31521-EN. Biotech Products Corporation, Lapp Road, Waterford, New York 12188. *Biotech Disinfectant Cleaner Formulation P128.* Active Ingredients: O-Benzyl-p-chlorophenol 3.375 percent; O-Phenylphenol 3.200 percent; Tetrasodium Ethylenediamine Tetraacetate 1.140 percent. Method of Support: Application proceeds under 2(a) of interim policy.

EPA File Symbol 7616-EI. Chem Lab Products Inc., 2850 East Coronado, Anaheim, California 92806. *Spot-X Algaecide.* Active Ingredients: Trichloro-s-Triazine trione 100 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 34270-R. Cougar Chemical Company, P.O. Box 8324, 1083 North Hollywood, Memphis, Tennessee 38108. *Cougar #22 Disinfectant Sanitizer Deodorizer.* Active Ingredients: n-Alkyl (60 percent C14, 30 percent C16, 5 percent C12, 5 percent C18) dimethyl benzyl ammonium chlorides 5 percent; n-Alkyl (68 percent C12, 32 percent C14) dimethyl ethylbenzyl ammonium chlorides 5 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 8764-RT. FMC Corporation, Riverside Division, P.O. Box 552, Riverside, California 92502. *Freshgard 113.* Active Ingredients: Benomyl Methyl 1-butylcarbamoyl)-2-benzimidazolecarbamate 3.0 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 279-2904. FMC Corporation, Agricultural Chemical Division, 100 Niagara Street, Middleport, New York 14105. *Chlor Kil 10 Dust.* Active Ingredients: Technical Chlordane 10.00 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 279-EOTE. FMC Corporation, Agricultural Chemical Division, 100 Niagara Street, Middleport, New York 14105. *Pyrenone Dairy and Industrial Aerosol.* Active Ingredients: Pyrethrins 0.5 percent; Piperonyl Butoxide, Technical 5.0 percent; Petroleum Distillate 14.5 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 25581-R. G & G Chemical Co., Inc., 1550 Carroll Avenue, San Francisco, California 94124. *Formula 4027 Highly Concentrated Germicide.* Active Ingredients: Octyl Decyl Dimethyl Ammonium Chlorides 3.750 percent; Dioctyl Dimethyl Ammonium Chloride 1.875 percent; Didecyl Dimethyl Ammonium Chloride 1.875 percent; Alkyl (C14 50 percent, C12 40 percent, C16 10 percent) Benzyl Dimethyl Ammonium Chloride 5.000 percent; Tetrasodium Ethylenediamine Tetraacetate 3.420 percent; Isopropyl Alcohol 3.000 percent; Ethyl Alcohol 1.000 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 25581-E. G & G Chemical Co., Inc., 1550 Carroll Avenue, San Francisco, California 94124. *Formula 4029 Heavy-Duty Germicide with Organic Soil Tolerance.* Active Ingredients: Octyl Decyl Dimethyl Ammonium Chloride 4.50 percent; Dioctyl Dimethyl Ammonium Chloride 2.25 percent; Didecyl Dimethyl Ammonium Chloride 2.25 percent; Tetrasodium Ethylenediamine Tetraacetate 2.40 percent; Isopropyl Alcohol 3.60 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 8544-RU. General Pool Supply, 8700 Bellanca Avenue, Los Angeles, California 90045. *Sani-Clor 90 Stabilized Dry Chlorine.* Active Ingredients: Trichloro-s-triazinetrione 100 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5905-UNT, Helena Chemical Company, Clark Tower, 5100 Poplar Avenue, Suite 2900, Memphis, Tennessee 38137. *Helena Brand Soil Fumigant 8.6 E.C.* Active Ingredients: 1,2-dibromo-3-chloropropane 67.2 percent; Other Halogenated C3 Compounds 3.5 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 2136-EI. J. L. Hoffman Co., Inc., 1415 Court Street, Allentown, Pennsylvania 18102. *Hoffman's Malathion 4 Dust.* Active Ingredients: Malathion (O,O-Dimethyl Dithiophosphate of Diethyl Mercaptosuccinate 4 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 407-GAO. Imperial Inc., P.O. Box 423, Shenandoah, Iowa 51601. *Imperial Ready To Use Premise Spray.* Active Ingredients: Technical Piperonyl Butoxide 0.250 percent; Pyrethrins 0.025 percent; Technical Methoxychlor 2.500 percent; Aromatic Petroleum Hydrocarbons 97.225 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 407-GTN. Imperial Inc., P.O. Box 423, Shenandoah, Iowa 51601. *Imperial 50 percent Methoxychlor Wettable Powder.* Active Ingredients: Methoxychlor, Technical 50 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 2342-OEI. Kerr-McGee Chemical Corporation, Kerr-McGee Center, Oklahoma City, Oklahoma 73125. *Fasco Chlordane Bait-2.* Active Ingredients: Technical Chlordane (Equivalent to 1.2 percent octachloro-4,7-methano-tetrahydroindane and 0.8 percent of related compounds) 2.0 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 2342-OEO. Kerr-McGee Chemical Corp., Kerr-McGee Center, Oklahoma City, Oklahoma 73102. *Fasco Chlorophene Bait-375.* Active Ingredients: Technical Chlordane (Equivalent to .9 percent Octachloro-4, 7-methanotetrahydroindane and .6 percent of related compounds) 1.50 percent; Toxaphene (Technical Chlorinated Camphene) (Chlorine content 67 percent to 69 percent) 2.25 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 2342-755. Kerr-McGee Chemical Corp., P.O. Box 4459, Jacksonville, Florida 32201. *Gro-Tone Malathion Spray.* Active Ingredients: Malathion (O, O-Dimethyl Dithiophosphate of Diethylmercaptosuccinate) 50.0 percent; Aromatic Petroleum Derivatives 41.5 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 675-30. Lehn & Fink Industrial Products Division of Sterling Drug Inc., 225 Summit Avenue, Montvale, New Jersey 07645. *New Roccal 10 percent.* Active Ingredients: Alkyl (C14 50 percent, C12 40 percent, C16 10 percent) dimethyl benzyl ammonium chloride 10.00 percent; Ethyl Alcohol 1.25 percent. Method of Support: Application proceeds under 2(a) of interim policy.

EPA File Symbol 524-GRG. Monsanto Company, 800 N. Lindbergh Blvd., St. Louis,

Missouri 63166. *ACL 56 Extra Granular.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 1706-RGI. Nalco Chemical Company, 180 N. Michigan Ave., Chicago, Illinois 60601. *Nalco 4WC120 Microorganism Control Chemical.* Active Ingredients: 2,2-Dibromo-3-nitrilopropionamide 20 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 4389-AE. Pace National Corp., Pacific Chemical Division, 500 7th Avenue S., Kirkland, Washington 98033. *Pace MF-60 Pasteurizer Conditioner.* Active Ingredients: Sodium carbonate 51.0 percent; Sodium metasilicate 14.4 percent; Poly[oxyethylene (dimethylimino) ethylene (dimethylimino) ethylene dichloride] 1.8 percent: Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 432-482. S. B. Penick & Company, Unit of CPC International Inc., 100 Church Street, New York, New York 10007. *SBP-1382/Bioallethrin Aqueous Pressurized Spray for House and Garden.* Active Ingredients: (5-Benzyl-3-fury) methyl 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate 0.200 percent; Related compounds 0.028 percent; d-trans Allethrin (allyl homolog of Cinerin I) 0.150 percent; Related compounds 0.012 percent; Aromatic petroleum hydrocarbons 0.272 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 32184-G. Sani-Chem, Inc., 5775 Mountain Creek Drive, NE, Atlanta, Georgia 30328. *Sani-Chem Pine Odor Disinfectant.* Active Ingredients: Isopropanol 4.75 percent; Pine oil 3.95 percent; Alkyl (C14 58 percent, C16 28 percent, C12 14 percent) dimethyl benzyl ammonium chloride 1.97 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 539-EIA. Sears, Roebuck and Co., Sears Tower, Chicago, Illinois 60684. *Sears Pre Emerge Crabgrass Control and Fertilizer.* Active Ingredients: Dimethyl ester of tetrachloroterephthalic acid 2.90 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5657-G. Sobin Chemicals, Inc., Sobin Park, Boston, Massachusetts 02210. *Chloropicrin-A Herbicide—Fungicide for Formulation Use.* Active Ingredients: Chloropicrin 99 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 52-201. West Agro-Chemical, Inc., 42-16 West St., New York, New York 11101. *XXX Disinfectant.* Active Ingredients: alpha-(p-Nonylphenyl)-omega-hydroxypoly (oxyethylene)-iodine complex (Providing 1.75 percent titratable iodine) 18.05 percent; Phosphoric Acid 16.00 percent. Method of Support: Application proceeds under 2(a) of interim policy.

Dated: April 30, 1974.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.74-10445 Filed 5-3-74;8:45 am]

FEDERAL COMMUNICATION COMMISSION

[Docket No. 19849, File No. BPH-7961; Docket No. 19851, File No. BPH-8224]

BRINDLEE BROADCASTING CORP. AND MARSHALL COUNTY BROADCASTING CO., INC.

Opinion and Order on Applications for Construction Permits

1. This proceeding involves the above-referenced applications for construction permits for new FM broadcast stations at Arab, Alabama. By Order, 38 FR 30577, published November 6, 1973, the Commission designated the applications for hearing under a standard comparative issue. Presently before the Review Board is a petition, filed November 21, 1973, by Marshall County Broadcasting Company, Inc. (Marshall) seeking to add the following issues against Brindlee Broadcasting Corporation (Brindlee): [1]

(a) Whether the public interest would be served by permitting cross-ownership between the Brindlee Mountain Telephone Company and an FM broadcast facility in Arab, Alabama, which would be located within said telephone company's exchange area.

(b) To determine the extent to which the principals of the Brindlee Broadcasting Corporation have ownership interests in media related and other financial enterprises which would result in pervasive economic influence and control in the city of Arab inconsistent with the public interest.

(c) To determine whether Brindlee Broadcasting Corporation has failed to disclose material facts concerning the business interests and official relationships of its principals.

CROSS-OWNERSHIP ISSUE

2. In support of the first issue, Marshall contends that Sid McDonald, vice-president and 80 percent shareholder in Brindlee, is also president, general manager and 50 percent stockholder in the Brindlee Mountain Telephone Company, which provides telephone exchange service to the city of Arab and the surrounding area. Relying principally on the Commission's action in The Court House Broadcasting Co., 37 FCC 2d 524 (1972), involving the proposed assignment of a broadcast license to a wholly-owned subsidiary of a telephone company, petitioner submits that a telephone company affiliation with a broadcast station creates a potentially anticompetitive situation. According to Marshall, broadcasters rely on local telephone facilities for programming transmission and studio to transmitter connections, and thus an affiliated telephone company could offer preferential treatment to its commonly-owned station to the competitive disadvantage of other local broadcasters. Like considerations, Marshall contends, underlay the Commission's treatment of affiliated telephone and cable companies in Telephone Companies Affiliated With CATV Systems, 21 FCC 2d 307, 18 RR 2d 1549 (1970). Marshall concludes that it is solely the potential for anti-competitive abuse which underlies its requested issue, not any actual impropriety on the part of Brindlee or any of its principals. The Broadcast Bureau supports addition of the issue and believes that since the issue is one involving policy, it should be certified to the Commission for resolution in the event that Brindlee is the otherwise successful applicant.

3. In opposition, Brindlee argues that the Commission's Order in The Court House Broadcasting Co., supra, was motivated by the fact that the Ohio Bell Telephone Company, a wholly owned subsidiary of AT&T, was the largest single shareholder in the proposed assignee and that the Commission's staff was concerned with the consent decree barring AT&T from broadcast ownership.[2] Here, however, petitioner notes, AT&T has no interest in the Brindlee Mountain Telephone Company of which Brindlee stockholder McDonald is president. Furthermore, Brindlee contends that the type of cross-ownership situation complained of by Marshall is a subject inherently more amenable to decision in a rulemaking proceeding than in an adjudicatory context.

4. In reply, Marshall asserts that an examination of the Commission's Order in the Court House case, supra, fails to reveal any concern with the distribution of stock in the assignee corporation and that in fact the Commission centered its inquiry only upon whether the public interest would be served by permitting a telephone common carrier to become a broadcast licensee. Moreover, according to petitioner, there is clear Commission precedent supporting the specification, analysis and determination of basic public interest, issues in an adjudicatory context whether or not that has been a rulemaking proceeding, citing General Electric Cablevision Corp., 10 FCC 2d 198, 11 RR 2d 310 (1967); Eastern Broadcasting Corp., 30 FCC 2d 745, 22 RR 2d 472 (1971); and Atlantic Broadcasting Co., 5 FCC 2d 717, 8 RR 2d 991 (1966).

5. The Review Board will deny Marshall's request for a crossownership issue.[3] In The Court House Broadcasting Co., *supra*, the only case directly in point, the Commission scheduled an oral argument to examine the policy question presented by the proposed assignment, i.e., whether the public interest would be served by allowing a common carrier to acquire and operate a broadcast station within its telephone exchange area. The question was never resolved, however, because of the subsequent withdrawal of the subject application. Although we agree with petitioner that there is clear Commission precedent for specifying an issue in the absence of a specific statement of policy where serious public interest questions are raised, nevertheless, we are constrained to point out that such issues must be supported by specific factual allegations. Cf. § 1.229 of the Commission's rules. However, in the instant case, the Board is of the view that petitioner has failed to make such allegations sufficient to show that the applicant's prin-

[1] Also before the Board are the following related pleadings: (a) Opposition, filed December 12, 1973, by Brindlee; (b) motion for the acceptance of an attachment to opposition, filed December 13, 1973, by Brindlee; (c) comments, filed December 12, 1973, by the Broadcast Bureau; and (d) reply, filed December 21, 1973, by Marshall. The Board will grant Brindlee's motion and accept for consideration a copy of an amendment to its application which was inadvertently omitted from its opposition.

[2] See U.S. v. Western Electric Company, Inc., 13 RR 2143 (U.S.D.C. D.N.J. 1956).

[3] In the Board's opinion, there is no need to certify the question to the Commission, as the Bureau suggests in its comments.

cipal's interest in the telephone company and broadcast station would be contrary to the public interest. No specific abuses as a result of the telephone company-broadcast applicant cross-ownership have been alleged nor has it been shown whether Brindlee's principal's 50 percent ownership in the telephone company would enable him to engage in such activities. Indeed, the insufficiency of petitioner's claim is underscored by its concession that there is absent any actual impropriety on the part of Brindle or any of its principals.[4] In any case, however, the differences between the applicants' ownership interests may be explored under the diversification criterion of the standard comparative issue. Cf. Stamps Radio Broadcasting Co., 11 FCC 2d 48, 11 RR 2d 1008 (1967).

CROSS-INTEREST ISSUE

6. Petitioner next urges that specification of requested issue (b) is appropriate in view of the extensive media and other business interests held by the Brindlee principals.[5] In support, petitioner notes that in addition to his interest in the Brindlee Mountain Telephone Company, Mr. McDonald is also a 100 percent owner of Arab Cablevision Company, Inc., a CATV system which serves the city of Arab; an organizing director of the Security Bank and Trust Company, one of the two commercial banks in Arab; and the controlling shareholder of the PLV Corporation, a real estate company in the process of constructing Arab's largest single housing development. In addition, petitioner asserts, the Federal Home Loan Bank Board on January 23, 1973, tentatively approved Mr. McDonald's application to organize a federal savings and loan association in Arab. Moreover, according to Marshall, the savings and loan application indicates that Mr. McDonald is a minority stockholder in the Arab Insurance Agency, Inc. and the Arab Real Estate Company, Inc. Also, Bill Kennedy, the president and 19.98 percent shareholder of Brindlee and Willene Clark, its corporate secretary and .02 percent shareholder, are both employed by the telephone company, petitioner asserts. Finally, Marshall alleges that Mr. Kennedy and Ms. Clark were as of December 31, 1972, vice-president and secretary, respectively, of the Arab Cablevision Company, Inc. Marshall concludes that these interests held by Brindle principals, in a city of under 5,000 population, warrant addition of the requested issue.

7. In opposition, Brindlee asserts that there is no legal basis for the addition of either an economic dominance issue or a cross-interest issue. In support thereof, Brindlee claims that an economic dominance issue has been added in the past only in cases where there has been virtual ownership or control of an entire city by an applicant or its principals and the traditional cross-interest issue applies only where an applicant's principal is associated with a broadcast station, an advertising agency, or a station representative firm. In an affidavit attached to the opposition, Mr. McDonald avers that, with the exception of his interests in the local telephone and CATV businesses which are regulated by the federal and/or state agencies, he does not have a dominant influence over any aspect of the business community of Arab. That is, his ownership interest in the Security Bank and Trust Company is only 3 percent; the savings and loan association will be owned by its depositors and borrowers; and the real estate and insurance firms in which he has minor interests are in competition with five other Arab real estate firms and ten other local insurance firms. The Broadcast Bureau agrees with Brindlee that an insufficient showing has been made to justify addition of the requested issue.

8. In the Board's view, neither a cross-interest nor an economic dominance issue is warranted. First, with respect to cross-interest, petitioner fails entirely to allege any of the necessary elements underlying or comprising the Commission's policy barring individuals from maintaining significant interests in competing facilities in the same broadcast service serving substantially the same area. See Eastern Broadcasting Corp., supra. Additionally, an insufficient showing has been made to justify the addition of an economic dominance issue. Past cases in which such an issue has been added involved far more substantial economic domination of a community by an applicant or its principals than is alleged here. Thus, in Midland Broadcasting Company, 12 FCC 611, 3 RR 1961 (1948), "company town" domination was found; the applicant employed 90 percent of the population of the community. In Hershey Broadcasting Co., Inc., 22 RR 1070 (1962), the Hershey estate virtually owned and operated the community, providing recreation facilities, utilities and employment for much of the populace. In our view, the business interests of McDonald and the other Brindlee principals do not approach the dominance present in these cases. See Industrial Business Corp., (40 FCC 2d 69, 26 RR 2d 1447 (1973)). Moreover, just as we can find no justification for addition of either a cross-interest or economic dominance issue, we can perceive no basis for a hybrid issue combining elements of both doctrines as requested by petitioner. However, these allegations may be explored under the existing standard comparative issue.

NON-DISCLOSURE ISSUE

9. In support of its requested non-disclosure issue, petitioner claims that Table II, Section II or Form 301 ("Business and Financial Interest") requires that the following interests should have been reported by Brindlee:[6] (1) Mr. Kennedy's and Ms. Clark's official relationship in the Arab Cablevision Company; (2) Mr. McDonald's position vis a vis the proposed savings and loan association; (3) Mr. McDonald's interest in both the Arab Insurance Agency, Inc. and the Arab Real Estate Co., Inc.; and (4) his position as a director of the Brindlee Businessmen Investment Group, Inc. The Broadcast Bureau supports addition of the requested issue and states that a Rule 1.65 issue may be required as well because of Mr. McDonald's failure to amend his application when tentative approval for the savings and loan association was obtained on January 23, 1973.

10. In opposition, Brindlee asserts that the omissions were unintentional and not of decisional significance. In his affidavit attached to the opposition, Mr. McDonald states that at the time the original application was prepared, he mistakenly believed that the Commission desired a listing of only those businesses in which an applicant's principals had been engaged as active participants or owned a major interest (25 percent or greater). Brindlee claims that with the exception of a franchise for a Tuskegee CATV system, obtained by the Tuskegee Cablevision Company, Inc., in which Mr. Kennedy and Mr. McDonald are the sole stockholders, and they and Ms. Clark the officers,[7] none of the omissions involved more than an occasional activity of any of the principals or an ownership interest in excess of 10 percent.[8] Thus, Brindlee states, Mr. Kennedy's and Ms. Clark's directorships in the Arab Cablevision Company were not reported since Mr. McDonald has full ownership and control of the company; and Mr. McDonald's organizing interest in the savings and loan association was not reported because he will have no ownership interest in the institution. Mr. McDonald also indicates in his affidavit that he is director and 9 percent owner of the Arab Real Estate Co., Inc., Brindlee Businessmen Investment Group, Inc., and Arab Insurance Agency, Inc., but has not taken an active part in these businesses.

11. The Board is of the view that Brindlee's omissions with regard to the various business interests of its prin-

[4] We note in this respect that Marshall is licensee of Station WRAB, the only other broadcast facility in Arab, but has not alleged any discriminatory treatment in the past by the telephone company.

[5] The petitioner characterizes the requested issue as lying somewhere between what the Commission terms an "economic dominance" issue and what it terms a "cross-interest" issue.

[6] Table II, Section II of Form 301 requires the disclosure of "* * * any other business or financial enterprise in which the party has now or within the past five years has had either a 25 percent or greater interest or any official relationship."

[7] According to Brindlee, since this CATV franchise is being voluntarily reported with this pleading, no motive for concealment is present and therefore no issue should be added.

[8] Mr. McDonald states in his affidavit, with regard to the Tuskegee CATV system, that "other than securing the franchise, no steps were ever taken to build the system," and that the franchise was subsequently assigned to another party. However, in its reply, Marshall County attaches a copy of a certificate of compliance for the Tuskegee CATV system, granted by the Commission on July 24, 1973, and issued to the Tuskegee Cablevision Company, Inc.

cipals warrant the addition of a Rule 1.514/1.65 issue. Although Brindlee represented that its principals, operating as the Tuskegee Cablevision Company, had only secured a franchise for the Tuskegee CATV system and that the franchise was subsequently assigned to another party, it appears that Tuskegee Cablevision Company's application for a certificate of compliance was granted by the Commission on July 24, 1973. This apparent contradiction is unexplained and it belies Brindlee's claim that this interest was voluntarily disclosed. In our view, Brindlee's failure to report the grant of the certificate of compliance for a CATV system which its principals owned and operated raises serious questions concerning its compliance with Rule 1.65. In addition, the information concerning the applicant's principals' other business interests should have been reported initially or the application amended as significant changes occurred. The omissions here were numerous; and although none, standing alone, would raise a serious question, we believe that taken together, and with the above Tuskegee CATV omission, they require addition of an appropriate issue.

12. Accordingly, *it is ordered*, That the motion for acceptance of an attachment to opposition, filed December 13, 1973, by Brindlee Broadcasting Corporation, is granted; and

13. It is further ordered, That the petition to enlarge issues, filed November 21, 1973, by Marshall County Broadcasting Company, Inc., is granted to the extent indicated herein, and is denied in all other respects; and

14. It is further ordered, That the issues in this proceeding are enlarged by the addition of the following issue:

To determine whether Brindlee Broadcasting Corporation has complied with the provisions of §§ 1.514 and 1.65 of the Commission's rules with respect to the business interests and official relationships of its principals, and, if not, to determine the effect of such non-compliance on the basic or comparative qualifications of the applicant.

15. It is further ordered, That the burden of proceeding with the introduction of evidence under the added issue shall be on Marshall County Broadcasting Company, Inc. and the burden of proof shall be on Brindlee Broadcasting Corporation.

Adopted: April 24, 1974.

Released: May 1, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.74-10322 Filed 5-3-74;8:45 am]

[FCC 74-400]

DOMESTIC PUBLIC LAND RADIO SERVICE

New Procedures on Petitions To Deny Applications

APRIL 17, 1974.

Because of the proliferation of petitions to deny applications in the Domestic Public Land Mobile Radio Service, we are adopting new procedures to insure that the public receives needed radio common carrier service and that qualified carriers are given an opportunity to render such service.

In nearly every disputed case, petitioners are existing licensees who have objected to the entry of an applicant who proposes similar service in the same market. To support their petitions, these licensees have alleged that the market conditions are such that their own operations cannot survive added competition, and that the applicant has failed to demonstrate the need for an additional licensee to offer similar communications service.

As of May 1, 1974, the pending renewal applications of all existing licensees who presently have petitions to deny on file, which include the aforementioned arguments, and who have requested that the Commission designate the respective applications for a hearing pursuant to section 309(e) of the Communications Act of 1934, as amended, will be designated for hearing with the applicants. The hearing will determine first, whether the particular market will support an additional carrier. If this is found to be the case, and assuming that all else is in order, then both the new application and the existing licensee's renewal application can be granted. If instead, it is found that the market cannot support an additional carrier, the hearing will proceed on a comparative basis to establish whether grant of the new application or grant of the existing licensee's renewal application would best serve the public interest. With respect to this latter question, the petitioner will be given no preference based solely on his status as an existing licensee.

If a petitioner does not wish to maintain his protest, notice of withdrawal should be filed with the Commission before May 1, 1974. Requests for extensions of time to consider withdrawal will be looked upon with disfavor.

The Commission concluded in the guardband decisions that competition between radio common carriers and wireline carriers is beneficial to the public, see Commission Report and Order in Docket No. 16778, 12 FCC 2d 841 (1968), Aff'd sub nom. Radio Relay Corporation v. FCC, 409 F. 2d 322 (2d Cir. 1969). We find that competition between and among radio common carriers will also benefit the public with respect to the diversity of service offered, quality of the service, and rates charged for mobile communications. Radio common carrier service is not limited in its scope, but provides such varied communications forms as paging, two-way, interconnected, noninterconnected and message relay service. These services, although included within our licensing function, are basically unregulated by this Commission. If competition is fostered in a given market, it is our belief that competing licensees will be prompted to meet any requirements for service to which the public is entitled.

Action by the Commission April 16, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.74-10321 Filed 5-3-74;8:45 am]

FEDERAL CROP INSURANCE CORPORATION

[Notice 82]

SUGAR BEETS—IDAHO, OREGON, UTAH AND WASHINGTON

Extension of the Closing Date for Filing of Applications for the 1974 Crop Year

Pursuant to the authority contained in § 401.103 of Title 7 of the Code of Federal Regulations, the time for filing applications for sugar beet crop insurance for the 1974 crop year in all counties in Idaho, Oregon, Utah and Washington where such insurance is otherwise authorized to be offered is hereby extended until the close of business on May 3, 1974. Such applications received during this period will be accepted only after it is determined that no adverse selectivity will result.

[SEAL] M. R. PETERSON,
Manager,
Federal Crop Insurance Corporation.

[FR Doc.74-10317 Filed 5-3-74;8:45 am]

FEDERAL MARITIME COMMISSION

INTER-AMERICAN FREIGHT CONFERENCE, ET AL.

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 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 May 26, 1974. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the

agreement (as indicated hereinafter) and the statement should indicate that this has been done.

INTER-AMERICAN FREIGHT CONFERENCE-AREA RIVER PLATE/PUERTO RICO AND U.S. VIRGIN ISLANDS/RIVER PLATE

Notice of Agreement Filed by:

J. V. Valdez, Assistant Administrator
Inter-American Freight Conference—Section "B"
Lavalle 381–8.° Piso
Buenos Aires, Argentina

Agreement No. 10122, among the following member lines:

CIA. AGROPECUARIA Y MARITIMA SANTA ROSA (LINEAS AGROMAR)
DELTA STEAMSHIP LINES, INC.
EMPRESA LINEAS MARITIMAS ARGENTINAS (E.L.M.A.)
IVARAN LINES (A/S IVARANS REDERI)
J. LAURITZEN LINES
CIA. DE NAVEGACAO LLOYD BRASILEIRO
MONTEMAR S.A. COMERCIAL Y MARITIMA
CIA. DE NAVEGACAO MARITIMA NETUMAR

provides for the creation of the Inter-American Freight Conference-Area River Plate/Puerto Rico and U.S. Virgin Islands/River Plate Agreement, for the establishment and maintenance of rates, rules and regulations to apply on the movement of cargo in the trades, both northbound and southbound, between Argentina, Uruguayan and Paraguayan ports and ports of Puerto Rico and the U.S. Virgin Islands.

By Order of the Federal Maritime Commission.

Dated: MAY 1, 1974.

JOSEPH C. POLKING,
Assistant Secretary.

[FR Doc.74–10357 Filed 5–3–74;8:45 am]

PACIFIC COAST-AUSTRALASIAN TARIFF BUREAU

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 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 May 26, 1974. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:
F. Conger Fawcett, Esq.
Graham & James
310 Sansome Street
San Francisco, California 94104

Agreement No. 50–28, is an application on behalf of the member lines of the Pacific Coast-Australian Tariff Bureau (Agreement No. 50, as amended) for an extension, without limitation as to duration beyond the present termination date of July 14, 1974, of the authority under Article VI of the conference agreement which prohibits the absorption of wharfage, storage, or other charges against the cargo and the expenses of transshipment of cargo between ports via any means, except as may be agreed among the member lines and set forth in the conference tariff.

By Order of the Federal Maritime Commission.

Dated: May 1, 1974.

JOSEPH C. POLKING,
Assistant Secretary.

[FR Doc.74–10358 Filed 5–3–74;8:45 am]

NORTH ATLANTIC UNITED KINGDOM FREIGHT CONFERENCE

Notice of Petition Filed

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to Section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, (46 U.S.C. 813a)).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126 or at the Field Office located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments with reference to the proposed changes and the petition, including a hearing on the proposed modificabe submitted to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C., 20573, within 20 days after publication of this notice in the Federal Register. Any person desiring a hearing on the proposed modilcation of the contract form and/or the approved contract system 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 petition, (as indicated hereinafter), and the statement should indicate that this has been done.

Notice of Application to Modify Dual Rate Contract Filed by:
Howard A. Levy, Esq.
Suite 631
17 Battery Place
New York, New York 10004

Agreement No. 7100 D.R.–5, among the members of the North Atlantic United Kingdom Freight Conference, is an application to modify its dual rate contract to provide for unlimited and unconditional approval of the Conference's inland authority in the United Kingdom, Northern Ireland and the Republic of Ireland. By Order of the Federal Maritime Commission.

Dated: May 1, 1974.

JOSEPH C. POLKING,
Assistant Secretary.

[FR Doc.74–10356 Filed 5–3–74;8:45 am]

[Circular Letter No. 9–74]

GOVERNMENT OWNED OR SPONSORED CARGOES

Notice of Reduced Terminal Rates

The Commission is concerned over practices of certain terminal operators in granting reduced rates for terminal services performed for U.S. Government owned or sponsored cargoes. It appears that reduced rates for terminal services are being allowed on cargoes which are indirectly sponsored by the U.S. Government. The purpose of this circular is to inform the industry of the Commission's position with respect to the allowance of special rates on government owned or sponsored cargoes.

In Docket No. 68–13, Assembly Time—Port of San Diego, 13 F.M.C. 1 (1969), one of the issues before the Commission was whether cargoes moving under Titles I and II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691, et seq.) commonly known as P.L. 480, should qualify for extended free time beyond that allowed for commercial cargoes. Title I cargoes move pursuant to sales agreements between foreign governments and U.S. suppliers who are businessmen selling from private stocks. The commodities move under commercial bills of lading and the foreign buyer arranges ocean transportation and nominates the port of loading. The recipient nation is generally responsible for all transportation costs. The purchase and transportation is financed by various types of loans from the U.S. Government. Title II commodities are exported to needy foreign counties, not as sales, but as outright gifts in cooperation with voluntary relief agencies. Transportation is arranged by the U.S. Department of Agriculture which pays

all costs, including inland transportation and terminal charges.

Section 6 of the Intercoastal Shipping Act, 1933, states that "nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal governments, or for charitable purposes." In order for such a reduced rate to apply the government must receive the entire benefit of the reduced rate. The benefit to the government must be total and direct. Cited in support of this finding were certain ICC cases [1] including a 1964 case [2] where the ICC had occasion to consider the question of whether a carrier could accord a nongovernment (commercial) shipper a reduced rate if "the costs paid to the carrier by the shipper or receiver are to be reimbursed by the Government." The Commission fully supported the reasoning and conclusions of the ICC which found that reduced rates for government cargoes are proper only so long as the direct and entire benefit of the special rates accrues solely to the government and where the government pays the charges, or directly and completely reimburses the party which initially bears the freight charges.

Under the rationale of the San Diego case and the ICC cases cited, Title I shipments would not qualify for free or reduced terminal rates and Title II shipments, in general, would not qualify where the government supplier was operating under a fixed price contract. On the other hand, where a supplier was operating under a cost reimbursement contract, reduced rates would be proper.[3]

In view of the Commission's pronouncements on this matter in Docket No. 68–13 above, the industry is cautioned that only on those shipments for which the U.S. Government bears ultimate responsibility for the transportation costs can reduced rates be granted. It is incumbent upon the terminal operator to ascertain whether reduced rates are properly applicable and the allowance of reduced rates on cargo which does not qualify for such rates could lead to a violation of the Shipping Act, 1916.

In connection with this subject matter, the industry is also drawn to the tariff filing requirements of General Order 15 which state in the preamble that the rules:

* * * would require public terminals to file the rates they charge Federal agencies. This does not mean that the terminals must alter their present method of making rates for Federal agencies. It merely means that once a terminal reaches an agreement with the Federal Government on the rates to be charged for terminal services, such rates must be filed with the Federal Maritime Commission.

Therefore, the terminal operator is required to file with the Commission any rate charged to the Government which deviates from the normal published tariff rate.

It is expected that those terminal operators who currently publish tariff provisions contrary to the guidelines laid down in Docket No. 68–13 and the Commission's General Order 15 amend their tariffs to conform to these guidelines.

N. THOMAS HARRIS,
Director,
Bureau of Compliance.

[FR Doc.74–10355 Filed 5–3–74;8:45 am]

[1] Havens & Company v. C. & N.W. Ry. Co., 20 I.C.C. 156 (1911); Givens v. L. & N.R. Co., 140 I.C.C. 605 (1928).

[2] Interpretation of Government Rate Tariff—Eastern Central, 323 I.C.C. 347 (1964).

[3] Interpretation of Government Rate Tariff, supra.

FEDERAL POWER COMMISSION

[Docket No. E–8673]

ALABAMA POWER CO.

Notice of Revisions in Interconnection Agreement

APRIL 29, 1974.

Take notice that on March 7, 1974, Alabama Power Company (Applicant) filed with the Federal Power Commission a revised Exhibit B to the Interconnection Agreement between Applicant and Alabama Electric Cooperative, which was accepted for filing by the Commission and designated as Applicant's Rate Schedule FPC No. 133. Revised Exhibit B is stated to be submitted pursuant to section 5.05 of said Interconnection Agreement and reflects agreement between the parties to the estimated maximum integrated peak hour demands shown thereon.

Applicant further filed, in the form of Statement O, pursuant to § 35.13 of the Commission's regulations, a change in the fuel cost adjustment factor to be used under the Interconnection Agreement in the ensuing year. The application states, however, that it is understood between the parties that Alabama Electric Cooperative's concurrence in the filing is qualified by its position that an energy loss multiplier should not be used in calculation of the fuel cost adjustment factor—a matter pending decision before the Commission in Docket No. E–8360.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before May 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–10274 Filed 5–3–74;8:45 am]

[Docket No. RP72–110]

ALGONQUIN GAS TRANSMISSION CO.

Notice of Proposed Change in FPC Gas Tariff

APRIL 26, 1974.

Take notice that Algonquin Gas Transmission Company (Algonquin Gas), on April 19, 1974, tendered for filing First Revised Sheet No. 30–F to its FPC Gas Tariff, Original Volume No. 1.

The purpose of this filing, Algonquin Gas asserts, is to modify the use of Algonquin Gas' Unrecovered Purchased Gas Cost Account contained in the Purchased Gas Cost Adjustment Provision in order to accommodate the filing made by Texas Eastern Transmission Corporation (Texas Eastern) dated April 9, 1974, which proposed certain modifications to Texas Eastern's tariff which would reinstate a Demand Charge Adjustment under conditions of a gas supply shortage and to recover amounts equal to the Demand Charge Adjustments through the use of a Demand Charge Adjustment Commodity Surcharge of the effected rate schedule.

It is proposed that the tendered revised tariff sheet be permitted to become effective as of April 1, 1974, to match the corresponding effective date requested by Texas Eastern for its tariff modification.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8, 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 8, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–10261 Filed 5–3–74;8:45 am]

[Docket No. RP74–61]

ARKANSAS LOUISIANA GAS CO.

Notice of Extension of Time and Postponement of Hearing

APRIL 29, 1974.

On April 17, 1974, Staff Counsel filed a motion for an extension of the procedural dates fixed by Order issued February 22, 1974, in the above-designated matter. The motion states the parties to the proceeding had been contacted and there was no opposition to the motion.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Staff Service, June 19, 1974.
Intervener Service, July 5, 1974.
Company Rebuttal, July 22, 1974.
Hearing, August 13, 1974 (10 a.m. e.s.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10263 Filed 5-3-74;8:45 am]

[Docket No. E-8187]

BOSTON EDISON CO.

Notice of Further Postponement of Prehearing Conference and Hearing

APRIL 26, 1974.

On April 23, 1974, Boston Edison Company filed a motion on behalf of itself, New England Power Company, and the Towns of Concord, Massachusetts, et al., for an extension of the date for the prehearing conference which was scheduled for April 30, 1974 by Notice issued April 3, 1974 in the above-designated matter.

Upon consideration, notice is hereby given that the prehearing conference in the above matter is postponed to May 30, 1974, at 10 a.m. (e.d.t.). The hearing will commence upon the conclusion of the prehearing conference.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10269 Filed 5-3-74;8:45 am]

[Docket No. CI74-561]

BROWN AND McKENZIE, INC.

Notice of Application

APRIL 29, 1974.

Take notice that on April 11, 1974, Brown and McKenzie, Inc. (Applicant), 1120 Three Greenway Plaza East, Houston, Texas 77046, filed in Docket No. CI 74-561 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of natural gas in interstate commerce to Texas Gas Transmission Corporation (Texas Gas) from the Savoy Field, St. Landry Parish, Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant states that on February 1, 1974, it initiated an emergency sale of natural gas to Texas Gas from the Savoy Field for 89 days within the contemplation of Section 157.29 of the Regulations under the Natural Gas Act (18 CFR 157.29). Applicant proposes to continue to sell said gas for one year, within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70), commencing with the expiration of the 89-day period or the date on which Applicant shall be issued and accepted the certificate sought herein, whichever shall occur first. Under the terms of a contract dated February 7, 1974, Applicant proposes to sell approximately 45,000 Mcf per month of natural gas to Texas Gas at 55.0 cents per Mcf at 15.025 psia, subject to downward Btu adjustment.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10264 Filed 5-3-74;8:45 am]

[Docket Nos. RP74-14 and RP74-34]

CASCADE NATURAL GAS CORP.

Notice of Revised Sheet

APRIL 30, 1974.

Take notice that on April 12, 1974 Cascade Natural Gas Corporation (Cascade) tendered for filing Third Revised Sheet No. 2 to its FPC Gas Rate Schedule No. 1. Cascade states the Revised Sheet reflects a decrease of 0.02 cents per Mcf for old gas. This relates to the Unrecovered Purchased Gas Cost Account of the Purchased Gas Adjustment Provision authorized by the Commission's order dated November 28, 1973 in the above captioned dockets.

Cascade proposes an effective date of June 1, 1974 for said revised sheet.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 10, 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 to public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10280 Filed 5-3-74;8:45 am]

[Docket No. CI74-187]

CHEVRON OIL CO. WESTERN DIVISION

Notice of Petition To Amend

APRIL 29, 1974.

Take notice that on April 2, 1974, Chevron Oil Company, Western Division (Petitioner), P.O. Box 599, Denver, Colorado 80201, filed in Docket No. CI74-187 a petition to amend the order issued in said docket on January 11, 1974, pursuant to Section 7(c) of the Natural Gas Act by authorizing Petitioner to sell natural gas to Mississippi River Transmission Corporation (MRT) from two additional wells, all as more fully set forth in the petition to amend in this proceeding.

By the Commission's order of January 11, 1974, Petitioner was authorized to sell to MRT an estimated 487,500 Mcf of natural gas per month at 30 cents per Mcf at 14.65 psia, subject to an upward and downward Btu adjustment, within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70), for one year, from the Mills Ranch Field, Wheeler County, Texas.

Petitioner now proposes, pursuant to a contract amendment dated March 1, 1974, to sell gas to MRT, for the duration of the term authorized in the order of January 11, 1974, from two additional wells, the Valentine Coltharp No. 1 and the W. V. Lister No. 1, drilled in the Mills Ranch Field, at 30.0 cents per Mcf at 14.65 psia, subject to upward and downward Btu adjustment. Initial downward adjustment is estimated to be 0.27 cent per Mcf. The gas from these additional wells is expected to add approximately 12,000 Mcf per day to the sales volume.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 20, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10265 Filed 5-3-74;8:45 am]

[Docket No. CP74-186]

CITIES SERVICE GAS CO.

Notice of Further Extension of Time and Postponement of Hearing

APRIL 29, 1974.

On April 12, 1974, Cities Service Gas Company filed a motion for a further extension of the procedural dates fixed by the notice issued April 12, 1974. The motion states that the interveners and the Kansas Corporation Commission are agreeable to the suggested schedule.

Upon consideration, notice is hereby given that the procedural dates are further modified as follows:

Service of direct testimony and exhibits by Union and Cities, May 15, 1974.
Service of direct testimony and exhibits by the Kansas Corporation Commission, June 17, 1974.
Hearing, July 9, 1974.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10273 Filed 5-3-74;8:45 am]

[Docket No. E-8740]

COLUMBUS AND SOUTHERN OHIO ELECTRIC CO. ET AL.

Notice of Application for Lease of Electric Facility

APRIL 29, 1974.

Take notice that on April 19, 1974 Columbus and Southern Ohio Electric Company (Applicant) filed an application seeking authority, pursuant to Section 203 of the Federal Power Act, to lease certain 345 Kv electric transmission facilities (Conesville Corridor Transmission Line) to the Cincinnati Gas and Electric Company and the Dayton Power and Light Company. The facilities to be leased will consist of a 345 Kv electric transmission line of 54.19 miles in length, together with related facilities. Each Company proposes to lease a ⅓ interest in the facilities. Implementation of the lease will not result in any change in the line and there will be no further construction relating to the line during the terms of the lease. The proposed lease will expire no later than December 31, 1975.

Applicant is incorporated under the laws of the State of Ohio, with its principal business office at Columbus, Ohio. Applicant is presently engaged in the production, transmission, distribution and sale of electricity in 25 counties within the State of Ohio.

Based on present original cost data for the facilities and present tax rates, it is estimated that the monthly rentals payable by each of the aforementioned companies will be between $30,000 and $35,000. In addition, to the rental as described above, all costs and expenses of any kind connected with the operation and maintenance of the facilities are, during the term of the lease, to be borne in equal shares by Cincinnati Gas and Electric Company, Columbus and Southern Ohio Electric Company, and Dayton Power and Light Company, with Columbus billing the respective shares of such operation and maintenance costs and expenses, including applicable overheads to Cincinnati and Dayton on a monthly basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 23, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10270 Filed 5-3-74;8:45 am]

[Docket No. E-8008]

FLORIDA POWER AND LIGHT CO.

Notice of Filing of Revised Tariff

APRIL 29, 1974.

Take notice that on January 30, 1974, Florida Power and Light Company (Florida) tendered for filing certain revised tariff sheets to its FPC Electric Tariff, Original Volume No. 1, which has been in effect with the rate subject to refund since September 1, 1973. The revised tariff is intended to represent various changes which have been made to the tariff as a result of negotiations between Florida and various customers who have intervened in this proceeding. Florida requests an immediate effective date.

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 May 9, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10272 Filed 5-3-74;8:45 am]

[Docket No. RI74-167]

J-W OPERATING CO.

Order Granting Intervention and Setting Date for Hearing

APRIL 29, 1974.

On January 10, 1974, J-W Operating Company (J-W) filed for a certificate of public convenience and necessity authorizing a rate increase from the applicable Texas Gulf Coast area rate of 25 cents per Mcf to a level of 45 cents per Mcf pursuant to a contract amendment dated December 14, 1973, with the purchaser Texas Eastern Transmission Corporation (Texas Eastern).

J-W applied for certificate authority as partial successor in interest to Mobil Oil Corporation under an assignment dated December 11, 1973, and effective on November 15, 1973. The assignment was made by Mobil to United Oil & Gas Company and Mr. J. C. West, with J-W as operator. United Oil & Gas owns 90% of J-W and West holds the remaining 10%. The subject of this assignment was all rights between the surface and a depth of 9,221' feet below the Eloise Shuttle lease, Provident City Field, Lavaca County, Texas. The amendment covering these leases was entered into under the base November 26, 1971, contract between Mobil and Texas Eastern, which has been designated as Mobil's FPC Gas Rate Schedule No. 492. Mobil has assigned to J-W only the acreage delineated in the contract amendment, and will retain its above mentioned FPC Gas Rate Schedule.

By letter of February 22, 1974, J-W informed the Commission that J-W had intended its filing to be made pursuant to Section 2.76 of the Commission's General Policy Statements, and J-W requested that its petition be considered under that provision. Specifically, J-W averred that it intended to rework one well already in existence, and to drill a second well on the subject acreage with the hope of obtaining additional gas reserves.

Notice of the J-W petition was issued on March 6, 1974, and appeared in the FEDERAL REGISTER on March 13, 1974, at 39 Fed. Reg. 9707. The Public Service Commission of the State of New York (NYPSC) filed a notice of intervention on March 11, 1974.

An examination of the petition and the data in support thereof, raises a question of whether there is sufficient basis for us to find that the proposed rate is just and reasonable. Therefore, we deem it necessary that a hearing be held in this matter.

The Commission finds:

It is necessary and in the public interest that the above-docketed proceeding be set for a formal hearing.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 7, 14 and 16 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural

Gas Act (18 C.F.R., Chapter 1), Docket No. RI74–167 is set for the purpose of hearing and disposition.

(B) A public hearing on the issues presented by the application herein shall be held commencing on June 11, 1974, 10:00 a.m. (e.d.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(C) A Presiding Law Judge to be designated by the Chief Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

(D) J–W and any intervenor supporting the application shall file their direct testimony and evidence on or before May 17, 1974. All testimony and evidence shall be served upon the Presiding Judge, the Commission Staff, and all parties to this proceeding.

(E) The Commission Staff, and any intervenor opposing the application, shall file their direct testimony and evidence on or before May 24, 1974. All testimony and evidence shall be served upon the Presiding Judge, and all other parties to this proceeding.

(F) All rebuttal testimony and evidence shall be served on or before June 3, 1974. All parties submitting rebuttal testimony and evidence shall serve such testimony upon the Presiding Judge, the Commission Staff, and all other parties to the proceeding.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74–10259 Filed 5–3–74;8:45 am]

[Docket No. RP74–11]

KANSAS-NEBRASKA NATURAL GAS CO.

Notice of Further Extension of Time and Postponement of Hearing

APRIL 29, 1973.

On April 22, 1974, Staff Counsel filed a motion for a further extension of the procedural dates fixed by notice issued March 5, 1974 in the above-designated matter. The motion states that all parties to the proceedings concur in the motion.

Upon consideration, notice is hereby given that the procedural dates are further modified as follows:

Kansas-Nebraska to submit revised schedules which demonstrate the effect of the reduced sales volumes, May 20, 1974.
Staff supplemental testimony and exhibits responding to the effect of the reduced sales volumes, June 17, 1974.
Intervener's Evidence, July 26, 1974.
Rebuttal Evidence, September 4, 1974.
Hearing, October 2, 1974 (10 a.m. e.d.t.).

KENNETH F. PLUMB, *Secretary.*

[FR Doc.74–10271 Filed 5–3–74;8:45 am]

MICHIGAN GAS STORAGE CO.

[Docket No. RP74–70]

Order Accepting for Filing and Suspending Proposed Rate Increase, and Setting the Matter for Hearing

APRIL 29, 1974.

On February 15, 1974 Michigan Gas Storage Company (Company) tendered for filing proposed changes in its FPC Gas Tariff, Original Volume No. 1, requesting an effective date for the proposed rate changes of May 1, 1974. The proposed changes would increase revenues from jurisdictional sales and service by $1,256,510 based on the 12 month period ending November 30, 1973, as adjusted.

Company requests waiver of the Commission's regulations requiring that filings be made not more than sixty days prior to the proposed effective date and also requests waiver of § 154.63(f) of the regulations requiring submittal of Statement P.

Notice of the filing was issued on February 25, 1974, with protests and petitions to intervene due on or before March 8, 1974. The Michigan Public Service Commission, on March 13, 1974, filed a notice of intervention. The notice raised no substantive issues.

Our review of the filing indicates, inter alia, that the proposed rate of return may be excessive and therefore the proposed rates may not be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we shall accept the proposed rate increase for filing, suspend it for one day, and institute a hearing, pursuant to Section 4 of the Natural Gas Act, concerning the lawfulness of the rates. Pending hearing and decision on the proposed rates, the increased rates will be suspended for one day and permitted to go into effect on May 2, 1974, subject to refund. We shall require the filing of Statement P, but shall waive the sixty day filing requirement of the regulations.

We note that Company purports to reserve the right to file a revised rate schedule reflecting a rate of return greater than the rate of return of 10.22 percent claimed in the instant filing in the event this Commission enters a hearing concerning the proposed rates. Company appears to be reserving a "right" which does not exist under the provisions of the Natural Gas Act and our regulations. Under § 154.66(b) of our regulations, a natural gas company may file a change in a tariff under suspension only by special permission of the Commission. Changes filed after the suspension period would have to conform to the full requirements of a regular Section 4 rate filing.

The Commission finds:

(1) It is necessary and appropriate in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in Company's proposed rates and that the proposed rates be accepted for filing and suspended for one day as hereinafter ordered.

(2) Good cause exists to permit waiver of § 154.22 of the regulations relating to notice requirements.

(3) Good cause does not exist to permit waiver of § 154.63(f) with regard to the required filing of Statement P and Company should be required to submit such statement as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Section 4 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR Chapter I), a public hearing shall be held on August 13, 1974 at 10:00 A.M., EDT, in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, concerning the lawfulness of the rates, charges, classification, and services contained in Company's FPC Gas Tariff, as proposed to be amended herein.

(B) Waiver of § 154.22 of the our regulations relating to notice requirements is hereby granted.

(C) Waiver of § 154.63(f) of the regulations relating to the Statement P is hereby denied and Company shall submit Statement P to the Commission within 15 days from the issuance of this order.

(D) On or before July 1, 1974, the Commission Staff shall serve its prepared testimony and exhibits. The prepared testimony and exhibits, if any, of the intervenor Michigan Public Service Commission shall be served on or before July 22, 1974. Any rebuttal evidence by Company shall be served on or before August 5, 1974.

(E) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control the proceeding in accordance with the policies expressed in the Commission's rules of practice and procedure.

(F) Pending hearing and a decision thereon, Company's proposed changes in its FPC Gas Tariff, Original Volume No. 1 are accepted for filing, suspended for one day and the use thereof deferred until May 2, 1974, and until such further time as they are made effective in the manner provided in the Natural Gas Act.

(G) Nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to § 1.18 of the Commission's rules of practice and procedure.

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

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-10260 Filed 5-3-74;8:45 am]

[Docket No. E-8494]

MINNESOTA POWER AND LIGHT CO.

Order Granting Reconsideration and Amending Prior Order

APRIL 29, 1974.

On November 16, 1973, Minnesota Power and Light Company (MP&L) tendered for filing proposed changes in its rates and charges to twenty-one wholesale customers. MP&L requested an effective date of January 15, 1974. By letter dated December 6, 1973, the Secretary of the Commission informed MP&L that its initial filing was deficient. The data in completion of the filing was submitted by MP&L on January 18, 1974. At the same time, MP&L requested waiver of the notice requirements of the Commission's regulations, so that November 16, 1974, the date of the original tender might be assigned as the filing date.

By order of February 15, 1974, the Commission suspended the proposed increase for the full statutory period, permitted intervention to the Village of Aitkin, et al. (Petitioners), and established hearing procedures. The Commission also assigned January 18, 1974, the date MP&L cured the deficiency in its original tender as the filing date for MP&L's proposed changes.

On March 8, 1974, Village of Hibbing, City of Two Harbors and City of Virginia (Cities), previously permitted intervention, requested the Commission to issue an order rejecting the rates filed by MP&L applicable to service for other than Firm Power to Cities.

Cities contends that their contracts with MP&L only provide for unilateral changes in the rates, terms and conditions as they relate to Firm Power. Cities concludes that Excess Capacity, Emergency Reserve, Economy Energy, Emergency Energy and Scheduled Outage Energy and all other provisions of the contract other than Firm Power are not subject to the provisions for the unilateral change of rates or terms and conditions of service.

On April 1, 1974, MP&L filed a response in which it contends that a provision in the contract permitting unilateral changes in terms and conditions is applicable to the entire contract and not simply the section concerning Firm Power.

A review of the contracts between MP&L and Cities reveals that they are subject to unilateral change pursuant to Section 205 of the Federal Power Act only as such changes would relate to Firm Power. Only in Section 4.04 Firm Power does the contract contain language providing for unilateral change. It is apparent that by inserting Memphis[1] language within the confines of the Firm Power provision of the contract, the parties intended such language to apply only to Firm Power. Sections 4.05, Excess Capacity, 4.06 Spinning Reserve, 4.07 Economy Energy, and 4.08 Emergency Energy and Scheduled Outage Energy, contain no provision for the unilateral change of rates or terms and conditions of service. Further, Section 4.11 Billing, which is applicable to all the services provided for in Article IV, contains no provision for unilateral change.

For the foregoing reason we shall grant Cities' motion and amend our order of February 15, 1974, so as to reject MP&L's November 16, 1973 filing as such filing would apply to the rates, terms and conditions contained in all but the Firm Power section of Cities' contracts.

The Commission finds. (1) Cities' Motion filed March 8, 1974, should be granted.

(2) The Commission's order of February 15, 1974, should be amended so as to reject MP&L's November 16, 1973 filing as such filing would apply to the rates, terms and conditions contained in all but the Firm Power section of Cities' contract.

The Commission orders. (A) Cities' motion filed March 8, 1974, is hereby granted and the Commission's order of February 15, 1974 is amended so as to confine the hearing therein established pursuant to Section 205 of the Federal Power Act to the propriety of MP&L's proposed increase of November 16, 1973, but only as such proposed increase would effect the provisions relating to Firm Power in Cities' contracts.

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

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-10276 Filed 5-3-74;8:45 am]

[Docket No. RP74-41]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Extension of Time and Postponement of Prehearing Conference and Hearing

APRIL 29, 1974.

On April 12, 1974, Staff Counsel filed a motion for an extension of the procedural dates fixed by Order issued January 14, 1974, in the above-designated matter.

Upon consideration notice is hereby given that the procedural dates in the above matter are modified as follows:

Staff Evidence, July 12, 1974.
Intervener Evidence, July 31, 1974.
Rebuttal Evidence, August 16, 1974.
Prehearing Conference, September 4, 1974 (10 a.m. e.d.t.).
Hearing, September 17, 1974 (10 a.m. e.d.t.).

KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-10277 Filed 5-3-74;8:45 am]

[1] *United Gas Pipe Line Company* v. *Memphis Light, Gas, & Water Division, et al.*, 358 U.S. 103 (1959).

[Docket No. RP72-131]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Refund Statement

APRIL 29, 1974.

Take notice that on April 17, 1974, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following:

(1) Statement showing the distribution by customer of the refund received from Texas Eastern Transmission Corporation and the amount billed by Transco from the period November 1, 1973 through January 31, 1974 in excess of payments to Texas Eastern.

(2) A gas service refund statement mailed to each customer receiving refunds.

Transco states this filing is made pursuant to Ordering Paragraph (B) of the Commission's Order issued July 13, 1972, in the above captioned docket. According to Transco, the refund reflects (1) the refund received from Texas Eastern as a result of the Commission's Order in Docket No. RP72-98, and (2) the difference between amounts billed by Texas Eastern and the amount collected by Transco for the period November 1, 1973 through January 31, 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 May 10, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-10262 Filed 5-3-74;8:45 am]

[Docket No. E-8738]

UPPER PENINSULA POWER CO.

Notice of Application

APRIL 30, 1974.

Take notice that on April 19, 1974, Upper Peninsula Power Company (Applicant), filed a Supplement and amendment to its Application in Docket No. E-7643 with the Federal Power Commission seeking authority pursuant to Section 204 of the Federal Power Act to issue unsecured promissory notes not to exceed $14,500,000 face value at any one time outstanding.

The applicant is incorporated under the laws of the State of Michigan with its principal business office at Houghton, Michigan and is engaged in the electric utility business in a 4,460 square mile area in the upper peninsula of Michigan with a population of approximately 140,000.

The applicant proposes to issue unsecured promissory notes, payable to such bank or banks from which the Applicant may borrow funds for periods not exceeding twelve months from the date of original issue or renewal thereof, as the case may be, such notes, issued either originally or upon renewal from time to time, to have maturity dates not later than June 30, 1976.

The interest rate on the notes to be issued to commercial banks not for resale to the public will be at a rate not exceeding one-half of one percent over the floating prime rate in effect from time to time, meaning by "prime rate" the lowest rate at which the banks to whom the notes are payable are then making short term commercial loans to depositors.

The proceeds from the sale of the notes will be used, pending permanent financing, to refinance short term notes previously issued and to finance a portion of the Applicant's construction program which will total approximately $6,566,400 in 1974.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 17, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10278 Filed 5-3-74;8:45 am]

[Docket No. E-7172]

SOUTHWESTERN POWER ADMINISTRATION

Notice of Request for Approval of Rates and Charges

APRIL 30, 1974.

Notice is hereby given that the Secretary of the Interior (Secretary), acting on behalf of Southwestern Power Administration (SWPA) and pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890), filed with the Federal Power Commission on April 18, 1974, a request in Docket No. E-7172 for an extension of the Commission's confirmation and approval of SWPA's rates and charges for the sale of electric power and energy included in (1) Rate Schedules F-1 (firm power), P-2 (Revised) (peaking power), EE (excess energy) and IC (interruptible capacity), (2) Contract No. Ispa-356 between SWPA and Oklahoma Gas and Electric Company and Public Service Company of Oklahoma, and (3) Contract No. 14-02-001-864-8 between SWPA and Tex-La Electric Cooperative, Inc. The Commission, by orders issued November 30, 1971 and February 20, 1973 in this docket (46 FPC 1275 and 49 FPC 420), approved such rates and charges for the period ending May 31, 1974. Approval of those rates and charges, which are described in detail in the above-mentioned Commission orders, is now requested by the Secretary for the additional period of one year ending May 31, 1975.

The Secretary represents, in substance, that the requested extension of approval of SWPA's rates and charges is necessary to allow adequate time for SWPA to complete the rate and repayment study and other related studies currently underway to determine the adjustments in such rates and charges which may be appropriate in order that they will produce revenues sufficient to satisfy the payout requirements of the Flood Control Act of 1944.

The rate schedules and rate contracts of SWPA referred to above are on file with the Commission and available for public inspection. Any person desiring to make comments or suggestions for the Commission's consideration with respect to SWPA's rates and charges set forth in said rate schedules and rate contracts should submit the same in writing on or before May 17, 1974 to the Federal Power Commission, Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10279 Filed 5-3-74;8:45 am]

[Docket No. E-8049]

WISCONSIN PUBLIC SERVICE CORP.

Notice of Revised Fuel Clause

APRIL 29, 1974.

Take notice that on August 20, 1973, Wisconsin Public Service Corporation (Applicant) filed with the Federal Power Commission a revised Fuel Clause to an Interconnection and Emergency Agreement, dated February 22, 1973 and designated as Applicant's Rate Schedule FPC No. 31, between Applicant and Consolidated Water Power Company. The Applicant states that it believes that its tendered filing complies with the principles set forth by the Commission in New England Power Company, Opinion No. 633, issued October 30, 1972 (Docket No. E-7541).

The application further states that the effect of this revision on actual revenue would be minimal.

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, Northeast, 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 or 1.10). All such petitions or protests should be filed on or before May 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 desiring to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10266 Filed 5-3-74;8:45 am]

[Docket Nos. E-8049 and E-8204]

WISCONSIN PUBLIC SERVICE CORP.

Notice of Rate Filings

APRIL 29, 1974.

Take notice that on August 20, 1973 in Docket No. E-8049, the Wisconsin Public Service Corporation filed a revised fuel clause amending its Interconnection and Emergency Energy Agreement with Consolidated Water Power Company. The fuel clause was originally filed as part of "Article VII-Rates" in the Interconnection and Emergency Energy Agreement, dated February 22, 1973, and designated Rate Schedule FPC No. 31.

On October 4, 1973 in Docket No. E-8204 the Wisconsin Public Service Corporation filed a revised fuel clause to its Interconnection and Electric Energy Agreement with the City of Marshfield, Wisconsin, Rate Schedule FPC No. 32.

Any person desiring to be heard or to make any protest with reference to these filings should on or before May 22, 1974 file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). Persons wishing to become parties to a proceeding or to participate as a party in any hearing related thereto must file petitions to intervene in accordance with the Commission's rules. 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. The documents discussed in this notice are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10267 Filed 5-3-74;8:45 am]

[Docket No. E-8204]

WISCONSIN PUBLIC SERVICE CORP.

Notice of Revised Fuel Clause

APRIL 29, 1974.

Take notice that on October 4, 1973, Wisconsin Public Service Corporation (Applicant) filed with the Federal Power Commission a replacement Section 2.03 (d) to an Interconnection and Electrical Energy Agreement between Applicant and the City of Marshfield, Wisconsin, said Agreement being designated as Applicant's Rate Schedule FPC No. 32. The Applicant states that this replacement contains a revised Fuel Clause for said Agreement which is in compliance with the Commission's ruling in New

England Power Company, Opinion No. 633, issued October 30, 1972 (Docket No. E-7541).

The application states that the revision is not anticipated to have any effect on revenues in the near term, because no firm power transactions are scheduled between the parties.

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, Northeast, 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 or 1.10). All such petitions or protests should be filed on or before May 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10268 Filed 5-3-74;8:45 am]

[Docket Nos. RI74-210, etc.]

PERRY R. BASS, ET AL.

Hearing on and Suspension of Proposed Changes in Rates; Rate Changes To Become Effective Subject to Refund [1]

APRIL 26, 1974.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds. It is in the the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders. (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto [18 CFR, Chapter I], and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in docket No.
									Rate in effect	Proposed increased rate	
RI74-210	Perry R. Bass	6	[1] 24	Transwestern Pipeline Co. (Keystone Gasoline Plant, Winkler County, Tex., and Bell Lake Field, Lea County, N. Mex.) (Permian Basin).	$284,975	4-1-74		10-2-74	[2] 38.59	[2] [4] 39.840	
RI74-215	Phillips Petroleum Co	374	[4] 11	Transwestern Pipeline Co. (Bell Lake Field, Lea County, N. Mex.) (Permian Basin).	22,345	4-1-74		10-2-74	[3] 35.65	[4] 36.668	
						4-3-74	5-4-74	[13] Accepted			
	do		[6] 12	do	1,328	4-3-74		10-4-74	22.87	[7] 45.0	
	do	484	[8] 10	El Paso Natural Gas Co. (Spraberry Plant, Sales Ranch Field, Martin and Midland Counties, Tex.) (Permian Basin).	3,693	4-3-74		10-6-74	38.78	39.405	
	do	532	3	Northern Natural Gas Co. (Benendum Plant, Upton County, Tex.) (Permian Basin).	186,975	4-3-74		10-4-74	[9] 36.5	[7] [10] 50.0	
	do	533	3	Northern Natural Gas Company (Spraberry Plant, Midland County, Tex.) (Permian Basin).	604,125	4-3-74		10-4-74	[9] 36.5	[7] [10] 50.0	
RI74-216	Sun Oil Co	[12] 319	[11] 12	El Paso Natural Gas Co. (Gallegos Canyon Unit, San Juan County, N. Mex., San Juan Basin, Subarea) (Rocky Mountain Area).	(12)	3-27-74		5-28-74	[7] [10] 26.7	[7] [10] 28.5	RI74-145.
RI73-82	Terra Resources, Inc	33	2	Montana-Dakota Utilities Co. (Poison Creek Unit, Fremont County, Wyoming, Montana-Wyoming Subarea) (Rocky Mountain Area).	406	3-27-74		3-28-74	[14] [15] 28.21	[14] [16] 28.6332	RI73-82.

*Unless otherwise stated, the pressure base is 14.65 lb/in²a.
[1] Applicable only to "new" gas as defined by Opinion No. 662 and contract amendment dated August 4, 1972 (Supplement No. 18).
[2] Texas gas.
[3] New Mexico gas.
[4] Includes Btu adjustment.
[5] Agreement dated Feb. 27, 1974, providing for among other things, a new pricing schedule for production from a new well drilled to test the Atoka formation.
[6] Applicable to sales made pursuant to Supplemental No. 6.
[7] Subject to Btu adjustment from a base of 1,000 Btu per cubic foot.
[8] Applicable to sales made pursuant to Supplement No. 5.
[9] Subject to quality adjustments pursuant to Opinion No. 662.
[10] Subject to 5 cent M ft³ compression charge by buyer for compression of shrinkage volumes.
[11] For wells completed after June 1, 1970.
[12] Considered new gas pursuant to Opinion No. 639.
[13] No current sales of gas.
[14] Includes 2.21 cents upward Btu adjustment.
[15] Accepted to become effective as of the date set forth in the "Effective Date Unless Suspended" column.
[16] The pressure base is 15.025 lb/in²a.

The proposed rate increase of Terra Resources, Inc. reflects contractually due reimbursement of the recent increase in the Wyoming severance tax. Since the underlying rate is being collected subject to refund in Docket No. RI73-82, the proposed tax reimbursement increase is suspended for one day in that same proceeding.

The proposed rate increases which exceed the applicable ceiling rate established by Opinion No. 662 are suspended for five months and the proposed rate increase which exceeds the applicable area ceiling rate in Order No. 435 is suspended for one day.

[FR Doc.74-10142 Filed 5-3-74;8:45 am]

[Docket No. RP74-84]

HORNER AND SMITH

Proposed Changes in FPC Gas Tariff

APRIL 30, 1974.

Take notice that Horner and Smith on April 17, 1974, tendered for filing changes in its FPC Gas Tariff to be effective June 1, 1974. The proposed tariff changes would increase resale revenues by $28,640 per annum based on operations for the twelve-month period ended December 31, 1973, as adjusted.

Horner and Smith state that the principal reason for the changes in its tariff is to reflect an increase in the price paid for gas purchased from 12.5¢ per Mcf to 30.0¢ per Mcf.

Copies of the filing have been mailed to the interested customer and state commissions.

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 May 6, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10484 Filed 5-3-74;11:40 am]

FEDERAL RESERVE SYSTEM

BANK OF VIRGINIA CO.

Acquisition of Bank

Bank of Virginia Company, Richmond, Virginia, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Bank of Virginia-Eastern Shore, Hallwood, Virginia, a proposed new bank, and thereby acquire the assets and assume the liabilities of the Hallwood Office of Bank of Virginia-Central, Richmond, Virginia. 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)).

Bank of Virginia Company is also engaged in the following non-bank activities: Credit card service, sale of physical damage insurance on collateral financed by subsidiary banks, full notification factoring, equipment leasing, consumer finance, data processing, construction lending, commercial and residential lending, land acquisition and development financing, and the origination of second mortgage loans. In addition to the factors considered under section 3 of the Act (banking factors) the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Richmond. 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 May 27, 1974.

Board of Governors of the Federal Reserve System, April 29, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-10294 Filed 5-3-74;8:45 am]

CENTRAN BANCSHARES CORP.

Order Approving Acquisition of Ben Gordon Finance Company, Inc.

Centran Bancshares Corporation, Cleveland, Ohio, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire all of the common shares of Ben Gordon Finance Company, Inc. ("Ben Gordon"), Houston, Texas. Ben Gordon engages in the activities of making or acquiring consumer loans and other extensions of credit; acting as insurance agent or broker in the sale of credit life, accident and health insurance, and property insurance on collateral, all incident to extensions of consumer credit by Ben Gordon's subsidiaries; and the underwriting of credit life and credit accident and health insurance so sold. The underwriting function is performed by a separately-incorporated wholly-owned subsidiary of Ben-Gordon, Investors Income Insurance Company ("IIIC"), Dallas, Texas.[1] Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(1), (9) and (10)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (39 FR 2308). The time for filing comments and views has expired, and none has been received.

On the basis of the record, the application is approved for the reasons set forth in the Board's Statement,[2] which will be released at a later date.

By order of the Board of Governors,[3] effective April 26, 1974.

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

[FR Doc.74-10292 Filed 5-3-74;8:45 am]

[1] IIIC also underwrites ordinary life insurance on the lives of employees of Ben Gordon's subsidiaries for which Ben Gordon's subsidiaries pay the premiums, own the policies, and are the beneficiaries. Such activity is not "closely related to banking" and Applicant has agreed to terminate that activity.

NATIONAL DETROIT CORP.

Proposed Acquisition of Ralph C. Sutro Co.; Correction

In FR Doc. 74-8930 appearing on page 13918 of the issue for Tuesday, April 18, 1974, the name of the applicant should read National Detroit Corporation and the name of the company to be acquired should read Ralph C. Sutro Co.

Board of Governors of the Federal Reserve System, April 29, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-10293 Filed 5-3-74;8:45 am]

WATER TOWER FINANCIAL GROUP, INC.

Formation of Bank Holding Company

APRIL 30, 1974.

Water Tower Financial Group, Inc., Chicago, 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 50.625 percent of the voting shares of Water Tower Trust & Savings Bank, Chicago, 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later that May 28, 1974.

Board of Governors of the Federal Reserve System, April 30, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-10295 Filed 5-3-74;8:45 am]

[2] When it is released the Board's Statement will be available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Cleveland.

[3] Voting for this action: Chairman Burns and Governors Mitchell, Sheehan, Holland, and Wallich. Absent and not voting: Governors Brimmer and Bucher.

TEXAS COMMERCE BANCSHARES, INC.

Acquisition of Bank

Texas Commerce Bancshares, Inc., Houston, Texas, has submitted an amended application for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Westwood Commerce Bank, Houston, Texas, a proposed new bank. 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 Dallas. 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 May 10, 1974.

Board of Governors of the Federal Reserve System, April 30, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-10360 Filed 5-3-74;8:45 am]

GENERAL SERVICES ADMINISTRATION

[FEDERAL PROCUREMENT REG.; TEMP. REG. 32, SUPP. 1]

ECONOMIC STABILIZATION PROGRAM

Price Certification Requirements Rescinded

1. *Purpose.* The purpose of this supplement is to cancel FPR Temporary Regulation 32.

2. *Effective date.* This regulation is effective May 6, 1974.

3. *Expiration date.* This regulation expires May 31, 1974.

4. *Background.* Temporary Regulation 32, June 15, 1973, prescribed a notice and price certification for use in all solicitations as required by the price stabilization requirements of Executive Order 11723, June 13, 1973, as amended by Executive Order 11730, July 18, 1973, and the regulations of the Cost of Living Council as set forth in Title 6, Code of Federal Regulations, Part 140. Since the Economic Stabilization Act of 1970, as amended, and the rules and regulations of the Cost of Living Council expire on April 30, 1974, it is appropriate to rescind Temporary Regulation 32 at the same time.

5. *Effect on other issuances.* FPR Temporary Regulation 32 is canceled, effective at midnight, April 30, 1974.

DWIGHT A. INK,
Acting Administrator of General Services.

MAY 2, 1974.

[FR Doc.74-10509 Filed 5-3-74;11:10 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR METABOLIC BIOLOGY

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Advisory Panel for Metabolic Biology to be held at 9 a.m. on May 23 and 24, 1974, in Room 321 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 Pub. L. 92-463.

For further information concerning this Panel, contact Dr. Elijah B. Romanoff, Program Director, Metabolic Biology Program, Room 323, 1800 G Street, NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director for Administration.

APRIL 23, 1974.

[FR Doc.74-10359 Filed 5-3-74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

OPPENHEIMER FUND, INC., ET AL.

Notice of Application

Notice is hereby given that Oppenheimer Fund, Inc., Oppenheimer A.I.M. Fund, Inc., Oppenheimer Time Fund, Inc. and Oppenheimer Income Fund, Inc. (collectively referred to as the "Funds") each of which is registered as an open-end investment company under the Investment Company Act of 1940 (the "Act") and Oppenheimer Management Corporation ("Oppenheimer", collectively refered to with the Funds as "Applicants") have filed an application for an order (1) pursuant to Section 11(a) of the Act to permit the Funds to offer to exchange their shares for shares of Oppenheimer Financial Bridge Fund, Inc. ("Bridge Fund") on a basis other than their relative net asset value per share at the time of the exchange and (2) pursuant to Section 6(c) of the Act granting exemptions from Section 22(d) of the Act and Rule 22d-1 thereunder, in connection with such exchanges. 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.

Oppenheimer, as principal underwriter for each of the Funds, maintains a continuous public offering of the shares of each of the Funds at their respective net asset value plus a sales charge. The maximum sales charge is 8.5% on purchases of less than $25,000. The sales charge is reduced on large purchases. Shares of each of the Funds may be exchanged for shares of any of the other Funds on the basis of the relative net asset value per share at the time of the exchange without sales charge.

The Bridge Fund is an open-end investment company registered under the Act. It has filed a registration statement under the Securities Act of 1933 with respect to a public offering of 500,000 shares of its capital stock. Oppenheimer is the investment adviser and principal underwriter for the Bridge Fund. The Bridge Fund offers its shares to the public at an offering price equal to net asset value plus a sales charge equivalent to one-half of the sales charge applicable to comparable investments in shares of the Funds.

Applicants propose to offer shares of each of the Funds to shareholders of the Bridge Fund in exchange for shares of the Bridge Fund on the basis of their relative net asset values at the time of the exchange plus a sales charge described in the prospectus of the Fund being acquired, less the sales charges paid on the Bridge Fund shares at the time they were originally purchased (one-half of the sales charge otherwise applicable to a direct purchase of shares of any of the Funds). An investor acquiring shares of one of the Funds through an exchange of shares of the Bridge Fund would, therefore, pay approximately the same overall sales charge that he would have paid had he purchased the same number of shares of one of the Funds directly.

No sales charge will be imposed upon the exchange of shares of the Bridge Fund which were acquired as a result of the reinvestment of dividends or capital gain distributions. In the event a shareholder desires to exchange a portion of his shares of the Bridge Fund, those shares that may be exchanged at relative net asset values without sales charge will be exchanged first. The remaining shares to be exchanged will be selected from those shares entitled to be exchanged upon payment of the lowest additional sales charge.

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such company to make or cause to be made an offer to the shareholder of a security of such a company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered 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 sales charge described in the prospectus of each of the Funds is equivalent to twice the sales charge which would be applicable to the proposed exchange offer.

Applicants state that the purpose of the proposed exchange offer is to permit a shareholder of the Bridge Fund who changes his investment objective to change his investment to a different investment company without paying the full sales charge otherwise applicable. Applicants assert that the exchange offer

to shareholders of the Bridge Fund cannot be made at the relative net asset values of the Fund to be acquired because the shareholder of the Bridge Fund would have paid substantially less sales charges on his investment than similarly situated investors in the Fund to be acquired. Applicants contend that if shares of the Funds could be acquired by a shareholder of the Bridge Fund at net asset value in an exchange, it is possible that the exchange would be in violation of section 22(d) of the Act since an investor would be able to purchase shares of one of the Funds at a sales charge other than that described in its prospectus merely by purchasing shares of the Bridge Fund and subsequently exchanging those shares at net asset value for shares of one of the Funds.

Section 6(c) provides, in part, that the Commission by order upon application, may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the Act and the rules promulgated thereunder, if and to the extent 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.

Notice is further given that any interested person may, not later than May 23, 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 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 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.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-10338 Filed 5-3-74;8:45 am]

[Release No. 34-1760]

REPORTS ON COMPLETED TRANSACTIONS

Revised Plans

The Securities and Exchange Commission announced today that on April 22, 1974 the New York, American, Midwest, PBW and Pacific Stock Exchanges and the NASD filed a revised joint plan (the "Revised Plan") with the Commission pursant to Rule 17a-15 under the Securities Exchange Act of 1934, providing for reporting of prices and volume of completed transactions with respect to securities listed on exchanges. The Revised Plan will be available for public inspection in the Commission's public reference room. The Revised Plan was filed in response to the Commission's letter of March 8, 1974 to the Revised Plan's sponsors[1] containing the Commission's definitive comments on the joint consolidated tape plan as originally filed on March 2, 1973.

(Secs. 10(b), 15(c), 17(a), 23(a), 48 Stat. 891, 895, 897, 901, 49 Stat. 1377, 1379, 52 Stat. 1075, 1076, 78 Stat. 570, 84 Stat. 1653 (15 U.S.C. 78j(b), 78o(c), 78q, 78w))

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

APRIL 26, 1974.

[FR Doc.74-10337 Filed 5-3-74;8:45 am]

[File No. 500-1]

WESTGATE CALIFORNIA CORP.

Notice of Suspension of Trading

APRIL 29, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock (classes A and B), the cumulative preferred stock (5% and 6%), the 6% subordinated debentures due 1979 and the 6½% 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 April 30, 1974 through May 9, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-10339 Filed 5-3-74;8:45 am]

[1] Securities Exchange Act Release No. 10671.

INTERSTATE COMMERCE COMMISSION

[Notice 501]

ASSIGNMENT OF HEARINGS

MAY 1, 1974.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after May 6, 1974.

MC 136384 Sub 2, Palmer Motor Express, Inc., now assigned June 17, 1974, at Charleston, S.C., is postponed to July 15, 1974, at Charleston, S.C., in a hearing room to be later designated.

MC-127872, Greenfield and Montague Transportation Area, now being assigned hearing July 16, 1974 (2 days), at Springfield, Mass., in a hearing room to be later designated.

MC-C-8213, W. F. Buckley Co., Inc., Graf Bros., Inc., Cole's Express, A Corp., Auclair Transportation, Inc., and Spear Trucking Corp.—Investigation of Operations and Revocation of Certificates, now being assigned hearing July 18, 1974 (2 days), at Boston, Mass., in a hearing room to be later designated.

MC-113651 Sub 161, Indiana Refrigerator Lines, Inc., now being assigned hearing July 22, 1974 (2 days), at Boston, Mass., in a hearing room to be later designated.

MC-F-11442, K. G. Moore, Inc.—Purchase—Fleming's Express, Inc., MC-126102, Ander-

son Motor Lines, Inc., now being assigned hearing July 24, 1974 (3 days), at Boston, Mass., in a hearing room to be later designated.

MC-F-11995, H. P. Welch Co., and Maislin Transport LTD—Purchase (Portion)—The National Transportation Co., now assigned May 13, 1974, at Boston, Mass., is postponed indefinitely.

I&S No. 8934, Insulating Materials, Southern, Official & Western Territories, now being assigned hearing June 25, 1974, at the offices of the Interstate Commerce Commission, Washington, D.C.

I&S M 26045, General Increase, July 1972, Central & Southern Territory, now being assigned hearing June 11, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-F-11916, All-American, Inc.—Purchase (Portion)—Russell Transportation, Inc., now assigned June 17, 1974; MC-C-8277, Cedar Rapids Steel Transportation, Inc.—Investigation and Revocation of Certificates—now assigned June 24, 1974; and MC 124211 Sub-233, Hilt Truck Line, Inc., now assigned June 26, 1974, at Omaha, Nebraska, will be held in Room 616, Union Pacific Plaza, 14th and Dodge.

MC 99610 Sub 17, Ross Neely Express, Inc., now being assigned hearing June 11, 1974 (9 days), in the Holiday Inn Motel, Junction of U.S. Highways 78 and 45, Tupelo, Miss.

MC 84687 Sub 2, Veterans Truck Line, Inc., now assigned May 20, 1974, at Chicago, Ill., will be held in Room 705, 536 South Clark Street.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-10349 Filed 5-3-74;8:45 am]

ENVIRONMENTAL THRESHOLD ASSESSMENT SURVEY

Processing of Railroad Abandonment Applications

MAY 1, 1974.

The Interstate Commerce Commission hereby gives notice that it, with the assistance of The Mitre Corporation, has developed specific steps to facilitate implementation of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA), in its processing of railroad abandonment applications. These steps include a threshold assessment survey and an assessment manual designed to enable the effective analysis of the environmental impacts of proposed abandonments. Based on a staff preparation of an environmental threshold assessment survey concerning a proposed abandonment action, the determination can be made as to whether a particular abandonment, if approved by this Commission, would constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the NEPA. In abandonment cases where the threshold assessment survey reaches an affirmative determination of this matter, a detailed environmental impact statement, pursuant to section 102(2)(c) of the NEPA, will be prepared by this Commission's staff.

Copies of the Environmental Threshold Assessment Survey and the assessment manual are available for public inspection upon request at the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-6989.

To aid in the preparation of an Environmental Threshold Assessment, this Commission requests that all applicants provide the following supplemental information for each abandonment application pending before the Commission:

1. A description, in narrative form, of the contemplated action, including the involvement of other railroads and related abandonment, construction, or trackage rights applications.

2. Number of acres in the right-of-way proposed for abandonment and railroad property appurtenant thereto.

3. Whether the applicant is contemplating the filing in the near future, of any additional abandonment applications which will have a direct effect on the same geographic region as that involved in the pending application. Applicant should include an analysis of the manner in which the line to be abandoned fits in both with its overall operations and the available transportation service in or through the affected area.

4. The number, type, and location, including a description, of all bridges, culverts, and grade crossings, or any other structure on the line.

5. Specify the exact plans for salvage operations, including the removal or sale of rail and ties, and the plans for removal of bridges and all structures. Also indicate what steps will be taken to avoid the creation of public safety hazards as a result of salvage operations.

6. Indicate any Federal, State, or local laws or ordinances relating to salvage operations.

7. Specify the nature of ownership of the underlying right-of-way. Indicate any specific plans for the property made available for disposition by the abandonment.

8. Describe current land use in the area directly adjacent to the line and in the tributary territory.

9. State what property taxes have been paid to the involved local communities in the last 2 calendar years.

The primary and nondelegable responsibility for fulfilling the mandate of the NEPA in abandonment cases rests with this Commission. Applicants are requested, however, to submit the above information regarding the background and particulars of a proposed abandonment. Information received from an applicant (or any other person) will be verified and supplemented by this Commission's staff. It is the Commission's exclusive responsibility to determine what the potential environmental impacts are and whether or not these foreseeable impacts are significant within the meaning of the NEPA, and in no way do the above-described procedures alter this fact.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-10352 Filed 5-3-74;8:45 am]

[Notice 73]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by Division 3 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 general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before June 5, 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-35455. By order entered April 24, 1974, Division 3, acting as an Appellate Division, approved the lease by R. C. Van Lines, Inc., Atlanta, Ga., of the operating rights set forth in Certificates Nos. MC-91053 and MC-91053 (Sub-No. 5), issued December 1, 1969, and September 24, 1971, respectively, to Trans-World Movers, Inc., Aurora, Colorado, authorizing the transportation of new furniture and emigrant movables, from, to, or between points in Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming, and the District of Columbia; and general commodities, with specified exceptions, between Denver, Colo., and specified points in Colorado. Frank W. Taylor, Jr., 1221 Baltimore Ave., Kansas City, Mo. 64105, Attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-10348 Filed 5-3-74;8:45 am]

[Notice 60]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 26, 1974.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section

210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67 (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 9325 (Sub-No. 69 TA), filed April 18, 1974. Applicant: K LINES, INC., P.O. Box 1348, Lake Oswego, Oreg. 97034. Applicant's representative: Eugene A. Feise (Same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry bulk fertilizers*, in tank or hopper-type equipment, from Port of Entry at Blaine, Wash., to points in Oregon, for 180 days. SUPPORTING SHIPPERS: Meeker Fertilizer Co., Inc., 1795 SE., 16th Street, Salem, Oreg. 97302; Woodburn Fertilizer & Grain, P.O. Box 7, Woodbur, Oreg. SEND PROTESTS TO: District Supervisor, A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 33426 (Sub-No. 3 TA), filed April 19, 1974. Applicant: FULLER TRANSPORTATION, INC., 1200 Shull Street, P.O. Box 198, West Columbia, S.C. 29169. Applicant's representative: Frank A. Graham, Jr., 707 Security Federal Bldg., Columbia, S.C. 29201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty containers*, from points in Charleston County, S.C., to points in Chatham County, Ga., for 180 days. SUPPORTING SHIPPER: Strachan Shipping Company, 5 Exchange Street, Charleston, S.C. SEND PROTESTS TO: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 302, 1400 Bldg., 1400 Pickens Street, Columbia, S.C. 29201.

No. MC 38435 (Sub-No. 6 TA), filed April 18, 1974. Applicant: INTERURBAN AUTO FREIGHT COMPANY, INC., 523 Puyallup Avenue, Tacoma, Wash. 98421. Applicant's representative: W. H. Grady, 603 Norton Bldg., Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, including Classes A and B explosives and household goods as defined by the Commission, (1) between Tacoma and Longmire, Wash., from Tacoma over Washington Highway 7 to Elbe, Wash., thence over Washington Highway 706 to Longmire, Wash. and return over the same route, serving all intermediate points; (2) between Tacoma and Ohanpecosh, Wash., from Tacoma over Washington Highway 7 to Morton and Kosmos, thence over Washington Highway 14 to Ohanapecosh, and return over the same route, serving all intermediate points; and (3) between Tacoma and Mossyrock, Wash., from Tacoma over Washington Highway 7 to Morton thence over Washington Highways 141 and 14 to Mossyrock and return over the same route, serving all intermediate points, for 180 days. SUPPORTING SHIPPERS: City of Morton, Box 67, Morton, Wash. 98356; Thrifty Drug Store, P.O. Box 38, Morton, Wash. 98356; Cascade Hardware, 131 Main St., Morton, Wash. 98356; Morton Supply & Equip. Inc., P.O. Box 488, Morton, Wash. 98356; Cascade Logger Supply, 132 Main Street, Morton, Wash. 98356; and Mountain Realty, Box 122, Morton, Wash. 98356. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Building, Seattle, Wash. 98104.

No. MC 48958 (Sub-No. 122 TA), filed April 15, 1974. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., 510 East 51st Avenue, Denver, Colo. 80216. Applicant's representative: Morris G. Cobb, P.O. Box 9050 (601 Ross Street), Amarillo, Tex. 79105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite of and storage facilities utilized by American Beef Packers, Inc., at or near Cactus, Tex. (Moore County), to points in Colorado, Nebraska, Kansas, Missouri, Iowa, Minnesota, Wisconsin, Illinois, New Mexico, Arizona, California, and Nevada, restricted to traffic originating at, and destined to, the named points, for 180 days. SUPPORTING SHIPPER: American Beef Packers, Inc., 7000 W. Center Road, Omaha, Nebr. SEND PROTESTS TO: District Supervisor Roger L. Buchanan, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 63417 (Sub-No. 62 TA), filed April 18, 1974. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, 1814 Hollins Road NE., P.O. Box 2888, 24001, Roanoke, Va. 24012. Applicant's representative: Nancy Pyeatt, 1030 15th Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shower bath stalls and parts and accessories therefor*, from Monroe, Ohio, to points in Alabama, Delaware, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Powers Fiat Corporation, One Michael Court, Plainview, N.Y. 11803. SEND PROTESTS TO: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 215 Campbell Avenue SW., Roanoke, Va. 24011.

No. MC 66124 (Sub-No. 8 TA), filed April 18, 1974. Applicant: PACIFIC NORTHWEST MOTOR FREIGHT LINES, INC., 600 South Edmunds Street, Seattle, Wash. 98108. Applicant's representative: Stanley H. Barer, 1122 Denny Building, 2200 Sixth Avenue, Seattle, Wash. 98121. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* in cargo containers and/or cargo vans, and *empty cargo containers* and/or *empty cargo vans*, having a prior or subsequent movement by water, between Tacoma, Wash., and Portland, Oreg., including the intermediate point of Longview, Wash., for 90 days.

NOTE.—Applicant intends to tack the authority at Tacoma, Wash. SUPPORTING SHIPPERS: Matson Agencies, Inc., 720 Third Ave., Suite 1215, Seattle, Wash. 98104, and Pacific International Freightliners, Inc., Norton Building, Seattle, Wash. 98104. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 6049 Federal Office Building, Seattle, Wash. 98104.

No. MC 76065 (Sub-No. 23 TA), filed April 16, 1974. Applicant: EHRLICH-NEWMARK TRUCKING CO., INC., 505–509 West 37th Street, New York, N.Y. 10018. 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: *Wearing apparel and materials, supplies, and equipment* used in the manufacture of wearing apparel (except commodities in bulk), between New York, N.Y., and points in New Jersey, on the one hand, and, on the other, Bridgewater, Christiansburg, Clifton Forge, Harrisonburg, Manassas, Farnassas, Suffolk, and Wytheville, Va., for 180 days. SUPPORTING SHIPPERS: Montgomery Ward & Co., New York, N.Y.; Metro Pants, Harrisonburg, Va.; Donn Kenny, Christiansburg, Va.; Shenandoah Textile, Inc., Parnassas, Pa.; and Jane Colby, New York, N.Y. SEND PROTESTS TO: Paul W. Assenza, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 76449 (Sub-No. 18 TA), filed April 18, 1974. Applicant: NELSON'S EXPRESS, INC., 675 N. Market Street, P.O. Box 312, Millersburg, Pa. 17061. Applicant's representative: John W. Frame, Box 626, 2207 Old Gettysburg Rd., Camp Hill, Pa. 17011. 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, and commodities contaminating to other lading), serving as off-route points, the terminal of Carolina Freight Carriers, Inc., at junction of U.S. Highway 11 and Interstate Highway 81 in Middlesex Township, near New Kingstown, Pa., and the terminal of Strickland Transportation Co., Inc., at or near New Kingstown, Pa., for interchange purposes only in connection with its regular route general commodity authority, for 180 days.

NOTE.—Applicant intends to tack all authority under Docket No. MC 76449. SUPPORTING SHIPPERS: Strickland Transportation Co., Inc., P.O. Box 5689, Dallas, Tex. 75222, and Carolina Freight Carriers Corporation, Cherryville, N.C. 28021. SEND PROTESTS TO: Robert P. Amerine, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 228 Walnut Street, P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 92068 (Sub-No. 11 TA), filed April 18, 1974. Applicant: MUTUAL TRANSPORTATION, INCORPORATED, President and Fleet Streets, Baltimore, Md. 21202. Applicant's representative: Walter T. Evans, 7401 Wisconsin Ave. NW., Washington, D.C. 20014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by department stores, from the facilities of Mutual Transportation, Inc., at Washington, D.C., to the store and facilities of the Woolco Department Store Division, F. W. Woolworth Company near Jefferson Davis Highway in Prince William County, Va., for 180 days. SUPPORTING SHIPPER: Mr. Roger Vesey, Regional Traffic Manager, F. W. Woolworth Company, 162 W. Chelton Ave., Philadelphia, Pa. 19144. SEND PROTESTS TO: William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 814–B Federal Building, Baltimore, Md. 21201.

No. MC 95084 (Sub-No. 102 TA), filed April 17, 1974. Applicant: HOVE TRUCK LINE, a Corporation, Stanhope, Iowa 50246. Applicant's representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural machinery and implements and parts, attachments, and accessories* for agricultural machinery and implements, from Blackwell, Okla., to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, and Wisconsin, for 180 days. SUPPORTING SHIPPER: Speed King Manufacturing Co., Inc., P.O. Box 1438, Dodge City, Kans. 67801. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 103051 (Sub-No. 304 TA), filed April 18, 1974. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Avenue North, P.O. Box 90408, Nashville, Tenn. 37209. Applicant's representative: William G. North (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oil*, in bulk, in tank vehicles, from Macon, Ga., to points in Wisconsin, for 180 days. SUPPORTING SHIPPER: The Proctor & Gamble Distributing Company, P.O. Box 599, Cincinnati, Ohio 45201. SEND PROTESTS TO: Joe J. Tate, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 803 1808 West End Building, Nashville, Tenn. 37203.

No. MC 107515 (Sub-No. 901 TA3, filed April 12, 1974. Applicant: REFRIGERATED TRANSPORT CO., INC., 3901 Jonesboro Rd. SE., P.O. Box 308, Forest Park, Ga. 30050. Applicant's representative: Alan E. Serby, 1600 First Federal Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Candy and/or confectionery and related products* (except in bulk) and (2) *Advertising matter, premiums and display materials* when shipped in the same vehicle with commodities described in (1) in vehicles with mechanical refrigeration, from the plantsite and warehouse facilities of M & M/Mars, division of Mars, Incorporated at Albany, Ga., to points in Arizona, California, Texas, Louisiana, Oregon and Utah, for 180 days. SUPPORTING SHIPPER: M & M/Mars, Division of Mars, Incorporated, High St., Hackettstown, N.J. 07840. SEND PROTESTS TO: William L. Scroggs, District Supervsior, Interstate Commerce Commission, Bureau of Operations, 1252 West Peachtree St. NW., Room 309, Atlanta, Ga. 30309.

No. MC 112288 (Sub-No. 9 TA), filed April 19, 1974. Applicant: YARBROUGH TRANSFER COMPANY, a Corporation, 1500 Doune Street, Winston Salem, N.C. 27107. Applicant's representative: Charles Ephraim, Suite 600, 1250 Connecticut Avenue NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Air conditioning, air filtration, refrigeration, and humidifying equipment*, the transportation of which because of size or weight require the use of special equipment, from Winston-Salem, N.C., to points in Alabama, Georgia, Kentucky, Louisiana, Mississippi, Ohio, South Carolina, Tennessee, Texas, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: The Bahnson Company, P.O. Box 10458, Salem Station, Winston-Salem, N.C. 27108. SEND PROTESTS TO: District Supervisor Terrell Price, Interstate Commerce Commission, Bureau of Operations, 800 Briar Creek Road, CC 516, Charlotte, N.C. 28205.

No. MC 112304 (Sub-No. 79 TA), filed April 3, 1974. Applicant: ACE DORAN HAULING & RIGGING CO., a Corporation, 1601 Blue Rock Street, Cincinnati, Ohio 45223. Applicant's representative: Carl M. Doran (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors*, other than truck, self-propelled, from the plant site and warehouse facilities of Allis-Chalmers Corp., located at or near Milwaukee, Wis., to Birmingham, Huntsville, Selma, Cullman, Robertsdale, Athens, Jasper, Sylacauga, and Northport, Ala.; West Memphis, Walnut Ridge, Wilmot, and Dumas, Ark.; Shelbyville and Stanton, Del.; Miami, Jacksonville, Orlando, Gainesville, Okeechobee, Trenton, New Port Richy, Ocala, Lynnhaven, Lake Worth, Tallahassee, Marianna, Eustis, and Palmetto, Fla.; Columbus, Rome, Athens, Albany, Claxton, Baxley, Moultrie, Thomasville, Dalton, La Grange, Sylvania, Atlanta, Waycross, Louisville, Elberton, and Dublin, Ga.; Gibson City, Springfield, Champaign, Danville, Peoria, Shelbyville, Martinsville, Macon, Havana, Effingham, Macomb, Greenville, Benton, Carrollton, Belleville, Carmi, Olney, Jacksonville, Pinckneyville, Carlyle, Litchfield, Paris, and Pittsfield, Ill.; Evansville, Indianapolis, Muncie, Peru, Lafayette, La Porte, Bloomington, Jeffersonville, Cloverdale, Columbus, Elkhart, Madison, Bedford, Marion, Richmond, Frankfort, Corydon, Jasper, Brownstown, Plymouth, Winnamac, Renselaer, and Kokomo, Ind.; Wheatley, Franklin, Louisville, Owensboro, West Somerset, Henderson, Mayfield, Tompkinsville, Albany, Mt. Sterling, Hopkinsville, Glasgow, Danville, Paris, Campbellsville, Elizabethtown, and Barlow, Ky.; Lafayette, Abbeville, Plaquemine, De Ridder, Oakgrove, Wildsville, Jeanerette, New Roads, Winnsboro, Franklinton, and Kentwood, La.; Frederick, Salisbury, Easton, Westminster, Upper Marlboro, Bel Air, Denton, and Chestertown, Md.; Stanton, Kalamazoo, Battle Creek, Ann Arbor, Niles, Albion, Traverse City, Jackson, Adrian, Kaw Kawlin, Gladwin, Petoskey, Port Huron, White Pigeon, Zeeland, Oxford, Paw Paw, St. John's, Keego Harbor, Standish, Onondaga, Imlay City, South Rockwood, West Branch, North Branch, Charlotte, Greenville, Fowlerville, and Corunna, Mich.; Yazoo City, Jackson, Hattiesburg, Columbia, Hollandale, Indianola, McComb, Macon, Battesville, and Lucedale, Miss.; St. Louis, Sedalia, Kansas City, Cape Girardeau, St. Joseph, Hannibal, Jefferson City, Kirksville, St. Genevieve, Carrollton, Columbia, East Prairie, Hawk Point, Bolivar, Bethany, Sikeston, Brookfield, Boonville, Macon, O'Fallon, Poplar Bluff, Anderson, Clinton, and Carthage, Mo.; Oakland, Middletown, Somerville, Bordentown, Egg Harbor City, Elmer, Hightstown, Mendham, Upper Saddle River, Frenchtown, and Flemington, N.J.; Schenectady, Rome, Newark, N. Tonawanda, Oneida, Corning, Lockport, Auburn, Hornell, Fulton, Tully, and Munnsville, N.Y.; Raleigh, Winston-Salem, Fayettesville, Greensboro, Rocky Mount, Welcome, and Spencer, N.C.; Dayton, Toledo, Akron, Columbus, Cincinnati, Cleveland, Zanesville, Chillecothe, Liberty Center, Marion, Payne, Wilmington, Edgerton, Reedsville, Bellefontaine, Elyria, Newark, and Batavia, Ohio; Oklahoma City, Enid, Seminole, Stroud, Medford, Buffalo, Okeene, Guthrie, and Woodward, Okla.; Erie, Lancaster, Washington, Greensburg, Johnstown, Sharon, Natrona Heights, Beaver Falls, Waynesboro, Titusville, East Berlin, Ephrata, Palmerton, Annville, Milroy, Uniontown,

Carlisle, and Meadville, Pa.; Anderson, Orangeburg, Conway, Gaffney, Lena, Holly Hill, and Fountain Inn, S.C.; Chattanooga, Memphis, Johnson City, Milan, Cleveland, Fayetteville, Franklin, Philadelphia, Ripley, Dickson, Shelbyville, Greenville, Dyersburg, Lebanon, Paris, and Springfield, Tenn.; Fort Worth, Houston, Waco, Amarillo, Lubbock, Abiline, San Antonio, Victoria, Gainesville, Memphis, Alvorado, Seminole, Gruver, White Deer, and Floydada, Tex.; Galax, Chesapeake, Richmond, Charlottesville, Fredericksburg, Manassas, Salem, Altavista, and Abingdon, Va.; Huntington, Keyser, Beckley, Lewisburg, Pennsboro, and Moorefield, W. Va., for 180 days. SUPPORTING SHIPPER: Allis-Chalmers Corporation, P.O. Box 512, Milwaukee, Wis. 53201. SEND PROTESTS TO: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5514–B Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

No. MC 112520 (Sub-No. 283 TA), filed April 17, 1974. Applicant: MCKENZIE TANK LINES, INC., New Quincy Road, P.O. Box 1200, Tallahassee, Fla. 32302. Applicant's representative: Sol H. Proctor, 1107 Blackstone Building, Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alkyd-resins, paint material and paint plasticizers*, from points in Columbia County, Fla., to points in Louisiana, Mississippi, and Tennessee, for 180 days. SUPPORTING SHIPPER: Cargill, Inc., Chemical Products Div., Cargill Bldg., Minneapolis, Minn. 55402. SEND PROTESTS TO: District Supervisor G. H. Fauss, Jr., Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 W. Bay St., Jacksonville, Fla. 32202.

No. MC 112595 (Sub-No. 57 TA), filed April 18, 1974. Applicant: FORD BROTHERS, INC., Mail: P.O. Box 727, Ironton, Ohio 45638 and Off: 510 Riverside Dr., Coal Grove, Ohio 45638. Applicant's representative: Walter Dial (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Calcined anthracite coal*, in dump trucks, from Natrium, W. Va. to Sebree, Ky., for 180 days. SUPPORTING SHIPPER: Anaconda Aluminum Company, P.O. Box 44, Henderson, Ky. 42420. SEND PROTESTS TO: H. R. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3108 Federal Office Bldg., 500 Quarrier St., Charleston, W. Va. 25301.

No. MC 112963 (Sub-No. 52 TA), filed April 17, 1974. Applicant: ROY BROS., INC., 764 Boston Road, Pinehurst, Mass. 01866. Applicant's representative: Leonard E. Murphy (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal oils and products of animal and vegetable oils*, in bulk, in tank vehicles, from Quincy, Mass., to points in New York, for 180 days. SUPPORTING SHIPPER: Procter & Gamble Distributing Co., P.O. Box 599, Cincinnati, Ohio. SEND PROTESTS TO: District Supervisor D. W. Hammons, Interstate Commerce Commission, Bureau of Operations, 150 Causeway St., 5th Floor, Boston, Mass. 02114.

No. MC 113362 (Sub-No. 275 TA), filed April 15, 1974. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, Iowa 50533. Applicant's representative: Milton D. Adams, Box 562, Austin, Minn. 55912. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite of and storage facilities utilized by American Beef Packers, Inc., at or near Cactus, Tex. (Moore County), to points in Maryland, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, and the District of Columbia, restricted to traffic originating at and destined to the named points, for 180 days. SUPPORTING SHIPPER: American Beef Packers, Inc., 7000 West Center Road., Omaha, Nebr. 68106. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 115311 (Sub-No. 166 TA), filed April 18, 1974. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, Ga. 31061. Applicant's representative: Paul M. Daniell, P.O. Box 872, Atlanta, Ga. 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe, tubing, conduits, molding, valves, fittings, siding, compounds, joint sealer, bonding cement, and accessories and materials* used in the installation thereof, from points in Thomas County, Ga., to points in Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee, for 180 days. SUPPORTING SHIPPER: Davis Water & Waste Industries, Inc., P.O. Box 1419, Thomasville, Ga. 31792. SEND PROTESTS TO: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 309, 1252 West Peachtree Street NW., Atlanta, Ga. 30309.

No. MC 116947 (Sub-No. 30 TA), filed April 3, 1974. Applicant: SCOTT TRANSFER CO., INC., 920 Ashby Street SW., Atlanta, Ga. 30310. Applicant's representative: William Addams, Suite 212, 5299 Roswell Road NW., Atlanta, Ga. 30342. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal cans and can ends*, from the plantsite of Ball Corporation in or near Williamsburg, Va., to the plantsite and/or warehouse facilities utilized by Anheuser-Busch in or near Jacksonville, Fla., for 180 days. SUPPORTING SHIPPER: Jeffco Manufacturing Co., doing business as Ball Corporation, P.O. Box 2407, Muncie, Ind. 47302. SEND PROTESTS TO: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 309, 1252 West Peachtree St. NW., Atlanta, Ga. 30309.

No. MC 117878 (Sub-No. 5 TA), filed April 18, 1974. Applicant: DWIGHT CHEEK, doing business as DWIGHT CHEEK TRUCKING, 2909 S. Pierce St., Box 1882, Amarillo, Tex. 79105. Applicant's representative: Dwight Cheek (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I 61 M.C.C. 209 and 766, from the plantsite of and storage facilities utilized by American Beef Packers, Inc., at or near Cactus, Tex. (Moore County), to points in Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, Tennessee, North Carolina, South Carolina, and California, for 180 days. SUPPORTING SHIPPER: Ralph L. McGee, General Traffic Manager, American Beef Packers, Inc., 7000 W. Center Road, Omaha, Nebr. 68106. SEND PROTESTS TO: Haskell E. Ballard, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box H–4395, Herring Plaza, Amarillo, Tex. 79101.

No. MC 118400 (Sub-No. 4 TA), filed April 18, 1974. Applicant: WANDO PRODUCE CO., 60 Romney Street, Charleston, S.C. 29403. Applicant's representative: Robert E. Tate, P.O. Box 517, Evergreen, Ala. 36401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Georgetown, S.C., to Charlotte, N.C.; Goldsboro, N.C.; Hickory, N.C.; Winston-Salem, N.C.; Raleigh, N.C.; Columbia, S.C.; Greenville, S.C.; and Richmond, Va., and their respective commercial zones, for 180 days. SUPPORTING SHIPPER: Castle & Cooke Foods, Inc., 202 Azar Bldg., Glen Burnie, Md. 21061. SEND PROTESTS TO: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 302, 1400 Building, 1400 Pickens St., Columbia, S.C. 29201.

No. MC 119293 (Sub-No. 3 TA), filed April 17, 1974. Applicant: DIAL TRANSFER, INC., 8452 Pillsbury Avenue South, Minneapolis, Minn. 55420. Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, Minn. 55403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Uncrated casket shells and uncrated burial cases* (coffins or caskets), from Minneapolis and Duluth, Minn., and their respective commercial zones, to points in Montana, for 180 days. SUPPORTING SHIPPERS: Batesville Casket Company, Inc., Batesville, Ind. 47006, and Minneapolis Casket Company, Inc., 2125 E. Hennepin Ave., Minneapolis, Minn. SEND PROTESTS TO: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building & U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 126477 (Sub-No. 3 TA), filed April 16, 1974. Applicant: JET AIR

FREIGHT & PARCEL DELIVERY, INC., R.R. #4, Baer Field Terminal, Fort Wayne, Ind. 46809. Applicant's representative: Richard D. Logan, 1435 Lincoln Bank Tower, Fort Wayne, Ind. 46802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, commodities in bulk and commodities requiring special equipment), having an immediately prior or subsequent movement by air, between points in Koscuisko County, Ind., on the one hand, and, on the other, O'Hare International Airport at or near Chicago, Ill. SUPPORTING SHIPPERS: There are approximately 8 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 345 W. Wayne St., Room 204, Ft. Wayne, Ind. 46802.

No. MC 127468 (Sub-No. 9 TA), filed April 17, 1974. Applicant: LTD, INC., 3250 South Western Ave., Chicago, Ill. 60608. Applicant's representative: Ronald N. Cobert, 1730 M Street NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electrical appliances and equipment and materials and supplies* used in the manufacture, sale, and distribution of electrical appliances and equipment, (1) between Chicago, Ill.; Dumas, Ark.; Forest, Miss.; Coushatta, La.; Waynesboro, Miss.; Elkin, N.C.; Denmark, S.C.; Manning, S.C.; Dayton, Tenn.; Knoxville, Tenn.; McMinnville, Tenn.; and Milwaukee, Wis., on the one hand, and, on the other, points in Orangeburg County, S.C. and Atlanta, Ga., and (2) between points in Orangeburg County, S.C., on the one hand, and, on the other, Atlanta, Ga., for 180 days. SUPPORTING SHIPPER: Mr. Neil F. Cunningham, Traffic Manager, Sunbeam Corporation, 5400 West Roosevelt Rd., Chicago, Ill. 60650. SEND PROTESTS TO: Robert G. Anderson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, Ill. 60604.

No. MC 127505 (Sub-No. 65 TA), filed April 16, 1974. Applicant: RALPH H. BOELK, doing business as R. H. BOELK TRUCK LINES, Route 2, Mendota, Ill. 61342. Applicant's representative: Walter Kobos, 1016 Kehoe Drive, St. Charles, Ill. 60174. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Freight of all kinds* (except articles of extraordinary value, Classes A and B explosives as described in Motor Carrier's Explosives, and dangerous articles Tariff ICC ATA 111 series, commodities in bulk, commodities injurious or contaminating to other lading, commodities requiring special equipment, household goods, used, or personal effects, and livestocks), from Cleveland, Ohio, to Chicago, Ill., restricted to the transportation of shipments originating at the facilities of Merchant Shippers, Stor Dor Freight System, Inc., and Westland Forwarding Co., at Cleveland, Ohio, and destined to similar facilities or railroad "Piggy Back" facilities located in Chicago, Ill., on traffic destined beyond, for 180 days. SUPPORTING SHIPPERS: Edward A. Douglas, Vice President, Merchant Shippers, 1601 South Western Avenue, Chicago, Ill. 60608; Douglas H. Wright, Executive Vice Pres. Stor Dor Freight System, Inc., 617 No. Mission Road, Los Angeles, Calif. 90033. SEND PROTESTS TO: William J. Gray, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 127539 (Sub-No. 34 TA), filed April 18, 1974. Applicant: PARKER REFRIGERATED SERVICE, INC., 3533 East 11th Street, Tacoma, Wash. 98421. Applicant's representative: George R. LaBissoniere, Suite 101, 130 Andover Park East, Seattle, Wash. 98188. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tortillas and taco shells*, not frozen, when moving in vehicles equipped with mechanical refrigeration, from the plantsite of Toltec Foods, Richmond, Calif., to points in Oregon and Washington, for 180 days. SUPPORTING SHIPPER: Toltec Foods, Inc., 2400 Florida Avenue, Richmond, Calif. 94804. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Bldg., Seattle, Wash. 98104.

No. MC 128007 (Sub-No. 62 TA), filed April 19, 1974. Applicant: HOFER, INC., P.O. Box 583, 4032 Parkview Dr., Pittsburg, Kans. 66762. Applicant's representative: Clyde N. Christey, 641 Harrison Street, Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Dearborn, Mich., to Parsons, Kans., for 180 days. SUPPORTING SHIPPER: TecTank Inc., Parsons, Kans. 67357. SEND PROTESTS TO: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Bldg., Wichita, Kansas 67202.

No. MC 128030 (Sub-No. 64 TA), filed February 8, 1974. Applicant: THE STOUT TRUCKING COMPANY, INC., P.O. Box 177, R.R. #1, Urbana, Ill. 61801. Applicant's representative: R. C. Stout (Same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and closures therefor*, from the plantsite of Midland Glass Co., Inc., Terre Haute, Ind., to points in Kentucky, Missouri, and Tennessee, for 180 days. SUPPORTING SHIPPER: James V. J. Jones, Manager of Transportation, Midland Glass Co., Inc., P.O. Box 557, Cliffwood, N.J. 07721. SEND PROTESTS TO: Robert G. Anderson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn Street, Chicago, Ill. 60604.

No. MC 128659 (Sub-No. 5 TA), filed April 19, 1974. Applicant: ORBITAL TRANSPORT, INC., 2649 Karen St., Bellmore, N.Y. 11710. Applicant's representative: Arthur J. Piken, Suite 1515, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass bottles*, from North Bergen, Millville, Freehold, and Wharton, N.J., and Orangeburg, N.Y., to Garden City and Patchogue, N.Y., for 180 days. SUPPORTING SHIPPER: PepCom Industries, Inc., Roosevelt Field, Garden City, N.Y. 11530. SEND PROTESTS TO: Anthony D. Giaimo, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 128746 (Sub-No. 15 TA), filed April 18 , 1974. Applicant: D'AGATA NATIONAL TRUCKING CO., 3224-44 South 61st, Philadelphia, Pa. 19153. Applicant's representative: Leonard A. Jaskiewicz, Suite 501, 1730 M St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, and *related advertising material*, from Baltimore, Md., to points in Indiana, Ohio, Michigan, Kentucky, and Tennessee, for 180 days. SUPPORTING SHIPPER: National Brewing Co., 22 N. Calvert St., Baltimore, Md. 21202. SEND PROTESTS TO: Peter R. Guman, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Federal Bldg., Room 3238, 600 Arch St., Philadelphia, Pa. 19106.

No. MC 128988 (Sub-No. 46 TA), filed April 17, 1974. Applicant: JO/KEL, INC., 159 South Seventh Avenue, P.O. Box 1249, City of Industry, Calif. 91749. Applicant's representative: Patrick E. Quinn, 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic rolls, sheets, trays, and forms*, from City of Industry, Calif., to Brentwood, Garden City, Latham, and Brooklyn, N.Y., Chicago, Elk Grove Village, and Champaign, Ill.; Cleveland, Ohio; Beaver Heights, Md.; New Brunswick, East Paterson, Lebanon, Plainfield, Totowa, Linden, Garfield, and South Brunswick, N.J.; Middleton, Framingham, Lawrence, and Needham, Mass., for 180 days. RESTRICTION: The operations sought herein are subject to the following conditions: Restricted against the transportation of commodities in bulk or those which by reason of size or weight require the use of special equipment and the authority sought is further restricted to a transportation service to be performed under a continuing contract or contracts with A & E Plastik Pak Co., Inc., its divisions and subsidiaries. SUPPORTING SHIPPER: A & E Plastik Pak Co., Inc., 14505 Proctor Avenue, Box 1268, City of Industry, Calif. 91749. SEND PROTESTS TO: Walter W. Strakosch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708 Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 133478 (Sub-No. 12 TA), filed April 17, 1974. Applicant: HEARIN TRANSPORTATION, INC., 8565 SW. Beaverton, Hillsday Hiway, P.O. Box 25448, Portland, Oreg. 97225. Applicant's representative: Nick I. Goyak, 404 Oregon National Bldg., Six Ten Southwest Alder, Portland, Oreg. 97205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Prefinished paneling and wood and plywood materials* for the account of DG Shelter Products Co., from plantsite in Jacksonville, Fla., to points in North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma, and (2) *Building materials and mill machinery* for the account of DG Shelter Products Co., between plantsites at Jacksonville, Fla.; Marion, Va.; Harrisburg, Oreg.; and Beaverton, Oreg., for 180 days. SUPPORTING SHIPPER: DG Shelter Products Co., One Maritime Plaza, San Francisco, Calif. 94111. SEND PROTESTS TO: District Supervisor W. J. Huetig, Interstate Commerce Commission, Bureau of Operations, 114 Pioneer Courthouse, Portland, Oregon 97204.

No. MC 135519 (Sub-No. 3 TA), filed April 17, 1974. Applicant: GEORGE B. SAMAC AND ANTHONY G. AYALA, doing business as QUEEN CITY TRUCKING, 2618 South DeLappe Place, Seattle, Wash. 98144. Applicant's representative: George R. Kargianis, 2120 Pacific Building, Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from Seattle and Tacoma, Wash., and Portland, Oreg., to Spokane, Wash., and points in Idaho and Montana; (2) *Scrap metal and pipe*, from points in Idaho and Montana, to Seattle, Wash., and Portland, Oreg.; and (3) *Hides*, green and salted, from points in Montana, Idaho, and Washington to Seattle and Tacoma, Wash., and Portland, Oreg., for 180 days. SUPPORTING SHIPPERS: There are approximately 13 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Bldg., Seattle, Wash. 98104.

No. MC 136464 (Sub-No. 5 TA), filed April 19, 1974. Applicant: CAROLINA WESTERN EXPRESS, INC., Off.: 650 Eastwood Drive, Mlg.: P.O. Box 3961, Gastonia, N.C. 28052. Applicant's representative: John R. Sims, Jr., Suite 600, 1707 H Street NW., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Zippers, finished and/or semifinished, sewing thread on spools, cotton or nylon, binding, braid, lace, tape, webbing, ribbon, NOI*, in package units of less than 24 continuous yards, from the facilities of Talon Division of Textron in Mecklenburg County, N.C., to Port Hueneme, Calif., and the warehouse facility of Talon Division of Textron, located at or near Los Angeles, Calif., for 180 days.

NOTE.—Application is for additional origin point and would like to be tacked to present authority. SUPPORTING SHIPPER: Talon Division of Textron, Hovis Road, Stanley, N.C. SEND PROTESTS TO: District Supervisor Terrell Price, Interstate Commerce Commission, Bureau of Operations, Suite CC516, 800 Briar Creek Road, Charlotte, N.C. 28205.

No. MC 136504 (Sub-No. 1 TA), filed April 16, 1974. Applicant: COLORADO-WYOMING TRANSFER CO., INC., Box 4158 Santa Fe Station, Wheat Ridge, Colo. 80204. Applicant's representative: Roger Sollenbarger, 9580 West 14th Ave., Lakewood, Colo. 80215. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Iron and steel products*, from, to, or between the following points or described areas from the warehouse and storage facilities of Gate City Steel Corporation of Denver, Colo., to points in Wyoming, points in Montana on and south of a line beginning on the west at the Montana-Wyoming border on Highway U.S. 212, via U.S. 212 via Billings, thence to Broadus, thence to the point on the Montana-Wyoming border where U.S. 212 exits into Wyoming, points in South Dakota on and west of a line beginning on the north of the South Dakota-Wyoming border on Highway U.S. 212, via U.S. 212 to Newell, thence via South Dakota Highway 79 to Hot Springs, thence via U.S. Highway 18 to the South Dakota-Wyoming border, for 180 days. SUPPORTING SHIPPER: Gate City Steel Corporation, 5500 Colorado Blvd., Commerce City, Colo. 80022. SEND PROTESTS TO: District Supervisor Herbert C. Ruoff, Bureau of Operations, Interstate Commerce Commission, 2022 Federal Building, Denver, Colo. 80202.

No. MC 136752 (Sub-No. 2 TA), filed April 16, 1974. Applicant: MARAUDER MARINE CORPORATION, 7826 Bellingham Avenue, North Hollywood, Calif. 91605. Applicant's representative: David P. Christianson, 825 City National Bank Bldg., 606 South Olive Street, Los Angeles, Calif. 90014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Boats, supplemental equipment and accessories*, between Los Angeles County, Calif., on the one hand, and, on the other, points in the United States, except Alaska and Hawaii, for 180 days. SUPPORTING SHIPPER: Catalina Yachts, Inc., Sale & Transportation Manager, 8211 Lankershim Blvd., North Hollywood, Calif. SEND PROTESTS TO: District Supervisor Philip Yallowitz, Bureau of Operations, Interstate Commerce Commission, 300 North Los Angeles Street, Room 7708, Los Angeles, Calif. 90012.

No. MC 136818 (Sub-No. 4 TA), filed April 15, 1974. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, Phoenix, Ariz. 85041. Applicant's representative: Donald E. Fernaays, Suite 312, 4040 East McDowell Road, Phoenix, Ariz. 85008. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soil amendments, potting soil, planter mix, and bark*, when moving in mixed shipments with these commodities, from Fredonia, Ariz., to points in California, New Mexico, Texas, Oklahoma, Colorado, Utah, Nevada, and Kansas, for 180 days. SUPPORTING SHIPPER: Kaibab Industries, P.O. Box 20506, Phoenix, Ariz. 85036. SEND PROTESTS TO: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 3427 Federal Bldg., 230 N. First Avenue, Phoenix, Ariz. 85025.

No. MC 138391 (Sub-No. 1 TA), filed April 16, 1974. Applicant: FRED A. PERELLA, 340 39th Street, Pittsburgh, Pa. 15201. Applicant's representative: John A. Pillar, 1122 Frick Building, Pittsburgh, Pa. 15201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream cones and wafers, paper and plastic cups, containers, straws and lids, and equipment, materials, and supplies used in the production and sale thereof*, between the facilities of Keystone Cone Company, Inc., located in the Borough of Greentree, Allegheny County, Pa., on the one hand, and, on the other, Charlotte, N.C., Chicago, Ill., Baltimore, Md., Boston, Mass., Detroit, Mich., Fair Lawn, N.J., Cincinnati, Ohio, and points in Ohio on and east of Ohio Route 83 from Avon Lake, Ohio, to the Intersection of Ohio Route 83 and Ohio State Route 60 and on and east of Ohio State Route 339 from Beverly, Ohio, to the Ohio-West Virginia State Line, points in West Virginia on and north of U.S. Route 50 and Brooklyn, N.Y., and points in New York on and west of U.S. Route 11, for 180 days. SUPPORTING SHIPPER: Keystone Cone Company, Inc., 601 Mansfield Ave., Pittsburgh, Pa. 15205. SEND PROTESTS TO: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Fed. Bldg., 1000 Liberty Avenue, Pittsburgh, Pa. 15222.

No. MC 138530 (Sub-No. 12 TA), filed April 18, 1974. Applicant: C.O.P. TRANSPORT, INC., 307 South High Street, Cortland, Ohio 44410. Applicant's representative: Warren R. Keck III, 28 South Second Street, Greenville, Pa. 16125. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Copper and copper alloys*, viz other than perforated or silver plated, plate and strip, scrap and scrap copper alloy, loose or in containers, coils, bars drawn, rolled or extruded, between the plant site of Hussey Metals Division/Copper Range Company, Leetsdale, Pa., on the one hand, and between the plant site of Batesville Casket Company, Inc., Batesville, Ind., on the other, for 180 days. SUPPORTING SHIPPER: Hussey Metals Division/Corper Range Co., Leetsdale, Pa. 15056. SEND PROTESTS TO: Franklin D. Bail, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 181 Federal Office Bldg., 1240 East Ninth Street, Cleveland, Ohio 44199.

No. MC 138530 (Sub-No. 13 TA), filed April 19, 1974. Applicant: C.O.P. TRANSPORT, INC., 307 South High Street, P.O. Box 85, Cortland, Ohio, 44410. Applicant's representative: Warren R. Keck III, 28 South Second Street, Greenville, Pa. 16125. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, strip mining, walking drag lines, mining and construction excavator shovels, stripping shovels, blast hole drills, steel forgings, castings, machinery parts, walking drag line parts, mining and excavator shovel parts, drill parts and accessories thereof, iron and steel* used in the manufacture of above parts and *vendor products* used in the manufacture and processing of products above-described commodities, between the plant site of Marion Power Shovel Co., Inc., Marion, Ohio, to points in Indiana, Illinois, Wisconsin, Minnesota, and Michigan, for 180 days. SUPPORTING SHIPPER: Marion Power Shovel Company, Inc., 617 West Center Street, Marion, Ohio 43302. SEND PROTESTS TO: Franklin D. Bail, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Bldg., 1240 East Ninth Street, Cleveland, Ohio 44199.

No. MC 138635 (Sub-No. 12 TA), filed April 19, 1974. Applicant: CAROLINA WESTERN EXPRESS, INC., Off: 650 Eastwood Drive, Mlg: P.O. Box 3961, Gastonia, N.C. 28052. Applicant's representative: David L. Bayne (same address as applicant). 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, commodities in bulk, in tank vehicles, commodities requiring special equipment, and household goods as defined by the Commission), from Charlotte, N.C., to Memphis, Tenn., restricted to traffic tendered by freight forwarders subject to Part IV of the Interstate Commerce Act, for 180 days. SUPPORTING SHIPPER: ABC-Trans National Transport, Division of National Carloading Corp., 201 Eleventh Ave., New York, N.Y. 10001. SEND PROTESTS TO: District Supervisor Terrell Price, 800 Briar Creek Road, Suite CC516, Interstate Commerce Commission, Bureau of Operations, Charlotte, N.C. 28205.

No. MC 139023 (Sub-No. 1 TA), filed April 17, 1974. Applicant: GERALD GORDON GOGIN, doing business as GOGIN TRUCKING, North 16 W 24990, Highway JJ, Pewaukee, Wis. 53072. Applicant's representative: Stanley C. Olsen, Jr., 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and closures thereof*, from the plantsite of Midland Glass Company at or near Shakopee, Minn., to Milwaukee, Wis., for 180 days. SUPPORTING SHIPPER: Midland Glass Co., P.O. Box 69, Valley Industrial Park, Minn. 55379 (Russell J. Barto, Finishware Superintendent). SEND PROTESTS TO: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 139033 (Sub-No. 1 TA), filed April 17, 1974. Applicant: CRT, INCORPORATED, Shamburger Lane, P.O. Box 2474, Little Rock, Ark. 72203. Applicant's representative: Michael G. Thompson, 1100 Boyle Building, Little Rock, Ark. 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Emulsified asphalt*, in bulk, in tank vehicles, from West Memphis, Ark., to points in Bollinger, Butler, Cape Girardeau, Dunklin, Madison, Mississippi, Pemiscot, New Madrid, Ripley, Scott, Stoddard, and Wayne Counties, Mo., for 180 days. SUPPORTING SHIPPERS: Ben M. Hogan Company, Inc., P.O. Box 2860, Little Rock, Ark. 72203; Butler County Asphalt, P.O. Box 68, Neelyville, Mo. 63954; J. W. Githens Company, 501 North Tenth Street, Poplar Bluff, Mo. 63901. SEND PROTESTS TO: District Supervisor William H. Land, Jr., Bureau of Operations, Interstate Commerce Commission, 2519 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 139624 (Sub-No. 1 TA), filed April 18, 1974. Applicant: J. J. MINNEHAN, INC., P.O. Box 369, Rockingham Road, Bellows Falls, Vt. 05101. 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: *Water*, in bulk, in tank vehicles, from Middleborough, Mass., to Goshen, N.Y., for 180 days. SUPPORTING SHIPPER: Natural Spring Water Co., Inc., 200 Park Avenue, New York, N.Y. 10017. SEND PROTESTS TO: District Supervisor Paul D. Collins, Interstate Commerce Commission, Bureau of Operations, P.O. Box 548, Montpelier, Vt. 05602.

No. MC 139668 (Sub-No. 1 TA), filed April 17, 1974. Applicant: ERNEST ALLEN, JR. AND EARL ALLEN, doing business as ALLEN COAL CO., 351 Main Street, Nelsonville, N.Y. 10516. Applicant's representative: John J. Brady, Jr., 75 State St., Albany, N.Y. 12207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stone*, from Patterson (Putnam County), N.Y., to Byram (Fairfield County), Conn., for 180 days. SUPPORTING SHIPPER: Patterson Materials Corp., Route 311, Patterson, N.Y. 12563. SEND PROTESTS TO: Robert A. Radler, Officer-in-Charge, Interstate Commerce Commission, Bureau of Operations, 518 New Federal Building, Albany, N.Y. 12207.

No. MC 139706 (Sub-No. 1 TA), filed April 17, 1974. Applicant: 77 TRANSPORT, INC., 870 "G" Street, Brawley, Calif. 92227. Applicant's representative: David P. Christianson, 606 South Olive Street, S[illegible]35, Los Angeles, Calif. 90014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed*, dry, in bulk, between points in Imperial County, Calif., restricted to traffic having a prior movement by rail, for 180 days. SUPPORTING SHIPPERS: Foster Milling, Inc., 3403 Casey Road, Brawley, Calif., and Snow Commodities Company, Inc., 505 Mission Street, South Pasadena, Calif. SEND PROTESTS TO: District Supervisor Philip Yallowitz, Interstate Commerce Commission, Bureau of Operations, 300 North Los Angeles Street, Room 7708, Los Angeles, Calif. 90012.

No. MC 139709 TA, filed April 16, 1974. Applicant: DAVIS TRUCK SERVICE, INC., Route 2, Box 43, Jeanerette, La. 70544. Applicant's representative: James M. Field, Louisiana National Bank Bldg., Baton Rouge, La. 70801. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Packaged carbon black in steamship, railroad or carrier containers and/or trailers*, from the port of New Orleans to Cities Service Company, Columbian Division, carbon black plant at Eola (near Bunkie), La., on Louisiana Highway 29 and to its Northbend carbon black plant near Franklin, La., on Louisiana Highway 317 and from said designated Cities Service Company, Columbian Div. carbon black plants, to the port of New Orleans, La. for export, and (b) *Empty railroad owned containers and/or trailers*, from the trailer on flat car railroad ramps at Meridian, Miss., to Cities Service's Columbian Div. carbon black plants at Eola (near Bunkie), La., on Louisiana Highway 29 and to its Northbend carbon black plant near Franklin, La., on Louisiana Highway 317, and *packaged carbon black in railroad or carrier owned containers and/or trailers*, from said designated Cities Service, Columbian Div. carbon black plants to the trailer on flat car ramps at Meridian, Miss., (2) (a) *Packaged carbon black in steamship, carrier containers, and/or trailers*, from the port of New Orleans to Cabot Corporation's carbon black plants at Tatecove (near Ville Platte), La., on Louisiana Highway 29 and Cabot (near Franklin), La., on Louisiana Highway 317, and from said designated Cabot Corporation's carbon black plants to the port of New Orleans for export, and (b) *Empty railroad owned containers and/or trailers*, from the trailer on flat car railroad ramps in New Orleans, to Cabot Corporation's carbon black plants at Tatecove (near Ville Platte), La., on Louisiana Highway 29 and at Cabot (near Franklin), La., on Louisiana Highway 317 and *packaged carbon black in railroad or carrier owned containers and/or trailers*, from Cabot Corporation's said designated carbon black plants to the trailer on flat car railroad ramps in New Orleans, La., for 180 days.

SUPPORTING SHIPPERS: (1) Cabot Corporation, 125 High Street, Boston, Mass. 02110, Mr. M. R. Roy, Manager Transportation Services, and (2) Cities

Service Company, Columbian Div., 3200 West Market Street, Akron, Ohio 44313, Mr. John Riddell, Distribution Services Manager. SEND PROTESTS TO: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, La. 70113.

No. MC 139710 TA, filed April 17, 1974. Applicant: MICHAELSEN TRUCK LINE, INC., Box 115, Whittemore, Iowa 50598. Applicant's representative: Steven C. Schoenebaum, 1200 Register and Tribune Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Feed and feed ingredients*, between points in Iowa, Minnesota, Wisconsin, and Nebraska, for 180 days. SUPPORTING SHIPPERS: Cargill, Inc., Nutrena Feed Division, Rowan, Iowa 50470; Agricor, 7400 Metro Blvd., Edina, Minn. 55435; FGDA—Soybean Processing Division, P.O. Box 1338, Mason City, Iowa 50401. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 139714 TA, filed April 17, 1974. Applicant: MIKE GRAY AND EDDIE GIBSON, doing business as GRAY BRO. PHILLIPS 66 WRECKER SERVICE, 1512 SE. 15th Street, Oklahoma City, Okla. 73129. Applicant's representative: Robert A. Miller, 760 First National Center, Oklahoma City, Okla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Disabled and wrecked and replacement vehicles and other operable vehicles* (except trailers designed to be drawn by passenger automobiles and excluding transport of new vehicles to dealers for resale) by use of wrecker or tow truck equipment only, between points in Oklahoma, on the one hand, and, on the other, points in Texas, New Mexico, Missouri, Arkansas, Louisiana, Kansas, and Illinois, for 180 days. SUPPORTING SHIPPERS: T.I.M.E., Inc., Bob Clark, Reg. Maintenance Mgr., 1400 Skyline Drive, Oklahoma City, Okla.; United Engines, Inc., Sherman Brown, Adm. Parts & Services Mgr., 5555 W. Reno, Oklahoma City, Okla. 73107. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 240, Old P.O. Bldg., 215 NW. Third, Oklahoma City, Okla. 73102.

No. MC 139715 TA, filed April 18, 1974. Applicant: WAYNE HINCHLIFFE, Rte. 1, Box 161, Dayton, Wash. 99328. Applicant's representative: James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber and lumber products*, from points in Umatilla and Morrow Counties, Oreg., and from Lewiston, Idaho, and Dayton, Wash.; (2) *machinery consisting of bean pickers, farm tractors, and pickup trucks*, from points in Walla Walla and Columbia Counties, Wash., to points in Umatilla and Morrow Counties, Oreg.; from points in Umatilla and Morrow Counties, Oreg., to points in Franklin County, Wash., from points in Franklin County, Wash., to points in Idaho and from points in Kootenai and Twin Falls, Idaho, to points in Columbia and Walla Walla Counties, Wash.; and (3) *irrigation pipe and equipment*, between Lewiston, Idaho, and Portland, Oreg., on the one hand, and, on the other, points in Walla Walla County, Wash., for 180 days. SUPPORTING SHIPPERS: Columbia Cut Stock, Inc., 618 West Main, Dayton, Wash. 99328; K2H Farms, Incorporated, Star Route, Prescott, Wash. 99348; Green Giant Co., Box 26, Dayton, Wash. 99328. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Bldg., Seattle, Wash. 98104.

No. MC 139716 TA, filed April 18, 1974. Applicant: TEXAS NEBRASKA EXPRESS, INC., 3902 West South Omaha Bridge Road, Council Bluffs, Iowa 51501. Applicant's representative: Robert V. Dwyer, Jr., 1601 Woodmen Tower, Omaha, Nebr. 68102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts and articles distributed by meat packinghouse*, 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 and storage facilities utilized by American Beef Packers, Inc., at or near Cactus, Tex. (Moore County), to points in California, Mississippi, Alabama, Georgia, Florida, Tennessee, North Carolina, South Carolina, Illinois, Kentucky, Michigan, Ohio, West Virginia, Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Vermont, New Hampshire, Massachusetts, and Maine, restricted to traffic originating at, and destined to, the named points, for 180 days. SUPPORTING SHIPPER: American Beef Packers, Inc., Ralph L. McGee, General Traffic Mgr., 7000 W. Center Road, Omaha, Nebr. 68106. SEND PROTESTS TO: District Supervisor Carroll Russell, Bureau of Operations, Interstate Commerce Commission, Suite 620 Union Pacific Plaza, Omaha, Nebr. 68102.

No. MC 139717 TA, filed April 18, 1974. Applicant: CARL R. SCHIAVONE, doing business as, THE D. & S. MESSENGER SERVICE, 669 Lowell St., Lawrence, Mass. 01840. Applicant's representative: Carl R. Schiavone (Same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Money, currency, and negotiable instruments*, from Lawrence, Mass., to Seabrook, N.H., from Seabrook, N.H., to Lawrence, Mass., from Seabrook, N.H., to Newburyport, Mass, from Newburyport, Mass., to Seabrook, N.H., for 180 days. SUPPORTING SHIPPER: The Zayre Corp., Framingham, Mass.; The DeMoulas Markets, Inc., 875 East St., Tewksbury, Mass. SEND PROTESTS TO: Max Gorenstein, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 150 Causeway St., Boston, Mass. 02114.

No. MC 139718 TA, filed April 19, 1974. Applicant: ALLAN DOW, doing business as DOW'S MAIN STREET CHEVRONS, 26 West Main Street, Fort Kent, Maine 04743. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Skidder*, used in the logging industry, between points in Aroostook and Penobscot Counties, Maine, and the port of entry between the United States/Canada at or near Fort Kent, Maine, for 180 days. SUPPORTING SHIPPER: Frank Martin's Son, Inc., Fort Kent Mill, Fort Kent, Maine 04743. SEND PROTESTS TO: Donald G. Weiler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 307, 76 Pearle Street, Portland, Maine 04112.

MOTOR CARRIERS OF PASSENGERS

No. MC 3700 (Sub-No. 70 TA), filed April 19, 1974. Applicant: MANHATTAN TRANSIT COMPANY, U.S. Highway #46, Elmwood Park, N.J. 07407. Applicant's representative: Robert E. Goldstein, 8 West 40th Street, New York, N.Y. 10018. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers in round trip special operations during the authorized racing season, beginning and ending at New York, N.Y., and extending to Penn National Race Course, Grantville, Pa., for 180 days. SUPPORTING SHIPPERS: Penn National Turf Course, Grantville, Pa. 17028, and Mountainview Racing Association, Grantville, Pa. 17028. SEND PROTESTS TO: District Supervisor Joel Morrows, Interstate Commerce Commission, Bureau of Operations, 9 Clinton St., Newark, N.J. 07102.

By The Commission.

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

[FR Doc.74-10350 Filed 5-3-74;8:45 am]

[Notice 61]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 29, 1974.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67, (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965.

These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 989 (Sub-No. 23 TA), (Correction), filed April 5, 1974, published in the FEDERAL REGISTER issue of April 19, 1974, and republished as corrected this issue. Applicant: IDEAL TRUCK LINES, INC., 912 North State Street, Norton, Kans. 67654. Applicant's representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Kansas City, Mo. 64105. 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, commodities requiring special equipment, and those injurious or contaminating to other lading) (1) Between Kansas City, Mo. and Washington, Kans., from Kansas City, Mo. over Interstate Highway 29 to St. Joseph, Mo., thence over U.S. Highway 36 to Washington, Kans. and return over the same route serving the intermediate points of Marysville, Hiawatha, and Seneca, Kans., the off-route point of Sabetha, Kans. and serving St. Joseph, Mo. and the junction of U.S. Highways 75 and 36 as points of joinder only and (2) Between Kansas City, Mo. and Marysville, Kans., from Kansas City, Mo. over U.S. Highway 24 to the junction of U.S. Highway 77, thence over U.S. Highway 77 to Marysville, Kans. and return over the same route serving the intermediate point of Blue Rapids, Kans. and serving the junction of U.S. Highways 24 and 77 as point of joinder only, for 180 days.

NOTE.—Applicant states it does intend to tack with its authority in MC 989 Sub 13, and interline at Denver, Colo.; Kansas City, Mo.; and Omaha, Nebr.

SUPPORTING SHIPPER: There are approximately 34 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 234 Federal Building, Topeka, Kans. 66603.

NOTE.—The purpose of this republication is to add additional territory to part (1) of the application which was omitted in previous publication.

No. MC 100666 (Sub-No. 279 TA), filed April 19, 1974. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, 1129 Grimmett Drive, Shreveport, La. 71107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 N.W. 58th Street, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Baffling*, from Ft. Myers, Fla., to points in Arizona, California, Louisiana, Oklahoma, Texas, and Utah, for 150 days. SUPPORTING SHIPPER: The Munters Corporation, P.O. Box 6428, Ft. Myers, Fla. 33301, Mr. J. A. Cavanagh. SEND PROTESTS TO: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Bldg., 701 Loyola Ave., New Orleans, La. 70113.

No. MC 111729 (Sub-No. 433 TA), filed April 17, 1974. Applicant: PUROLATOR COURIER CORP., 2 Nevada Drive, Lake Success, (NHP-PO) N.Y. 11040. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cut flowers, decorative greens, florist supplies, and seedlings*, moving at the same time and in the same vehicle with commodities, the transportation of which is subject to economic regulation, from West Chicago, Ill., to points in Iowa, Indiana, Kentucky, Wisconsin; Allegan, Barry Berrien, Branch, Cass, Calhoun, Kalamazoo, Kent, Muskegon, Ottawa, St. Joseph, and Van Buren Counties, Mich.; Franklin, Jefferson, Lincoln, Perry, St. Charles, St. Francois, St. Genevieve, St. Louis, St. Louis City, Washington, and Warren Counties, Mo.; points in Ohio located on or west of U.S. Highway 75, for 90 days. SUPPORTING SHIPPER: Pan American Plant Co., Inc., 250 Town Road, West Chicago, Ill. SEND PROTESTS TO: Anthony D. Giaimo, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 113828 (Sub-No. 217 TA), filed April 22, 1974. Applicant: O'BOYLE TANK LINES, INCORPORATED, Mlg.; P.O. Box 30006, Washington, D.C. 20014, Off: 5320 Marinelli Dr., Montrose Industrial Park, Rockville, Md. 20852. Applicant's Representative: William P. Sullivan, Federal Bar Building, 1819 H Street, NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lithium ore*, in bulk, in tank vehicles, (1) from Kings Mountain, N.C., to points in Chesterfield County, Va., and (2) from points in Chesterfield County, Va., to points in Berkeley County, W. Va., for 180 days. SUPPORTING SHIPPER: W. Hollis Leith, Supervisor-Purchasing, Corning Glass Works, P.O. Box 709, Martinsburg, W. Va. 25401. SEND PROTESTS TO: W. C. Hersman, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street & Constitution Avenue NW., Washington, D.C. 20423.

No. MC 115496 (Sub-No. 22 TA), filed April 9, 1974. Applicant: LUMBER TRANSPORT, INC., P.O. Box 111, Highway 23 South, Cochran, Ga. 31014. Applicant's representative: Virgil H. Smith, 1587 Phoenix Blvd., Suite 12, Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Finished gypsum board* (sheet rock painted, grooved or embossed, printed), from the plantsite of Champion Home Builders Co., Plains Products Division, at Plains, Ga., to points in Bushnell, Lake City, and Oneco, Fla.; Ridgeville, Breman, Elkhart, and Monroe, Ind.; Sherman, Miss.; Lillington, N.C.; Dryden, Reed City, and Imlay City, Mich.; Richfield Springs, Canastota, Sangerfield, and Kanona, N.Y.; Claysburg, Pa.; Henry, Tenn.; Honey Grove, Commerce, Buffalo, Wills Point, and Van Alstyne, Tex. and Mt. Jackson, Va., for 180 days. SUPPORTING SHIPPER: Champion Home Builders, Inc., Plains Products Division, P.O. Box 248, Plains, Ga. 31780. SEND PROTESTS TO: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 309, 1252 West Peachtree Street NW., Atlanta, Ga. 30309.

No. MC 117940 (Sub-No. 125 TA), filed March 7, 1974. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Donald L. Stern, Suite 530, Univac Building, 7100 W. Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery, chocolate, cocoa, milk chocolate and/or cocoa compound, flavoring syrup, chocolate coating, and cocoa butter*, from Hershey Foods Corp. and its subsidiary, H. B. Reese Candy Co., Inc., Derry Township, Dauphin County, Hershey, Pa., to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin, for 180 days. SUPPORTING SHIPPER: Hershey Foods Corporation, 19 East Chocolate Avenue, Hershey, Pa. 17033. SEND PROTESTS TO: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building & U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 128846 (Sub-No. 3 TA) (correction), filed March 7, 1974, published in the FEDERAL REGISTER issue of March 26, 1974, and republished as corrected this issue. Applicant: A. GUEBERT, INC., RR #2, Red Bud, Ill. 62278. Applicant's representative: Delmar O. Koebel, 109 West St. Louis Street, Lebanon, Ill. 62254. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rough and unfinished lumber*, from the sawmill site of East Perry Lumber Co., Frohna, Mo., to points in Lake, Porter, and La

Porte Counties, Ind., and points in the Chicago, Ill., commercial zone, for 180 days. SUPPORTING SHIPPER: Carroll Morris, President, Michigan Industrial Hardwood Co., 1851 Front Street, Whiting, Ind. 46394. SEND PROTESTS TO: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Leland Office Building, 527 East Capitol Avenue, Room 414, Springfield, Ill. 62701.

NOTE.—The purpose of this republication is to correct the designation points.

No. MC 129932 (Sub-No. 4 TA), filed April 8, 1974. Applicant: R & C CORPORATION doing business as WHEEL ESTATE MOVERS, ¼ Mile Old Richardson Highway, Fairbanks, Alaska 99701. Applicant's representative: Joseph W. Sheehan, 208 Wendell Street, Fairbanks, Alaska 99701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prefabricated houses or buildings*, set up or in set up sections moving on wheeled undercarriages equipped with ball hitch, pintle hitch, or drope pin connectors, between points in Alaska, for 180 days.

NOTE.—Applicant intends to interline at all gateways to Alaska.

SUPPORTING SHIPPER: Capital Corporation, Inc., doing business as Fairbanks Mobile Home Sales, ½ Mile Old Richardson Highway, Fairbanks, Alaska 99701. SEND PROTESTS TO: Hugh H. Chaffee, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 1532, Anchorage, Alaska 99510.

No. MC 133029 (Sub-No. 5 TA), filed April 19, 1974. Applicant: DOEPP CROCKETT HAULING, INCORPORATED, Route 1, Box 92C, Dexter, N. Mex. 88230. Applicant's representative: Edwin E. Piper, Jr., 1115 Simms Building, Albuquerque, N. Mex. 87101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feeds and feed ingredients* (except liquid feed and liquid feed ingredients in bulk), from points in Chaves, Eddy, and Otero Counties, N. Mex., to points in that part of Texas on, west, and north of a line beginning at the Texas-Oklahoma state line and extending south along U.S. Highway 83 to Abilene, Tex., thence west-southwestward along U.S. Highway 80 (and Interstate Highway 20), to junction with Interstate Highway 10, thence west-northwestward along said U.S. Highway 80 (and Interstate Highway 10) to the Texas-New Mexico State line at El Paso, Tex., including El Paso, Tex., for 180 days. SUPPORTING SHIPPERS: Diamond A Cattle Co., P.O. Box 1000, Roswell, N. Mex. 88201; Artesia Alfalfa Growers Association, 901 South 15th St., Artesia, N. Mex. 88210; and J. P. White Industries, Inc., P.O. Drawer 2063, Roswell, N. Mex. 88201. SEND PROTESTS TO: William R. Murdoch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Avenue, SW, Albuquerque, N. Mex. 87101.

No. MC 133146 (Sub-No. 9 TA), filed April 3, 1974. Applicant: INTERNATIONAL TRANSPORTATION SERVICE, INC., Northeast Expressway, N.E. Suite 1–M, Atlanta, Ga. 30341. Applicant's representative: Richard D. Cooper, 3300 Northeast Expressway, Atlanta, Ga. 30341. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, other than in bulk, from the plantsite and storage facilities of Monarch Wine Company of Georgia at Atlanta, Ga., to points in Texas, Missouri, and Minnesota, for 180 days. SUPPORTING SHIPPER: Monarch Wine Co., of Georgia, 451 Sawtell Avenue, S.E. Atlanta, Ga. 30315. SEND PROTESTS TO: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 309, 1252 West Peachtree Street, N.W. Atlanta, Ga. 30309.

No. MC 139702 (Sub-No. 1 TA), filed April 23, 1974. Applicant: GEORGE WILLIAM SIGRIST, doing business as SIGRIST TRUCKING COMPANY, Route 1, Box 093, Pocomoke City, Md. 21851. 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: *Sand, gravel, slag, and filler material*, in bulk, in dump vehicles, from Pocomoke City, Md. and points within three miles thereof, to points in Accomack and Northampton Counties, Va. and Sussex County, Del., for 180 days. SUPPORTING SHIPPER: Thomas Duncan, Office Manager, Blades Materials, Inc., P.O. Drawer 149, Pocomoke City, Md. 21851. SEND PROTESTS TO: W. C. Hersman, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street & Constitution Avenue NW., Washington, D.C. 20423.

No. MC 139724 (Sub-No. 1 TA), filed April 19, 1974. Applicant: NOVO PACKAGE DELIVERY, INC., 4900 Webster Street, Bladensburg, Md. 20710. Applicant's representative: V. Baker Smith, 2107 The Fidelity Building, Philadelphia, Pa. 19109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such mechandise, equipment and supplies* as are sold, used or distributed by a manufacturer of cosmetics, from the plant site and storage facilities of Avon Products, Inc., at Newark, Del., to points in the District of Columbia, Maryland, and Virginia, and return of *refused, rejected or damaged items*, restricted against the transportation of any package or article weighing more than 50 pounds, and against the transportation of packages or articles weighing in the aggregate more than 250 pounds from one consignor to one consignee at one location on one day, for 180 days. SUPPORTING SHIPPER: Charles B. Hertsenberg, Transportation Manager, Avon Products, Inc., 2100 Ogletown Road, Newark, Del. 19711. SEND PROTESTS TO: W. C. Hersman, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street & Constitution Avenue, NW., Washington, D.C. 20423.

No. MC 139725 TA, filed April 19, 1974. Applicant: DYOLL DELIVERY SERVICE, INC., P.O. Box 66, Netcong, N.J. 07857. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting:[1] *Component parts of special ordnance equipment, component parts of radar and underwater sound devices, component parts of missile and missile handling equipment for aircraft carriers, and component parts of special machinery manufactured to customer's specification*, between Dover, N.J., on the one hand, and, on the other, points in Vermont, New Hampshire, New York, Pennsylvania, Maryland, and Virginia, within 250 miles of Dover, N.J., and points in New Jersey, Rhode Island, Connecticut, Massachusetts, and the District of Columbia; and (2) *pile hammers and parts, air and steam core drills and parts, and rough steel and iron castings for such hammers and drills*, between Dover, N.J., on the one hand, and, on the other, points in New Jersey, Rhode Island, Connecticut, Massachusetts, and the District of Columbia and those in Vermont, New Hampshire, New York, Pennsylvania, Maryland, and Virginia, within 250 miles of Dover, N.J., for 180 days. RESTRICTION: The operations authorized above are limited to a transportation service to be performed, under a continuing contract, or contracts, with the MKT Division. SUPPORTING SHIPPER: MKT Division, 100 Richards Ave., Dover, N.J. 07801. SEND PROTESTS TO: District Supervisor Joel Morrows, Bureau of Operations, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 139727 TA, filed April 19, 1974. Applicant: MADEWELL METALS, INC., 301 East Shawnee, Muskogee, Okla. 74401. Applicant's representative: A. Camp Bonds, Jr., Box 1906, Muskogee, Okla. 74401. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lead, lead alloy, lead oxide and lead by-products*, in bulk and ingot form, from Schuylkill Metals Corporation, Baton Rouge, La., to Oklahoma City, Okla.; St. Louis, Mo.; St. Joseph, Mo.; Iowa City, Iowa; and Little Rock, Ark., for 180 days. SUPPORTING SHIPPER: J. M. Baldwin, Teas., Schuylkill Metals Corporation, P.O. Box 73916, Baton Rouge, La. 70807. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Rm. 240-Old P.O. Building, 215 N.W. Third, Oklahoma City, Okla. 73102.

No. MC 139728 TA, filed April 22, 1974. Applicant: J. D. WINGARD AND LOREN WINGARD, doing business as WINGARD DISTRIBUTORS, P.O. Box 164,

Turbeville, S.C. 29162. Applicant's representative: Edward J. Morrison, P.O. Box 67, Lexington, S.C. 29072. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Charcoal bricketts*, in bags on pallets, in shipper's trailers, from Lake City, S.C., to points in Alabama, Florida, Georgia, North Carolina, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: T. S. Ragsdale Company, Incorporated, P.O. Drawer 937, Lake City, S.C. 29560. SEND PROTESTS TO: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Rm. 302, 1400 Building, 1400 Pickens St., Columbia, S.C. 29201.

MOTOR CARRIERS OF PASSENGERS

No. MC 139726 TA, filed April 19, 1974. Applicant: CONNERSVILLE TRANSIT, INC., 217 East Sixth Street, Connersville, Ind. 47331. Applicant's representative: Michael V. Gooch, 777 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *passengers and their baggage* in charter operation, in round-trip movements, from Connersville, Ind., to points in Hamilton and Warren Counties, Ohio, for 180 days. SUPPORTING SHIPPERS: Fraternal Order of the Eagles Lodge 1065, RR No. 4, Connersville, Ind.; Connersville American Legion & Voiture Locale No. 1040, 1625 Eastern Avenue, Connersville, Ind. 47331; The Connersville Jaycees, RR No. 2, Connersville, Ind.; Stant Manufacturing Co. RR No. 6, Connersville, Ind.; and Central State Bank, Central Avenue, Connersville, Ind. SEND PROTESTS TO: District Supervisor James W. Habermehl, Interstate Commerce Commission, Bureau of Operations, 802 Century Bldg., 36 S. Penn. St., Indianapolis, Ind. 46204.

By the Commission.

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

[FR Doc.74-10351 Filed 5-3-74;8:45 am]

[No. AB-6 (Sub-No. 4)]

BURLINGTON NORTHERN, INC.

Order on Abandonment of Railroad Line

MAY 1, 1974.

Present. Kenneth H. Tuggle, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and of a staff-prepared environmental threshold assessment survey which is available for public inspection upon request; and

It appearing, that no environmental impact statement need be issued in this proceeding, because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.; and good cause appearing therefore:

It is ordered, that applicant be, and is hereby directed to publish the appended notice in a newspaper of general circulation in Atchison County, Mo., on or before May 16, 1974, 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 24th day of April, 1974.

By the Commission, Commissioner Tuggle.

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

BURLINGTON NORTHERN, INC., ABANDONMENT BETWEEN TARKIO AND WESTBORO, ATCHISON COUNTY, MO.

The Interstate Commerce Commission hereby gives notice that by order dated April 24, 1974, it has been determined that the proposed abandonment of the line of Burlington Northern Inc., between Tarkio and Westboro, Mo., a distance of approximately 7.4 miles, if approved by the Commission, would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 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 traffic over this line has been declining and is minimal. Alternate rail service is in close proximity over applicant's lines and highway transportation is adequate. Consequently, the impact on the area's total transportation scheme will not be substantial. The right-of-way may be sold to adjoining property owners who might reclaim the land for agricultural purposes consistent with local land use patterns. The determination was based upon the staff preparation and consideration of an environmental threshold survey, which is available for public inspection upon request at the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-6989.

[FR Doc.74-10353 Filed 5-3-74; 8:45 am]

[No. AB-12 (Sub-No. 9)]

SOUTHERN PACIFIC TRANSPORTATION CO. ET AL.

Rail Traffic Orders

MAY 1, 1974.

Present. Kenneth H. Tuggle, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceedings, and for a staff-prepared environmental threshold assessment survey which is available for public inspection upon request; and

It appearing, that no environmental impact statement need be issued on these proceedings, because these proceedings do not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 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 Fresno County, Calif., within 15 days of the date of service of this order, and certify to the 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 24th day of April, 1974.

By the Commission, Commissioner Tuggle.

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

SOUTHERN PACIFIC TRANSPORTATION COMPANY ABANDONMENT BETWEEN LACJAC AND REEDLEY, FRESNO COUNTY, CALIF.; FINANCE DOCKET No. 27413, SOUTHERN PACIFIC TRANSPORTATION COMPANY APPLICATION TO ACQUIRE TRACKAGE RIGHTS OVER THE LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY IN FRESNO COUNTY, CALIF.; FINANCE DOCKET No. 27414, SOUTHERN PACIFIC TRANSPORTATION COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY APPLICATION TO CONSTRUCT AND OPERATE A LINE OF RAILROAD IN FRESNO COUNTY, CALIF.

The Interstate Commerce Commission hereby gives notice that by order dated April 24, 1974, it has been determined that: (1) The proposed abandonment by the Southern Pacific Transportation Company of a portion of its Exeter Street branch line between Lacjac and Reedley, Calif., a distance of 1.15 miles, (2) the application by Southern Pacific Transportation Company to acquire trackage rights over a portion of the branch line of The Atchison, Topeka and Santa Fe Railway Company in Fresno County, Calif., and (3) the joint application of the Southern Pacific Transportation Company and The Atchison, Topeka and Santa Fe Railway Company to construct and operate a line of railroad in Fresno County, Calif., if approved by the Commission, do not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (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 inasmuch as traffic presently moving over the Southern Pacific line to be abandoned will subsequently be diverted to the adjacent line of the Atchison, Topeka and Santa Fe, no change in rail service will result. Therefore, there will be no significant effect on the area's transportation scheme. Accomplishment of this action will result in the removal of a deteriorated and unsightly railroad bridge across the King's River. There will not be a significant impact on local land use or recreational plans.

This 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 May 21, 1974.

[FR Doc.74-10354 Filed 5-3-74;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

REQUEST FOR CLEARANCE OF REPORTS

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on May 1, 1974 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget Washington, D.C. 20503, (202-395-4529).

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Services Administration, Development of Profiles of State Agency Certification Process, Form HSABQA 0325, Single time, Caywood, State Nursing home survey agencies.

Office of Education, Survey of Lenders and Borrowers in the Guaranteed Student Loan Program, Forms OE 357-1, 2, 3, Single time, HRD/Planchon, Borrowers & lenders.

Alcohol, Drug Abuse, and Mental Health Administration, ATC Follow-up Study Questionnaire, Form ADAMAAA 0408, Single time, Reese, Individuals.

DEPARTMENT OF THE INTERIOR

National Park Service, Float Trip Registration, Form ____, Single time, Planchon, Canoe floaters.

VETERANS ADMINISTRATION

Services Provided to Outpatients in Mass. Users & Non-users, Forms FL 07-14a(NR), 07-14b(NR), Single time, CVA/Caywood, Mass. veterans.

REVISIONS

ENVIRONMENTAL PROTECTION AGENCY

Application for Federal Assistance (State and Local Nonconstruction Programs), Form EPA 5700-33, Occasional, Lowry, State and local government agencies.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control, Birth Defects and/or Genetic Diseases, Form CDC 4.248, 4.249A, B, C; 4.250, Occasional, Reese, Hospital records, physicians & individuals.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration, Crime Insurance Application (Commercial), Form H-1631, Occasional, CVA, Crime insurance applicants.

Crime Insurance Application (Residential), Form H-1621, Occasional, CVA, Crime insurance applicants.

EXTENSIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Grant Application for Advanced Institutional Development Program, Form OE 1049-1, Annual, Caywood, Colleges.

National Institute of Health, Research Career Program Application, Form PHS 2557-1, Occasional, Caywood, Organizations engaged in research.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management, Progress Report Implementation of Recommendations, Comprehensive Consolidated Management Review, Form HUD 52607, Quarterly, CVA.

Loan Management Report, Form HUD 4370CH, Occasional, CVA.

RAILROAD RETIREMENT BOARD

Appeal from Initial Decision of BRC and Appeal to Board from Decision of Referee, Form AC-1, AC-2, Occasional, Evinger(x).

RAILROAD RETIREMENT BOARD

Letter and Questionnaire Regarding Pay for Time Lost, Form RL 51, Occasional, Evinger (x).

Appeals from Determination under the Railroad Unemployment Insurance Act, Forms UI-85, UI-86, Occasional, Evinger (x).

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.74-10467 Filed 5-3-74;11:25 am]

FEDERAL ENERGY OFFICE

RETAIL DEALERS GROUP

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given that the Retail Dealers Group will meet on Monday, May 6, 1974, at 9 a.m. in Room 3400, Federal Energy Office, 12th and Pennsylvania Ave. NW., Washington, D.C. 20461.

The Group was established to advise the Administrator, FEO, with direct and timely access to the technical knowledge possessed by a wide range of highly qualified independent businessmen engaged in the retail sale of gasoline and diesel fuel. The agenda for the meeting is as follows:

I. OLD BUSINESS

A. Pricing
B. Allocations/Margins

II. NEW BUSINESS

A. Data collection—"Pisces"
B. Normal business practices
C. RARP—refinery audit & review program
D. Reorganization under new charter
E. Remarks from the floor (10 minute rule)

The meeting is open to the public; however, space and facilities are limited.

The Chairman of the Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

Further information concerning this meeting may be obtained from Dino G. Pappas, Office of Policy, Planning and Regulation, Federal Energy Office, Washington, D.C. 20461. Area Code 202, 961-8324. Minutes of the meeting will be made available for public inspection at the Federal Energy Office, Washington, D.C.

Issued in Washington, D.C.

WILLIAM N. WALKER,
General Counsel.

[FR Doc.74-10546 Filed 5-3-74;12:05 pm]

LIST OF FEDERAL REGISTER PAGES AND DATES—MAY

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 May.

3 CFR

Page

PROCLAMATIONS:

4289 ... 15251
4290 ... 15253
4291 ... 15255

EXECUTIVE ORDERS:

11588 (see EO 11781) ... 15749
11615 (see EO 11781) ... 15749
11627 (see EO 11781) ... 15749
11695 (superseded in part by EO 11781) ... 15749
11723 (superseded in part by EO 11781) ... 15749
11730 (superseded in part by EO 11781) ... 15749
11748 (see EO 11781) ... 15749
11781 ... 15749

EXECUTIVE AGENCIES

5 CFR

213 ... 15383
930 ... 15110

6 CFR

155 ... 15276

PROPOSED RULES:

150 ... 15309, 15488

7 CFR

1 ... 15277
52 ... 15404
225 ... 15756
301 ... 15404
730 ... 15758
731 ... 15759
907 ... 15277
908 ... 15278, 15761
910 ... 15403
911 ... 15097
1007 ... 15762
1030 ... 15405
1032 ... 15417
1046 ... 15427
1049 ... 15437
1050 ... 15448
1062 ... 15458
1071 ... 15775
1073 ... 15786
1079 ... 15278
1090 ... 15798
1094 ... 15807
1096 ... 15817
1097 ... 15826
1098 ... 15836
1099 ... 15469
1102 ... 15847
1108 ... 15855
1137 ... 15867
1434 ... 15098
1843 ... 15868

PROPOSED RULES:

620 ... 15284
621 ... 15284
622 ... 15284
623 ... 15284
624 ... 15284
911 ... 15284

7 CFR—Continued

Page

PROPOSED RULES—Continued

915 ... 15488
944 ... 15141
1001 ... 15488
1002 ... 15488
1004 ... 15488
1015 ... 15488
1033 ... 15488
1036 ... 15488
1040 ... 15488
1049 ... 15488

8 CFR

PROPOSED RULES:

242 ... 15283

9 CFR

73 ... 15756
78 ... 15402
331 ... 15257
381 ... 15257

10 CFR

Rulings ... 15140
211 ... 15138, 15960
212 ... 15138
215 ... 15137

12 CFR

545 ... 15111
581 ... 15111

PROPOSED RULES:

340 ... 15510
561 ... 15881

14 CFR

39 ... 15257, 15258
71 ... 15099, 15259, 15383
73 ... 15259
97 ... 15259

PROPOSED RULES:

39 ... 15143
71 ... 15143, 15307, 15308
399 ... 15309

15 CFR

377 ... 15112

16 CFR

13 ... 15115, 15116, 15384, 15385
432 ... 15387

17 CFR

210 ... 15260
230 ... 15261
240 ... 15402
249 ... 15755

PROPOSED RULES:

240 ... 15145

18 CFR

PROPOSED RULES:

35 ... 15510

19 CFR

4 ... 15116
19 ... 15117

20 CFR

Page

PROPOSED RULES:

405 ... 15230
602 ... 15307

21 CFR

1 ... 15268
3 ... 15269
121 ... 15269, 15753
135 ... 15270
135c ... 15270
135e ... 15270
148i ... 15753

PROPOSED RULES:

3 ... 15306
121 ... 15879
141a ... 15879
146a ... 15879
149h ... 15879

24 CFR

1914 ... 15100, 15101, 15870–15872
1915 ... 15102, 15873, 15874

26 CFR

301 ... 15854
601 ... 15854

PROPOSED RULES:

20 ... 15878

28 CFR

0 ... 15875
16 ... 15875

29 CFR

102 ... 15271
519 ... 15117
522 ... 15122
1915 ... 15124
1916 ... 15125
1917 ... 15125
1952 ... 15394

33 CFR

110 ... 15271

38 CFR

3 ... 15125

39 CFR

132 ... 15271
135 ... 15271
136 ... 15271

40 CFR

35 ... 15760
52 ... 15272
60 ... 15396
61 ... 15396
108 ... 15398
165 ... 15236
180 ... 15126

PROPOSED RULES:

79 ... 15145
80 ... 15315
120 ... 15505
180 ... 15880

41 CFR

5A–2 ... 15126
5A–16 ... 15126
14–1 ... 15273

41 CFR—Continued Page
14–3 15273
14–4 15273
14–63 15399
PROPOSED RULES:
3–50 15141
42 CFR
PROPOSED RULES:
83 11541
45 CFR
189 15481
1450 15484
45 CFR—Continued Page
PROPOSED RULES:
103 15294
130 15298
173 15952
234 15232
47 CFR
13 15128
89 15129
PROPOSED RULES:
2 ..... 15315, 15507
73 ..... 15145, 15317, 15324, 15509
76 15327
89 15507
91 ..... 15315, 15507, 15509
93 15507
49 CFR
Chapter III 15129
571 ..... 15130, 15274
1033 ..... 15130, 15131, 15401, 15402
PROPOSED RULES:
571 15143
50 CFR
28 15274
32 15275
33 15276
280 15131
PROPOSED RULES:
33 15879

FEDERAL REGISTER PAGES AND DATES—MAY

Pages	*Date*
15087–15241	May 1
15245–15375	2
15377–15741	3
15743–15983	6

federal register

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PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF EDUCATION

■

Financial Assistance For Community Service and Continuing Education Programs

Proposed Guidelines

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 173]

FINANCIAL ASSISTANCE FOR COMMUNITY SERVICE AND CONTINUING EDUCATION PROGRAMS

Proposed Guidelines

In accordance with section 503 of the Education Amendments of 1972 (Pub. L. 92-318) and pursuant to the authority contained in Title I of the Higher Education Act of 1965 (Pub. L. 89-329, as amended, 20 U.S.C. 1001-1011), the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Title 45, Part 173 of the Code of Federal Regulations to read as set forth below. The Commissioner also proposes to establish guidelines for section 106 of Title I, which are set forth following the text of the proposed regulations.

1. *Program purpose.* The Community Service and Continuing Education Program, Title I of the Higher Education Act, embodies two separate authorities. The State grant program, established by the original Act, is designed to assist the people of the United States in the solution of community problems by strengthening the community service programs of colleges and universities. In 1972 the Act was amended by Pub. L. 92-318 to also authorize discretionary grants directly to institutions of higher education to assist them in carrying out special programs and projects which seek solutions to national and regional problems relating to technological and social changes and environmental pollution.

2. *Section 503 procedures and effect.* Section 503 of the Education Amendments of 1972 requires the Commissioner to study all rules, regulations, guidelines, or other published interpretations or orders issued by him or by the Secretary after June 30, 1965, in connection with, or affecting, the administration of Office of Education programs; to report to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives concerning such study; and to publish in the FEDERAL REGISTER such rules, regulations, guidelines, interpretations, and orders, with an opportunity for public hearing on the matters so published. The regulations and guidelines proposed below reflect the results of this study as it pertains to the program under Title I of the Higher Education Act of 1965, as amended. Upon publication of revised Part 173 in final form, after comments and hearing, all preceding rules, regulations, guidelines, and other published interpretations and orders issued in connection with or affecting Part 173 will be superseded effective thirty days after such publication.

3. *Effect of Office of Education general provisions regulation.* The proposed regulations do not include provisions relating to general fiscal and administrative matters which are covered in the overall Office of Education general provisions regulation, published in the FEDERAL REGISTER at 38 FR 30654 (November 6, 1973).

4. *Guidelines.* Guidelines for the program have not previously been published in the FEDERAL REGISTER. There will be no guidelines at present for the State grant program. The attached proposed guidelines essentially contain recommendations and suggestions for program management and operation of the discretionary authority contained in section 106 of the Education Amendments of 1972.

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

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

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

A hearing will take place at the U.S. Office of Education on May 24, 1974, in the auditorium of Regional Office Building Three (ROB 3), 7th and D Streets SW., Washington, D.C., beginning at 10 a.m.

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

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

(Catalog of Federal Domestic Assistance Number 13.491; University Community Service—Grants to States)

Dated: March 26, 1974.

JOHN OTTINA,
U.S. Commissioner of Education.

Approved: April 15, 1974.

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

PART 173—FINANCIAL ASSISTANCE FOR COMMUNITY SERVICE AND CONTINUING EDUCATION PROGRAMS

Subpart A—General

Sec.
173.1 Definitions.
173.2 Applicability of general provisions.

Subpart B—State Plan Program

173.10 Purpose and Scope.
173.11 State agency or institution.
173.12 State plan provisions.
173.13 State plan amendments.
173.14 Annual program plan.
173.15 Approval of State plan, non-compliance, judicial review.
173.16 Ineligible programs.
173.17 Relation to other Federal programs.
173.18 Fiscal assurances.
173.19 Fiscal procedures.
173.20 Institutional assurances.
173.21 Certification of State plan.
173.22 Reports.
173.23 Federal financial participation.
173.24 Required certification by State agency.
173.25 Reallotment.
173.26 Interstate transfer of allotments.

Subpart C—Special Programs and Projects

173.40 Applicability.
173.41 Eligible projects.
173.42 Eligible applicants.
173.43 Application for grants.
173.44 Review of applications.
173.45 Public information.

AUTHORITY: Secs. 101-112, 1201-1204, 79 Stat. 1219, 1269-1270, as amended; (20 U.S.C. 1001-1011, 1141-1143).

Subpart A—General

§ 173.1 Definitions.

As used in this part:

"Act" means Title I of the Higher Education Act of 1965, as amended. (20 U.S.C. 1001-1011)

"Combination of institutions" means two or more institutions of higher education, grouped together in a formal or informal consortial arrangement. (20 U.S.C. 1141)

"Community service program" pursuant to Section 102 of the Act means an educational program, activity, or service offered by an institution(s) of higher education and designed to assist in the solution of community problems in rural, urban, or suburban areas with particular emphasis on urban and suburban problems. Such programs may include but are not limited to research, technical assistance or consultation, or an extension or continuing education activity or course, provided that any such course is fully acceptable toward an academic degree, or is of college level as determined by the institution offering the course. (20 U.S.C. 1002)

"Educational service" means an aspect of the community service program involving the resources of an institution(s) of higher education, including but not limited to equipment and library materials used in support of efforts to solve community problems. (20 U.S.C. 1002)

"Educational research activity" means a research program of experimental or demonstration nature carried out on an objective and systematic basis using the resources of an institution(s) to identify and develop new or improved approaches to the solution of community problems. (20 U.S.C. 1002)

"Extension and continuing education activity" refers to the extension on a basis of temporal and geographic convenience of the teaching and research resources of an institution of higher education to meet the special educational needs of the adult population who have either completed or interrupted their formal training. Instructional methods include, but are not limited to, formal classes, lectures, demonstrations, counseling and correspondence, radio, television, and other innovative techniques of instruction and study. Programs of continuing and extension education assist the individual to meet the tasks imposed by the complexities of our society in fulfilling his role in the world as an informed and responsible citizen and the needs of his individual growth and development. (20 U.S.C. 1002)

"Institution of higher education" means an educational institution in any State which meets the requirements of section 1201(a) of the Act and has the capability of carrying out community service and continuing education programs consistent with the purposes of Title I of the Act. (20 U.S.C. 1141(a))

"Special project or special program" means an experimental activity or demonstration of regional or national significance carried out pursuant to section 106 of the Act on an objective and systematic basis using the resources of an institution of higher education or combinations thereof, to identify and develop new or improved educational approaches to problems relating to technological and social changes and environmental pollution. (20 U.S.C. 1005a (a))

"School or department of divinity" means an institution, or a department or branch of an institution, whose educational program is specifically designed to prepare students to become ministers of religion (or to provide continuing training for any such programs), to enter into some other religious vocation or to teach theological subjects. (20 U.S.C. 1141(1))

"State agency or institution" or "State agency" means the State agency or State institution designated or created pursuant to section 105(a) of the Act and § 173.10. (20 U.S.C. 1005(a))

§ 173.2 Applicability of general provisions.

Assistance under this part is subject to applicable general provisions contained in Subchapter A of this chapter (relating to fiscal, administrative, property management, and other matters). (20 U.S.C. 1001 et. seq; 45 CFR 100; 38 FR 30654 (November 6, 1973)).

Subpart B—State Plan Program

§ 173.10 Purpose and Scope.

The program described in this subpart shall be administered by the State agency or institution pursuant to a State plan developed and submitted through the State agency or institution and approved by the Commissioner. The State plan shall set forth a comprehensive, coordinated, and statewide system of community service programs designed to assist in the solution of community problems in rural, suburban areas (with particular emphasis on urban and suburban problems), such as, but not limited to, housing, poverty, government, recreation, employment, youth opportunities, transportation, health, and land use, by utilizing the resources of institutions of higher education: *Provided however,* That where funds are insufficient to support such a program, the State plan may set forth one or more proposals for community service programs in lieu thereof. The State plan and amendments thereof, once approved by the Commissioner, shall constitute the basis on which Federal allotments are paid to the State as well as the basis for determining the allowable expenditures by the State and participating institutions where support for a community service and continuing education program is derived in whole or in part from Federal funds. (20 U.S.C. 1005)

§ 173.11 State agency or institution.

(a) The State shall designate or create a single State agency or institution to develop, submit, and administer and/or supervise the administration of the State plan. The agency or institution so designated or created shall include individuals who have special qualifications or experience in working with and solving community problems, and who are broadly representative of institutions of higher education in the State, public and private, which are competent to offer community service programs. The State may, however, designate an existing State agency or institution which does not meet the above requirements, provided that (1) such State agency or institution takes whatever action as is necessary to meet such requirements, or (2) the State designates or creates an advisory council which does meet the requirements to consult with the designated State agency or institution in the preparation of the State plan and amendments thereto and in connection with any policy matters arising in the administration of the plan.

(b) The State agency or institution shall notify the Commissioner within 15 days of changes in the composition of either the State agency or institution, or the State advisory council, if any, affecting its special qualifications with respect to solving community problems or its being broadly representative of institutions of higher education in the State, public and private, which are competent to offer community service programs.

(c) If there is a change in the composition of the State agency or institution, the State shall also designate the official of the State agency or institution to whom communications shall be responsible for submitting the State plan to the Commissioner for approval. (20 U.S.C. 1005)

§ 173.12 State plan provisions.

(a) *Administrative.* The State plan shall contain a statement of the name of the designated or created State agency or institution. It shall also contain assurances that the agency or institution to be designated or created shall be the sole agency for the administration of the State plan or for supervision of the administration of the State plan, and that, where applicable, such agency or institution shall consult with any required State advisory council with respect to policy matters arising in the preparation and administration of the plan.

(b) *Program selection policies and procedures.* The State plan shall contain a general statement setting forth the policies and procedures which will be followed by the State agency in selecting those community problem(s) or specific aspects thereof for the solution of which Federal funds allotted under this program will be used. The statement shall describe any general methods and/or criteria which the State agency has determined will be used in making such selection(s). The statement shall also describe the procedures that will be used by the State agency to give adequate notice of the selection(s) to eligible institutions of higher education within the State.

(c) *Institutional selection policies and procedures.* The State plan shall set forth policies and procedures to be used in selecting institution(s) of higher education for participation in community service programs under the plan. Such policies and procedures shall adequately describe the criteria for review of applications and shall indicate the criteria which will be used in selecting institutions for participation and the degree of consideration to be given the following:

(1) Whether the program, service, or activity proposed to be undertaken by an institution of higher education is specifically designed directly to assist in the solution of urban, rural, or suburban problems with special emphasis upon urban and suburban problems;

(2) Whether the relative capacity and willingness of the particular institution(s), public or private, will be utilized to provide effective community service programs;

(3) Whether the program, service, or activity will effectively utilize the special resources of the institution(s) of higher education and its faculty;

(4) Whether the program, service, or activity will be consistent with the overall educational program of the institution(s) of higher education;

(5) Whether a single community service program will be undertaken by two or more institutions of higher education within the State or, by or with one or more institutions in other States; and

(6) Whether the results of periodic, objective and systematic evaluations of the programs, services, and activities will be considered in the light of information regarding current and anticipated community problems. (20 U.S.C. 1005)

§ 173.13 State plan amendments.

(a) *Annual.* (1) The State plan shall be amended annually, on or before such date as the Commissioner may designate, in order that the State plan will contain the information required by § 173.14.

The amendement shall be signed and certified in the same manner as the original plan submitted and shall become effective upon approval by the Commissioner.

(2) Notwithstanding the approval of a State plan during any prior year, unless and until the annual amendment has been submitted by the State agency or institution and approved by the Commissioner, there is no basis on which commitments of funds for new projects may be made by the State agency.

(b) *Other amendments.* The State plan shall be appropriately amended whenever there is any material change in the designation of the State agency, the content or administration of the State plan, or when there has been a change in pertinent State law. Such amendment shall clearly indicate the changes and shall be signed and certified in the same manner as the original plan submitted and shall become effective upon approval by the Commissioner. (20 U.S.C. 1005)

§ 173.14 Annual program plan.

(a) The annual program plan shall be submitted as an amendment on an annual basis as required under § 173.13.

(b) The annual program submission shall contain a statement describing the specific aspects of the comprehensive, coordinated, and statewide system of community service programs or, if it is determined that a comprehensive, coordinated, and statewide system of community service programs cannot be effectively carried out by reason of insufficient funds, a brief summary of the basis of this determination, a description of the community service program proposed in lieu thereof for which financial assistance is requested, and the basis for selection thereof. The description of the method followed by the State agency in determining the community problem(s) or aspects thereof to be solved shall indicate the degree to which:

(1) The State agency has consulted with representative community leaders, associations, and organizations, and with representatives of institutions of higher education;

(2) Due consideration has been given to the existence of other federally financed programs dealing with similar and other community problems in the State and to coordination with such programs, particularly in determining priorities of problems;

(3) Due consideration has been given to the resources of institutions of higher education especially relevant or adaptable to develop and carry out community service programs related to the community problems selected;

(4) Due consideration has been given to the relationship of the aspect of the community problem(s) selected for solution to other significant problems in the State; and

(5) Other criteria have been used in selecting community service problems to be included under the program. (20 U.S.C. 1005)

(c) In describing the particular community problem(s) and the aspects thereof that the State will attempt to solve, the annual program statement submitted by the State agency shall indicate the scope, prevalence, complexity, duration, and other appropriate specific aspects of the problems; and the relationship between the types of activities proposed and similar types of existing and contemplated activities in the State. The statement shall also indicate whether the problem(s) and specific aspects thereof exist in all types of communities or whether they are of general significance to the State as a whole although not specifically manifested in all communities thereof. The statement also shall indicate the approximate amount from the State's allotment that the State agency estimates will be required in order to carry out each type of program which will be undertaken in attempting to solve these problems. (20 U.S.C. 1005)

(d) If a State desires to carry out community service programs other than those possible under its allotment, it may indicate such programs with the same specificity as given those presently undertaken and the priority of importance and the basis therefor together with budgetary estimates of each program, service, or activity. Such programs, services, and activities may be considered for funding with any funds reallotted under section 103(b) of the Act. (20 U.S.C. 1003(b))

(e) An estimated budget itemizing the amount of funds which will be required by the State agency for developing and administering the State plan shall be submitted as a part of the annual program plan. (20 U.S.C. 1005(a)(5) and (6))

§ 173.15 Approval of State plan, noncompliance; judicial review.

(a) The Commissioner shall approve any State plan or amendment thereof which complies with the provisions set forth in the Act and in this subpart. No plan, or amendment thereof, shall be finally disapproved until the State agency or institution submitting the plan is afforded reasonable notice and opportunity for a hearing. (20 U.S.C. 1005(b))

(b) Where the Commissioner, after giving reasonable notice and opportunity for a hearing to the State agency or institution administering a State plan approved under Section 105(b) of the Act, finds that (1) the State plan has been so changed that it no longer complies with any provision of section 105(b) of the Act, or that (2) in the administration of the plan there is a failure to comply substantially with any such provision, the Commissioner shall notify the State agency that the State is no longer regarded as eligible to participate in the program until the Commissioner is satisfied that there is no longer any such failure to comply. (20 U.S.C. 1007(b))

(c) Final actions of the Commissioner with respect to approval of a State plan or amendment thereto or changes in or noncompliance with an approved State plan or amendment thereto are subject to judicial review, pursuant to section 108 of the Act. (20 U.S.C. 1008)

§ 173.16 Ineligible programs.

No payment may be made from a State's allotment under this part for (a) any community service program which relates to sectarian worship, or (b) any community service program which is provided by a school or department of divinity. An institution of higher education which has a school, branch, department, or other administrative unit within the definition of "school or department of divinity" as set out in § 173.1 is not precluded for that reason from participating in the program described in this subpart, if the community service program is not offered by that school, branch, department, or administrative unit and, as in all other cases, the community service program is not related to sectarian instruction or religious worship. (20 U.S.C. 1011)

§ 173.17 Relation to other Federal programs.

Nothing in this subpart shall be construed to mean that a proposed program be excluded from participation on the basis that it would be eligible to receive financial assistance under another Federal program. (20 U.S.C. 1010)

§ 173.18 Fiscal assurances.

The State plan shall contain:

(a) A statement of the policies and procedures designed to assure that Federal funds allotted to the State for the program described in this subpart will not be used to supplant State or local funds or funds of institutions of higher education but to supplement and, to the extent practicable, to increase the amount of such funds that would otherwise be available for community service programs.

(b) A statement of assurance that the State agency will, prior to approval of any community service program under the plan, provide the certification required under § 173.24. (20 U.S.C. 1005(a)(4))

§ 173.19 Fiscal procedures.

The State plan shall contain the Fiscal procedures required by section 105(a)(5) of the Act. (20 U.S.C. 1005(a)(5))

§ 173.20 Institutional assurances.

(a) The State plan shall contain a statement of assurance that, prior to approval of any community service program under the plan, each institution of higher education proposing such community service program shall submit to the State agency an assurance:

(1) That the proposed program is not otherwise available;

(2) That the conduct of the program or performance of the activity or service is consistent with the institution's overall educational program and is of such a nature as is appropriate to the effective utilization of the institution's special resources and the competencies of its faculty; and

(3) That, if courses are involved, such courses are extension or continuing education courses, and (i) that they are fully acceptable toward an academic de-

gree, or (ii) that they are of college level as determined by the institution offering the courses.

(b) Copies of such assurances required by paragraph (a) of this section shall be maintained by the State agency and made available to the Commissioner upon request. (20 U.S.C. 1002)

§ 173.21 Certification of State plan.

The State plan or amendment shall include as a part or appendix thereto:

(a) A certification by the official of the State agency authorized to submit the State plan that the plan (or amendment) has been adopted by the State agency and will constitute the basis for operation and administration of the programs described therein;

(b) A certification by the appropriate State legal officer that the State agency named in the plan is the sole State agency for the preparation and administration of the plan and has authority under State law to develop, submit, and administer or supervise the administration of the plan, and that all the provisions contained in the plan are consistent with State law. (20 U.S.C. 1005(a)(1))

§ 173.22 Reports.

The State plan shall provide that the State agency will make and submit to the Commissioner the reports listed below in accordance with procedures established by the Commissioner; and that the State agency will maintain such records, afford such access thereto, and comply with such other provisions as the Commissioner may find necessary to substantiate and/or verify the information contained in the reports:

(a) A detailed statement, describing the proposed operation of each community service program, to be submitted immediately upon approval of such program by the State agency;

(b) A report of the total amount of a State's allotment obligated or expended during a particular fiscal year, to be submitted at the close of such fiscal year;

(c) An annual report containing an evaluation of the State plan program and its administration in terms of the plan provisions and program objectives;

(d) A copy of any independent evaluations of the State plan, its program, objectives, and/or administration, if obtained by any State, State agency or institution, or State advisory council; and

(e) Any other reports containing such information in such form as the Commissioner may from time to time require in order to carry out his functions under the Act. (20 U.S.C. 1005(a)(6))

§ 173.23 Federal financial participation.

(a) The Federal Government will pay from each State's allotment an amount equal to 66⅔ percent of the total amount expended by the State agency and the institutions participating under the State plan, except that, in calculating such total amount, there shall be excluded any amounts received for the same purpose under any other Federal program and the matching funds required therefor. Where fees, if any, exceed the non-Federal share of the cost of the program, as determined above, the Federal share shall be reduced by the amount of this excess. (20 U.S.C. 1006)

(b) No payment for any fiscal year will be made, however, with respect to expenditures for developing or administering the plan by the State agency which exceed 5 percent of the total eligible costs for that year or $25,000, whichever is greater. (20 U.S.C. 1006)

§ 173.24 Required certification by State agency.

As a condition to receipt of any payments under the program described in this subpart, the State agency must submit to the Commissioner, both at the time that it initially determines the institutions of higher education to participate under the State plan, and each time that it approves a new program involving an institution not previously participating, a certification that all institutions participating under the plan will together have available during that year from non-Federal sources for expenditure for extension and continuing education programs not less than the total amount actually expended by those institutions for extension and continuing education programs from such sources during the Fiscal Year 1965, plus an amount which is not less than the non-Federal share of the costs of community service programs for which Federal financial assistance is requested. The certification shall also state that the State agency has obtained all information including records documenting expenditures necessary to make the above-noted finding and that such documents shall be kept by the State agency and made available to the Commissioner upon request. The certification required under this section shall constitute the basis for the finding required to be made by the Commissioner under section 107(b) of the Act. (20 U.S.C. 1006(b))

§ 173.25 Reallotment.

(a) In order to provide a basis for reallotment by the Commissioner pursuant to section 103(b) of the Act, each State agency will submit, upon request of the Commissioner by such date(s) as the Commissioner may specify, a statement showing all estimated anticipated needs during the remainder of the current fiscal year for carrying out the State plan. The statement will contain estimates based on the estimated costs (1) of completing community service programs already approved without expansion, (2) of expanding or modifying already approved community service programs, and (3) of approving new community service programs which will further carry out the objectives of the plan. The Commissioner may also request any additional information on such statement as he desires for the purpose of making reallotment.

(b) Subsequent to the review of the above described required statement and prior to the date fixed by the Commissioner for reallotment of funds, the Commissioner will notify each State agency affected by reallotment of his determination respecting the State's allotment. The Commissioner shall thereafter either modify the amount authorized for payment to the State or if an overpayment has already been made, direct the State to return to the Commissioner whatever amount the Commissioner determines the State does not require. (20 U.S.C. 1003(b))

§ 173.26 Interstate transfer of allotments.

Where two or more States agree that a portion of the Federal allotment of one State be added to and combined with that of the other State, there shall be submitted to the Commissioner, as part of both State plans or as amendments thereto, the following information:

(a) A request that a specified amount of one State's allotment be transferred to the other State for purposes described therein;

(b) A description of the community service program(s) for which the funds will be used by the recipient State;

(c) A statement of the total amount to be expended for such program(s) and the amount of the non-Federal share thereof;

(d) A statement indicating how the requirement for matching funds and/or maintenance of effort will be assumed by either or both institutions;

(e) A statement showing how such program(s) will assist in the solution of community problems of concern to both participating States; and

(f) A certified statement from the recipient State agency that it will use the funds for the purposes identified by the State requesting such transfer. (20 U.S.C. 1003(c))

Subpart C—Special Programs and Projects

§ 173.40 Applicability.

The regulations in this subpart apply to awards made by the Commissioner pursuant to section 106 of the Act for special community service and continuing education programs and projects designed to seek solutions to national and regional problems relating to technological and social changes and environmental pollution. Specific funding priorities will be announced from time to time by publication in the FEDERAL REGISTER. (20 U.S.C. 1005a(f))

§ 173.41 Eligible projects.

(a) From funds available under section 106 of the Act, the Commissioner may provide financial support for special programs and projects of national or regional significance which are consistent with the purposes of section 101 of the Act and which involve:

(1) Innovative methods, systems, or materials which the Commissioner determines may have national or regional significance or be of special value in promoting effective solutions to defined problems; or

(2) Innovative programs carried out in cooperation with other Federal, or federally assisted State and local programs which the Commissioner determines have unusual promise in promot-

ing a coordinated or comprehensive educational approach to problems in an entire region or the nation as a whole; or

(3) Demonstrations of educational strategies which may prove effective on a national or regional basis in assisting community leaders, government officials, and others involved in the search for solutions to community problems.

(b) Each project is expected to complement and advance current programs, investigations, or experimentation in continuing education for adults.

(c) Projects must also be designed to be of optimum use in the further development of State programs of community service and continuing education by having a high potential for replication or adaptation by other institutions of higher education. (20 U.S.C. 1005a; S. Rept. 92-346, p. 10)

§ 173.42 Eligible applicants.

Only the following are eligible to apply for financial assistance under this subpart:

(a) Institutions of higher education; and

(b) Combinations of institutions of higher education. (20 U.S.C. 1005a)

§ 173.43 Applications for grants.

(a) Applications under this subpart shall contain (in addition to the requirements of Part 100a (Subpart B) of this chapter):

(1) The portion of the total project cost to be borne by the applicant which shall be not less than 10 per centum;

(2) An assurance that no fees and charges will be collected from participants with respect to any training or instruction offered in the project; and

(3) An assurance that the State Agency for the Community Service and Continuing Education Program has been given an opportunity to comment on the proposed application. (S. Rept. 92-346, p. 10)

(b) No project proposed in an application shall be for a period of more than 30 months.

(c) Applications and requests for information shall be sent to: Community Service and Continuing Education Program, U.S. Office of Education, Washington, D.C. 20202. (20 U.S.C. 1005a)

§ 173.44 Review of applications.

In evaluating applications that meet the requirements of § 173.41 under this subpart the Commissioner will also consider the following criteria, in addition to the criteria set forth in § 100a.26(b) of this chapter:

(a) The extent to which the project is responsive to such regional or national priorities for Community Service and Continuing Education as the Commissioner, after consultation with the National Advisory Council on Extension and Continuing Education, may establish;

(b) The extent to which the project has unusual promise in establishing or improving programs of community service and continuing education in institutions of higher education;

(c) The extent to which the project employs or will result in new approaches, methods and materials which will be of value in increasing the effectiveness of continuing education programs for adults; and

(d) The extent to which the project is coordinated with related Federal, State or institutional programs in order to promote a comprehensive approach to community problem solving through the continuing education of adults. (20 U.S.C. 1005a)

§ 173.45 Public information.

The grantee is responsible for making announcements concerning the project and noting the availability of Federal support therefor. For certain projects a brochure or circular may be developed which will provide concerned adults with information by which they may participate in the project. Pertinent information concerning any other type of public information shall be sent to the Community Service and Continuing Education Program, U.S. Office of Education, Washington, D.C. 20202. (20 U.S.C 1005a)

APPENDIX A

GUIDELINES COMMUNITY SERVICE AND CONTINUING EDUCATION

Special Experimental and Demonstration Projects (Section 106, Title I, Higher Education Act of 1965, as amended)

Table of Contents

PART 1—INTRODUCTION

Section 1.1 Scope of guidelines.
1.2 Purpose of section 106.

PART 2—ELIGIBILITY

Section 2.1 Eligible applicants.
2.2 Eligible projects.

PART 3—PROPOSAL EVALUATION

Section 3.1 Review and assessment.

PART 4—PROPOSAL SUBMISSION

Section 4.1 Number of copies.
4.2 State agency consultation.

PART 5—GENERAL POLICIES

Section 5.1 Duration of project.
5.2 Public information.
5.3 Reporting requirements.

PART 1—INTRODUCTION

SEC. 1.1 *Scope of guidelines.* (a) The guidelines contained in this document are recommendations and suggestions for meeting the legal requirements which apply to Federal assistance under the Higher Education Act, Title I, section 106. The legal requirements include the Act itself (20 USC 1001-1011) and the regulations (45 CFR Part 173). The guidelines are not to be construed as requirements. However, where the guidelines set forth a permissible means of meeting a legal requirement, the guidelines may be relied upon. (20 USC 1001 et. seq.; 113 Cong. Rec. 5936, (daily ed. May 23, 1967) (*United States v. Jefferson County Board of Education*, 372 F 2d 836, 857 (1966)).

(b) Where a guideline is issued in connection with or affecting a provision in the regulations, the pertinent regulation will be cited after the citation of legal authority for the guideline, in the parentheses following the guideline. For example, if the legal authority for the guideline is 20 USC 1005a and the guideline affects section 173.41 of the regulations (45 CFR 173.41) the following citation will be placed on the line immediately following the guideline: (20 USC 1005a; 45 CFR 173.41). If no particular section of the regulation is affected, no citation to the Code of Federal Regulations (CFR) will be made. (20 U.S.C. 1232(a)).

SEC. 1.2 *Purpose of section 106.* (a) Title I of the Higher Education Act of 1965 (Pub. L. 89-329) established a State grant program designed to assist * * * the people of the United States in the solution of community problems * * * by making grants to strengthen the community service programs of colleges and universities.

(b) Thus, the Community Service and Continuing Education Program is implementing the concept of education as a continuing life-long and dynamic process through which adults may lead more meaningful and useful lives and through which concerned communities can improve their operations and services. Since 1966 this Federal program has supported through State determined programs the development of educational activities for adults in more than 1,000 colleges and universities.

(c) With the passage of the Education Amendments of 1972 (Pub. L. 92-318) the Commissioner of Education is now authorized to make awards to institutions of higher education for special programs and projects which are designed to seek solutions to national and regional problems relating to technological and social changes and environmental pollution.

(d) These guidelines describe the provisions for Special Programs and Projects contained in section 106 of the Act, and outline procedures for proposal preparation and submission, and set forth general policies and priorities for experimental and demonstration projects related to national and regional problems. (20 U.S.C. 1005a)

PART 2—ELIGIBILITY

SEC. 2.1 *Eligible applicants.* A single, accredited institution of higher education, or combinations of such institutions, are the only eligible applicants for grants under section 106 of the Act. "Combinations of such institutions" means two or more colleges or universities grouped in a consortial arrangement. (20 U.S.C. 1005a; 45 CFR 173.42)

SEC. 2.2 *Eligible projects.* Projects must be based on a design for and implementation of an organized continuing education activity for adults. Special projects may be either experimental or demonstration activities, carried out on an objective and systematic basis, which seek solutions to national or regional problems related to technology and social changes and environmental pollution, and which involve:

(a) Innovative methods, systems, or materials which the Commissioner determines may have national or regional significance or be of special value in promoting effective solutions to such problems; or

(b) Innovative programs carried out in cooperation with other Federal, federally assisted, State, or local programs which the Commissioner determines have unusual promise in promoting a coordinated or comprehensive approach to problems in an entire region or the nation as a whole, or

(c) Demonstrations of educational strategies which may prove effective on a national or regional basis in assisting community leaders, government officials, and others involved in the search for solutions to community problems. In addition:

(d) Each project is expected to complement and advance current programs, investigations, or experimentation in continuing education for adults.

(e) Projects must also be designed to be of optimum use in the further development of State programs of community service and

continuing education by having a high potential for replication or adaptation by other institutions of higher education. (20 U.S.C. 1005a; S. Rept. 92-346, p. 10; 45 CFR 173.41)

PART 3—PROPOSAL EVALUATION

SEC. 3.1 *Review and assessment.* The following criteria will be employed in the review and assessment of each proposed project:

(a) The extent to which the project is responsive to such regional or national priorities for Community Service and Continuing Education as the Commissioner may establish;

(b) The extent to which the project has unusual promise in establishing or improving programs of community service and continuing education in institutions of higher education;

(c) The extent to which the project employs or will result in new approaches, methods and materials which will be of value in increasing the effectiveness of continuing education programs for adults;

(d) The extent to which the project is coordinated with related Federal, State or institutional programs in order to promote a comprehensive approach to community problems through the continuing education of adults;

(e) The extent to which the project is soundly designed;

(f) Evidence of administrative and supervisory practices sufficient to assure effective and economical operation of the project. (20 U.S.C. 1005a; 45 CFR 173.44)

PART 4—PROPOSAL SUBMISSION

SEC. 4.1 *Number of copies.* One copy of the application form must bear the signature(s) of the official(s) authorized to submit the proposal. On the remaining copies the name(s) of the official(s) need only be typed. Completed proposals are to be submitted in ten (10) copies to:

Community Service and Continuing Education Program
U.S. Office of Education
Washington, D.C. 20202

(20 U.S.C. 1005a; 45 CFR 173.43(c))

SEC. 4.2 *State agency consultation.* The institution(s) submitting a proposal should attach a letter describing the extent to which the proposed project has been discussed with State Administrator(s) for Community Service and Continuing Education in the state(s) affected. (20 U.S.C. 1005a; 45 CFR 173.43 (a)(7))

PART 5—GENERAL POLICIES

SEC. 5.1 *Duration of project.* The duration of a project may vary from 18 to 30 months depending upon the scope of the work to be undertaken. The fact that a proposal was funded in an earlier year is no guarantee that resubmission will result in renewed financial assistance. (20 U.S.C. 1005a; 45 CFR 173.43(b))

SEC. 5.2 *Public information.* The recipient is responsible for making announcements concerning the project and noting the availability of Federal support therefor. For certain projects a brochure or circular may be developed which will provide concerned adults with information by which they may participate in the project. (20 U.S.C. 1005a; 45 CFR 173.45)

SEC. 5.3 *Reporting requirements*—(a) *Progress Report.* Three (3) copies of progress reports shall be submitted in accordance with the requirement stated in the award. Each report shall include a brief description of work completed during the reporting period, problems encountered, and plans for the next reporting period.

(b) *Special Reports.* Special reports shall be submitted upon request from the Office of Education.

(c) *Final Project Report.* Before or at the expiration of the grant, the grantee shall submit one hundred (100) duplicated copies of a final report and an accompanying abstract.

(d) *Independent Evaluations.* The Office of Education shall be provided with a copy of any independent evaluations of the project, its operations and accomplishments, or studies of any other nature.

(e) *Submission of Reports.* All reports are to be submitted to:

Community Service and Continuing Education Program
U.S. Office of Education
Washington, D.C. 20202

(20 U.S.C. 1005a)

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PART III

FEDERAL ENERGY OFFICE

■

MANDATORY PETROLEUM ALLOCATION

Title 10—Energy

CHAPTER II—FEDERAL ENERGY OFFICE

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

A notice of proposed rulemaking containing clarifications and revisions to Part 211 was issued on March 27, 1974 (39 FR 11768, March 29, 1974). Comments were invited from interested persons by April 8, 1974. Subsequently, the comment period was extended to April 15, 1974. In response more than 600 comments were received by FEO. The amendment published herewith reflects FEO's consideration of those comments and incorporates substantial changes suggested in those comments. In order to allow sufficient time for persons to come into full compliance with the amended regulations, this amendment is not being made effective until June 1, 1974.

Subpart C (Crude Oil) is not included within this revision, since it is still the subject of a proposed rulemaking. Subparts E (Butane), J (Petrochemicals) and K (Other Products) are also not included within this revision. FEO will shortly issue a notice of proposed rulemaking with respect to a proposed revision of Subparts E and J, and a further proposed revision of Subpart K.

Numerous technical changes in Subpart A of the proposed regulations have been made to correct errors and clarify the working of the general allocation rules. The most important changes from those noted in the March 27, 1974 rulemaking are noted below.

SUBPART A

Allocation fraction greater than one. Section 211.10(g) sets forth the procedure to be followed when a supplier determines that its allocation fraction will be greater than 1.0 for a period which corresponds to a base period. The supplier must notify FEO within five days of its determination. The supplier may, however, distribute its excess product to its wholesale purchaser-resellers, wholesale purchaser-consumers and its end-user purchasers following its determination and before giving notice to FEO. To do so the supplier is required to apportion its allocable supply among all its purchasers as provided in § 211.10(g). Modified allocation levels are also established in each subpart for use when a supplier's allocation fraction is greater than one. Distribution of that part of a supplier's allocable supply assigned to its direct wholesale purchaser-consumer and end-user customers shall be made under modified allocation levels.

Such a supplier will also distribute that part of its allocable supply assigned to its wholesale purchaser-reseller purchasers by providing product equal to its allocation fraction multiplied by each wholesale purchaser-reseller's base period use, except in the case of retail sales outlets for motor gasoline which would in such circumstances be supplied up to 110 percent of their base period use.

Whenever the supplier determines that it will have excess product following distribution of product to its wholesale purchaser-consumers, end users and wholesale purchaser-resellers as outlined above, the supplier will again notify FEO. If FEO does not direct delivery of the product within ten (10) days, the supplier may then distribute the excess product at its discretion.

However, FEO may at any time direct excess product to other suppliers, wholesale purchasers or end-users which are not direct purchasers of the supplier with an allocation fraction in excess of one (1.0).

Determination of amounts not subject to an allocation fraction. Section 211.12(d) now provides that wholesale purchaser-resellers, rather than wholesale purchaser-consumers or end-users, will make the initial certification of the required volumes of product for delivery to wholesale purchaser-consumers and end-users entitled to an allocation level not subject to an allocation fraction. The certification is to be made annually but may be adjusted from time to time by the wholesale purchaser-reseller. Provision is made for resolution of disputes between a supplier and its wholesale purchaser-resellers as to a certification. Pending resolution of a dispute, the supplier shall supply the volumes which it does not dispute subject to adjustment by FEO upon resolution of the dispute.

Suppliers receiving certifications of amounts not subject to an allocation fraction shall in turn certify those volumes to their suppliers.

Any wholesale purchaser-consumer, wholesale purchaser-reseller, or end-user entitled to a product not subject to an allocation fraction, and engaged in agricultural production, may seek assistance in resolving disputes as to volumes required from the Agricultural Stabilization and Conservation Service.

At the end of the period which corresponds to a base period, wholesale purchaser-resellers will also certify to their suppliers the quantity of product received, and the quantity delivered to wholesale purchaser-consumers and end-users for end uses not subject to an allocation fraction. Product received pursuant to a certification but not delivered by a wholesale purchaser-reseller must be used to adjust the quantity of product received in a subsequent period corresponding to a base period. Suppliers shall in turn make corresponding adjustments.

Separate treatment of retail sales outlets of motor gasoline. In the proposed March 27 revision, § 211.11 treated all retail sales outlets as separate wholesale purchaser-resellers for purposes of computing base period volumes and entitlements to allocations. After further consideration, it has been determined that such separate treatment of sales outlets should be restricted to motor gasoline outlets. Consequently, the provisions with respect to such outlets are now contained in Subpart F as § 211.106 rather than in § 211.11.

Section 211.106 provides that each retail sales outlet is to be considered a separate wholesale purchaser-reseller. Independent marketers may petition FEO for treatment of all or some of its retail outlets as one firm. No supplier may shift entitlements between or among retail sales outlets without FEO approval. Base period volumes and adjustments thereto must be recalculated by July 1, 1974, based upon treatment of each retail sales outlet as a separate wholesale purchaser-reseller.

A wholesale purchaser-reseller will be deemed to have gone out of business if it vacates one site and does not reestablish another outlet within a reasonable time. Additional provisions with respect to independent marketers in these circumstances are also provided. A wholesale purchaser-reseller may, with FEO's permission, close one or more of its retail sales outlets and adjust the base period volumes of its remaining retail sales outlets.

To be a supplier of a retail sales outlet, a firm must actually deliver products to the retail sales outlet. Suppliers which operate retail sales outlets must notify FEO whenever any retail sales outlet they supply goes out of business.

Redirection of product and State set-aside. Section 211.17 contains several changes. Each prime supplier for a State must appoint a firm within that State as its "State representative" to facilitate the distribution of the State set-aside. The prime suppliers must notify the appropriate State offices of those appointments no later than June 15, 1974. Section 211.17 now provides that authorizing documents become void if not presented to a prime supplier or its local distributors within ten (10) days of issuance.

The State office may also order distribution of some or all of a prime supplier's set-aside volume through normal distribution channels. In the case of intra-State supply imbalances, it may release set-aside volumes selectively within such areas.

If necessary, State offices may direct product to end-users and wholesale purchaser-consumers experiencing a temporary hardship or emergency through designated wholesale purchaser-resellers.

Section 211.14 now provides that FEO will not redirect product within a State without first obtaining the recommendation of the affected State office.

End-user and wholesale purchaser-consumer importers. End-users and wholesale purchaser-consumers which import an allocated product in excess of the volumes which they imported in the base period are now covered by § 211.12 (g) as well as end-users and wholesale purchaser-consumers which are importing for the first time.

Adjustments of base period volume. Section 211.13 has several minor changes. Notice is given that supplier-initiated adjustments will be subject to normal FEO audit requirements. A wholesale purchaser must report to FEO if its sup-

plier-initiated adjustment for unusual growth when combined with its base period volume supplied by other suppliers would exceed the wholesale purchaser's actual unusual growth. Request for validation under § 211.13(d) can be referred for validation ten (10) days after submission to a supplier.

SUBPART D (PROPANE)

Final issuance of the proposed Propane allocation program, published on April 5, 1974, in the FEDERAL REGISTER is also included in this amendment. That rulemaking has been modified in several significant ways. The changes were made in recognition of several unique aspects of the propane marketing system. The regulation now provides for a less restrictive arrangement of allocation levels to better reflect the current supply/demand situation, but retains certain restraints on the diversion of propane to lower priority uses.

The definition of "standby volumes" in § 211.82 was modified so as to exclude from the definition those volumes of propane which are intended as a substitute for a process or plant protection fuel use.

In § 211.83, the allocation level for industrial uses of propane was changed to eliminate the 210,000 gallon limitation on standby volumes. However, the inventories which may be stored for industrial use are limited to 120 percent of base period inventories in § 211.86(h). New allocation levels for synthetic natural gas plants and governmental use were also added to § 211.83. Modified allocation levels for propane are added in § 211.84 to replace § 211.85(e) which appeared in the proposed regulations.

The requirement found in § 211.10 concerning determination of base period volumes has been modified for suppliers of propane to require reporting only to propane resellers. In addition, § 211.86 contains a new provision which makes the supplier-initiated unusual growth adjustment found in § 211.13(b) inapplicable to propane. Dispensing stations, as defined, are to continue to receive one hundred percent of their current requirements up to a maximum volume of 15,000 gallons per year. Section 211.86 is further changed in paragraph (h) to limit the inventories of gas utilities and industrial users (including petrochemical producers).

In order to monitor rapidly increasing inventories of propane, § 211.87 now imposes a requirement that all owners of propane in shortage report those quantities to the FEO. The requirement in § 211.223 that all propane suppliers keep their records on FEO forms has been modified to allow dealers to use their normal recordkeeping practices in maintaining this information.

OTHER SUBPARTS

Definitions. Many definitions have been clarified and several new definitions added to conform to changes in other subparts.

Most comments received dealt with the definition of agricultural production. Although the definition of agricultural production has been modified somewhat in light of these comments, in general the definition is still limited to the actual production of agricultural commodities and the processing of these commodities into food items.

With respect to the many businesses and activities which sought inclusion within the meaning of agricultural production, it should be noted that exclusion, in most cases, does not deprive such businesses or activities of the allocation of fuel. It merely requires the use of a somewhat reduced level such as the general levels applicable to industrial users. FEO will also take administrative action to make certain that those parts of businesses or activities which directly support agricultural production and which develop critical shortages that impact on the production of agricultural commodities will be granted expedited treatment to adjust their entitlements and to insure that adequate supplies of fuel are available.

Modified allocation levels. Modified allocation levels have been inserted in each product subpart for use when a supplier's allocation fraction exceeds one.

Conservation. Although the notice of proposed rulemaking was not intended to deal with energy conservation, many comments were received expressing a concern that FEO address this subject. This was not possible within the time limitations for issuing this amendment. Energy conservation, however, is fundamental to FEO's programs and is receiving FEO's continuing attention. As measures are developed to insure that energy conservation will be practiced, they will be reflected in future revisions of FEO's regulations.

As published, this document reflects corrections filed after the filing date of the original document.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, E.O. 11748; 38 FR 33575)

In consideration of the foregoing, Chapter II of Title 10 of the Code of Federal Regulations is revised as set out herein, effective June 1, 1974.

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

JOHN C. SAWHILL,
Administrator,
Federal Energy Office.

Part 211 is revised to read as follows:

Subpart A—General Provisions

Sec.
211.1 Scope.
211.2 Relationship of subparts.
211.9 Supplier/purchaser relationships.
211.10 Supplier's method of allocation.
211.11 Basis for purchaser's entitlement to allocation.
211.12 Purchaser's allocation entitlement.
211.13 Adjustments to base period volume.
211.14 Redirection of products.
211.15 State offices of petroleum allocation.
211.17 State set aside.
211.21 Energy conservation.
211.22 Administrative actions.
211.23 Normal business practices.
211.25 Supplier substitution.
211.26 Department of Defense allocations.
211.27 Construction industry.
211.28 Price.
211.29 Synthetic Natural Gas production.

Subpart B—Definitions

211.51 General Definitions.

Subpart D—Propane

211.81 Scope.
211.82 Definitions.
211.83 Allocation levels.
211.84 Modified alocation levels.
211.85 Supplier/purchaser relationships.
211.86 Method of allocation.
211.87 Procedures and reporting requirements.

Subpart F—Motor Gasoline

211.101 Scope.
211.102 Definitions.
211.103 Allocation levels.
211.104 Modified allocation levels.
211.105 Supplier/purchaser relationships.
211.106 Retail sales outlets.
211.107 Method of allocation.
211.108 Procedures and reporting requirements.

Subpart G—Middle Distillate

211.121 Scope.
211,122 Definitions.
211.123 Allocation levels.
211.124 Modified allocation levels.
211.125 Supplier/purchaser relationships.
211.126 Method of allocation.
211.127 Procedures and reporting requirements.

Subpart H—Aviation Fuels

Sec.
211.141 Scope.
211.142 Definitions.
211.143 Allocation levels.
211.144 Modified allocation levels.
211.145 Supplier/purchaser relationships and adjustments of base period use.
211.146 Method of allocation.
211.147 Procedures and reporting requirements.

Subpart I—Residual Fuel Oil

Sec.
211.161 Scope.
211.162 Definitions.
211.163 Allocation levels.
211.164 Modified allocation levels.
211.165 Supplier/purchaser relationships.
211.166 Method of allocation.
211.167 Procedures and reporting requirements.

Subpart L—General Reporting and Recordkeeping Requirements

Sec.
211.221 Scope.
211.222 Monthly reports by refiners and importers.
211.223 Recordkeeping requirements.
211.224 Weekly petroleum reporting system.
211.225 Report of new end-user and whole sale purchaser-consumer importers.

1. Subpart A of Part 211 is revised to read as follows:

Subpart A—General Provisions

§ 211.1 Scope.

(a) *General.* This part applies to the mandatory allocation of crude oil, residual fuel oil and refined petroleum products produced in or imported into the United States.

(b) *Exclusions.* (1) Exports of crude petroleum and petroleum products sub-

ject to Subchapter B of Chapter III of Title 15 of the Code of Federal Regulations are excluded from this part.

(2) The first sale of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from any stripper well lease as defined in § 210.32 of this chapter is excluded from this part.

(3) Petroleum refinery products such as petroleum wax, petroleum coke, asphalt, road oil, and refinery gases which are not crude oil, refined petroleum products, or residual fuel oils are excluded from this part.

(4) Natural gas and ethane are also excluded from this part.

(c) *State set-asides.* State set-asides are provided for middle distillates, residual fuel oil, motor gasoline and propane.

§ 211.2 Relationship of subparts.

Unless otherwise specified in Subparts D through K of this part, the general provisions set forth in this subpart apply to the mandatory allocation of all allocated products.

(a) *Supplier/wholesale purchaser relationship.* (1) Each supplier of an allocated product shall supply all wholesale purchaser-resellers and all wholesale purchaser-consumers which purchased or obtained that allocated product from that supplier during the base period as specified in Subparts D through K of this part.

(2) (i) Unless otherwise provided in this part or directed by FEO, the supplier/wholesale purchaser-reseller relationships defined by specific dates or base periods or otherwise imposed pursuant to this part shall be maintained for the duration of the Mandatory Petroleum Allocation Program and may not be waived or otherwise terminated without the express written approval of FEO.

(ii) Unless otherwise provided in this Part or directed by FEO, the supplier/wholesale purchaser-consumer relationships defined by specific dates or base periods or otherwise imposed pursuant to this part shall be maintained for the duration of the Mandatory Petroleum Allocation Program and may not be revised or otherwise terminated except that any such relationship may be terminated by the mutual consent of both parties.

(b) *Supplier/end-user relationship.* Each supplier of an allocated product shall, to the maximum extent practicable, supply all end-users which purchased that allocated product from that supplier as of January 15, 1974, and which are entitled to an allocation level under the provisions of Subparts D through K of this part.

(c) *Changes in ownership or brand.* The supplier/purchaser relationships required by this Part shall not be altered by (1) changes in the ownership or right of possession of the real property on which a wholesale purchaser or end-user maintains its on-going business or end use; or (2) changes in the brand or franchise under which a wholesale purchaser-reseller maintains its on-going business.

(d) *New relationships.* (1) Suppliers shall not supply new wholesale purchasers except in accordance with § 211.12(e).

(2) Suppliers shall not supply new end-users except in accordance with § 211.12(f).

(3) New suppliers shall not supply wholesale purchasers or end-users except in accordance with § 211.10(e).

(e) *Dual capacities.* A supplier may act in the capacity of a wholesale purchaser and an end-user. A wholesale purchaser-consumer may also be a wholesale purchaser-reseller. A firm which is acting in one or more different capacities shall comply with the appropriate regulations governing each capacity in which it acts.

§ 211.10 Supplier's method of allocation.

(a) *General.* (1) Suppliers of allocated products shall allocate all of their allocable supply in accordance with the provisions of this section unless otherwise specified in Subparts D through K of this part. Each supplier shall determine its allocation fraction pursuant to the provisions of paragraph (b) of this section. Suppliers shall then allocate to wholesale purchasers and end-users in accordance with the provisions of paragraph (c) of this section. Suppliers of end-users without allocation levels shall allocate their allocable supply in accordance with the provisions of paragraph (d) of this section. The method of allocation for new suppliers is specified in paragraph (e) of this section. Suppliers with allocation fractions less than one (1.0) must act in accordance with the provisions of paragraph (f) of this section, while suppliers with allocation fractions in excess of one (1.0) must act in accordance with the provisions of paragraph (g) of this section. Suppliers which sell products with different uses which are subject to allocation under more than one subpart shall determine the applicable subpart by reference to paragraph (h) of this section.

(2) For purposes of defining a supplier in this part, a firm shall mean the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(b) *Allocation fraction.* Each supplier shall determine an allocation fraction prior to making any allocation. A supplier's allocation fraction for any period which corresponds to a base period for an allocated product shall be equal to its allocable supply of that product, which is defined in paragraph (b)(1) of this section, for that period, divided by its supply obligation for all levels of distribution, which is defined in paragraph (b)(2) of this section. Suppliers shall adjust their allocation fractions for each such period to reflect adjustments in their supply obligation and in their allocable supply. Each supplier shall only have a single allocation fraction for all purchasers except to the extent permitted in § 211.14 or unless permitted or required by order of the FEO. Suppliers with two or more distribution subsystems or regions independent of one another may petition National FEO for permission to use multiple allocation fractions whenever use of a single allocation fraction would be impracticable or inconsistent with the objectives of the program.

(1) *Allocable supply.* Each supplier's allocable supply of an allocated product for a period which corresponds to a base period shall be equal to its total supply for that period, which is the sum of its estimated production, including amounts received under processing and exchange agreements, imports, purchases and any reduction in inventory of that allocated product made pursuant to § 211.22 except as otherwise ordered by FEO; less (i) any amounts designated as a state set-aside for a prime supplier pursuant to § 211.17, (ii) any amounts of allocation requirements supplied directly to end-users or wholesale purchaser-consumers under an allocation level not subject to an allocation fraction, (iii) any amounts supplied to wholesale purchaser-resellers which have certified these amounts to be for ultimate use under an allocation level not subject to an allocation fraction, and (iv) any amounts supplied to customers through exchange agreements. Any existing inventory, or production, importation or purchase of an allocated product used to increase that inventory consistent with the provisions of § 211.22 shall not be included in the allocable supply of that product.

(2) *Supply obligation*—(i) *General.* A supplier's supply obligation of a particular allocated product is the sum of (A) the amounts of its wholesale purchaser-resellers' base period volumes as adjusted pursuant to § 211.13 for unusual growth and other allowable factors, which were supplied by the supplier during the appropriate base period provided that the wholesale purchaser is still in business; (B) the amounts of base period uses of new wholesale purchasers and end-users which are assigned to or accepted by the supplier in accordance with the provisions of § 211.12; and (C) the amounts of allocation requirements of end-users and wholesale purchaser-consumers supplied by the supplier; minus (D) any amounts of allocation requirements supplied directly to end-users or wholesale purchaser-consumers under an allocation level not subject to an allocation fraction; and (E) any amounts supplied to wholesale purchaser-resellers which have certified those amounts to be for ultimate use under an allocation level not subject to an allocation fraction. The supply obligation of a retail sales outlet for motor gasoline shall also include an amount equal to its total sales of motor gasoline during the base period to end-users not entitled to an allocation level. A wholesale purchaser's base period volume, allocation requirements and allocation levels are defined below.

(ii) *Base period use.* Base period use means base period volume or adjusted base period volume, as appropriate. A wholesale purchaser's base period volume of a particular allocated product is the volume of that allocated product pur-

chased or obtained during the appropriate base period as determined in accordance with § 211.12(c). In the case of a new wholesale purchaser, base period volume means the volume assigned pursuant to § 211.12(c). Base period volume, however, does not include any amounts of an allocated product obtained pursuant to in kind exchange agreements involving a single product which are normal business operating procedures except the difference between the total amounts received under exchange agreements and the total amounts supplied to customers through exchange agreements. Suppliers do not have a base period volume except when acting in the capacity of wholesale purchasers. Depending on the applicable allocation level, end-users may have a base period volume or may be treated on the basis of current requirements. Adjustments to base period volumes shall be made in accordance with the provisions of § 211.13.

(iii) *Allocation requirements.* The allocation requirement of an end-user or wholesale purchaser-consumer is the product of that purchaser's current requirements or base period use multiplied by the applicable allocation level.

(iv) *Allocation levels.* An allocation level is the percentage of the current requirements or base period use of an end-user or wholesale purchaser-consumer that its supplier shall supply if sufficient volumes of the allocated product are available. Allocation levels are assigned on the basis of the use to be made of the product and the type of purchaser receiving the product.

(c) *Allocation by suppliers to wholesale purchasers and end-users.* There shall be two levels of priority in the allocation by suppliers to wholesale purchasers and end-users:

(1) *First priority.* The first priority shall be for each supplier at every distribution level (i) to allocate from its total supply to wholesale purchaser-resellers any amounts which those purchasers have certified pursuant to § 211.12(d)(2) to be for ultimate use under an allocation level not subject to an allocation fraction and (ii) to allocate from its total supply to end-users and wholesale purchaser-consumers supplied directly under an allocation level not subject to an allocation fraction sufficient volumes of the allocated product to supply one hundred percent of those purchasers' allocation requirements which suppliers of those purchasers have certified pursuant to § 211.12(d)(1). The amounts allocated under this first priority shall not be subject to the supplier's allocation fraction.

(2) *Second priority.* The second priority for each supplier shall be (i) to allocate to each wholesale purchaser-reseller a volume of allocated product equal to the product of that supplier's allocation fraction multiplied by the amount equal to that wholesale purchaser-reseller's base period use minus any amounts which that purchaser has certified to be for ultimate use under an allocation level not subject to an allocation fraction and (ii) to allocate from its allocable supply to all end-users and wholesale purchaser-consumers supplied directly under an allocation level subject to an allocation fraction a volume of allocated product equal to the product of that supplier's allocation fraction multiplied by the allocation requirements of those purchasers.

(3) *Allocation level priority.* Allocation levels listed in Subparts D through K are not arranged in sequence of priority except that the allocation levels not subject to an allocation fraction must be supplied as the first order of priority. Suppliers shall distribute their allocable supply to all classifications of purchasers listed within each particular percentage allocation level and among percentage allocation levels other than levels not subject to an allocation fraction without regard to the order of listing.

(d) *Purchasers without allocation levels.* Notwithstanding the provisions of paragraphs (c) and (g) of this section, suppliers such as retail gasoline dealers, which supply both end-users or wholesale purchaser-consumers which are not entitled to an allocation level and end-users or wholesale purchaser-consumers which are entitled to an allocation level shall allocate their allocable supply in the following manner:

(1) The first priority for each supplier shall be to allocate to all end-users and wholesale purchasers which are entitled to an allocation in accordance with the provisions of paragraph (c) of this section.

(2) The second priority for each supplier shall be to distribute equitably the remainder of the supplier's allocable supply among all end-users or wholesale purchaser-consumers which are not entitled to an allocation level. A state may require or authorize priorities to or among such end-users or wholesale purchaser-consumers purchasing the allocated product for the uses listed in the allocation levels for that product in the subpart of this part applicable to the particular allocated product. Except to the extent that FEO regulations or a State office otherwise may require or authorize, local governments and the supplier may also give priority to or among such end-users or wholesale purchaser-consumers purchasing the allocated product for the uses listed in the allocation levels for that product in the subpart of this part applicable to the particular allocated product. Priority treatment, per se, when granted in accordance with the provisions of this subparagraph, shall not be considered a form of discrimination among purchasers or any other prohibited conduct under § 210.62 of this chapter.

(e) *New supplier.* (1) A supplier which was not a base period supplier but was a supplier prior to January 15, 1974 shall supply, in accordance with the provisions of this section, (i) wholesale purchasers which it supplied as of January 15, 1974 and which have no base period supplier; (ii) any assigned purchasers; (iii) new wholesale purchasers acquired after January 15, 1974 in accordance with the provisions of § 211.12; and (iv) to the maximum extent possible, end-users.

(2) A supplier which was not a supplier prior to January 15, 1974 shall be considered to have no supply obligation and shall not allocate supplies to any purchaser without FEO approval.

(f) *Allocation fractions less than one.* When a supplier's allocation fraction is less than one (1.0), a supplier shall reduce, on a pro-rata basis, the amounts supplied to end-users and wholesale purchasers for uses subject to the allocation fraction. End-users and wholesale purchaser-consumers supplied under an allocation level not subject to an allocation fraction, shall, however, be supplied at a constant one hundred percent of allocation requirements. Wholesale purchaser-resellers which certify amounts of an allocated product to be for ultimate use under an allocation level not subject to an allocation fraction shall also be supplied at one hundred percent of these certified amounts. These purchasers shall not receive a pro-rata reduction unless the supplier's total supply is not sufficient to supply all such end-users and wholesale purchasers at one hundred percent of allocation requirements or certified amounts, as appropriate.

(g) *Allocation fractions greater than one.* (1) In allocating allocable supplies of any allocated product among wholesale purchasers and end-users, no supplier may use an allocation fraction greater than one (1.0) except as provided herein.

(2) If a supplier's allocable supply is of sufficient magnitude that its allocation fraction computed pursuant to paragraph (b) of this section will exceed one (1.0) for a period corresponding to a base period, the supplier shall report either by its monthly report under § 211.222 which would cover the period during which the allocation fraction will exceed one (1.0) or by certified mail to the National FEO and the appropriate regional FEO, the volume of surplus product available within five (5) days of the supplier's determination that its allocation fraction will exceed one (1.0).

(3) The National or regional FEO (whenever authorized by the National FEO) may at any time direct that the product reported pursuant to paragraph (g)(2) above be distributed among other suppliers or sold to designated wholesale purchasers or end-users.

(4)(i) Immediately following a supplier's determination that its allocation fraction will exceed one (1.0), the supplier shall determine the basic allocation entitlements of its wholesale purchasers and end-users in accordance with the provisions of paragraph (c) of this section as modified below. For the purpose of determining the amounts to be supplied to wholesale purchaser-resellers pursuant to paragraph (c)(2)(i) of this section, the supplier shall multiply their base period uses by the supplier's allocation fraction which is greater than one except to the extent restricted in § 211.107(b) for retail sales outlets of motor gasoline. For the purpose of determining the amounts to be supplied to end-users

and wholesale purchaser-consumers pursuant to paragraph (c)(2)(ii) of this section, the supplier shall multiply their allocation requirements by an allocation fraction of one (1.0) instead of its actual allocation fraction greater than one.

(ii) The supplier shall then calculate an incremental allocable supply, the incremental allocation requirements of its end-users and wholesale purchaser-consumers, an incremental supply obligation and an incremental allocation fraction.

(A) The incremental allocable supply shall be the remaining amount of the supplier's allocable supply available for distribution after the basic entitlements have been determined under paragraph (g)(4)(i) above. Any amounts of product to which a wholesale purchaser-reseller is entitled pursuant to paragraph (g)(4)(i) above but which that wholesale purchaser-reseller chooses not to accept shall also be included in the incremental allocable supply.

(B) The incremental allocation requirements for each wholesale purchaser-consumer or end-user shall be the difference between the allocation requirments of that wholesale purchaser-consumer or end-user (as defined in paragraph (b)(2)(iii) of this section) determined by using the modified allocation levels and the allocation requirements determined by using the non-modified allocation levels.

(C) The incremental supply obligation shall be the sum of all the supplier's incremental allocation requirements.

(D) The incremental allocation fraction shall be the supplier's incremental allocable supply divided by the supplier's incremental supply obligation.

(5) The supplier shall then simultaneously allocate to its wholesale purchasers and end-users in the following manner:

(i) The supplier shall distribute to each wholesale purchaser-reseller the basic allocation entitlement calculated pursuant to paragraph (g)(4)(i) of this section.

(ii) The supplier shall distribute to each wholesale purchaser-consumer and each end-user the sum of the following allocation entitlements:

(A) The basic allocation entitlement for that purchaser calculated pursuant to paragraph (g)(4)(i) of this section using an allocation fraction of one (1.0); and

(B) The incremental allocation entitlement for that purchaser calculated by multiplying that supplier's incremental allocation fraction by that purchaser's incremental allocation requirements.

(6) Whenever the supplier determines that it will have an incremental allocation fraction in excess of one (1.0), the supplier shall report either by its monthly report under § 211.222 which would cover the period during which the incremental allocation fraction will exceed one (1.0) or by certified mail to the National FEO and the appropriate regional FEO the volume of supplies remaining from its allocable supply. Such report may be made at the same time the notice required by paragraph (g)(2) of this section is made. The National or regional FEO (whenever authorized by the National FEO) may direct that the excess product reported under this subparagraph be distributed among other suppliers or sold to designated wholesale purchasers or end-users as provided by § 211.12. If the reporting supplier is not notified to the contrary within ten (10) days of reporting to the FEO, it may distribute such excess product at its discretion.

(7) Notwithstanding the provisions of § 211.12, any wholesale purchaser or end-user may purchase allocated product from any supplier which certifies that it has excess product to distribute and that it has complied with the provisions of paragraph (g)(6) of this section.

(8) No supplier shall supply and no end-user or wholesale purchaser-consumer shall accept quantities of an allocated product which exceed one hundred (100) percent of the end-user's or wholesale purchaser-consumer's current requirements, unless directed by FEO.

(h) *Products with different uses.* When an allocated product may be subject to allocation under more than one subpart of this part, a wholesale purchaser shall certify the type of use of the product to the supplier which supplied that product during the base period prescribed in the subpart applicable to that type of use of that product. The supplier shall then supply that wholesale purchaser in accordance with the provisions of the subpart which applies to the certified use of that product unless the supplier and wholesale purchaser mutually agree that the product shall be supplied for a use other than the use during the base period. Suppliers shall supply end-users in accordance with the provisions of the subpart that applies to the end-user's present use of the product.

§ 211.11 Basis for purchaser's entitlement to allocation.

(a) *Basis of entitlement.* A wholesale purchaser or an end-user entitled to an allocation level shall receive an allocation based on its conduct of an on-going business or maintenance of an established end use.

(b) *End-users and wholesale purchasers as a firm.* (1) For purposes of defining an end-user or wholesale purchaser-consumer in this part, a firm shall mean all parts of the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls which act as ultimate consumers including all sites, storage tanks and other facilities or entities of the end-user or wholesale purchaser-consumer that utilize or store an allocated product.

(2) Except as provided in Subpart F of this part, for purposes of defining a wholesale purchaser-reseller in this part, a firm shall mean all parts of the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(c) *Loss of allocation entitlement for going out of business.* Wholesale purchasers and end-users which have gone out of business shall not be eligible for allocations based on volumes received or purchases made prior to going out of business.

(d) *Transfer of entitlement.* The right to receive an allocation shall not be assignable separately but shall be considered an integral part of the on-going business or established end use. The right to an allocation shall be deemed to have been transferred only when the entire business or activity of the firm is transferred to a successor firm.

§ 211.12 Purchaser's allocation entitlement.

(a) *Scope.* This section describes a purchaser's allocation entitlements. Paragraph (b) of this section specifies the volumes of an allocated product which wholesale purchasers and end-users are entitled to receive from suppliers. The method by which purchasers determine base period volumes is provided in paragraph (c) of this section and the method by which purchasers determine the amounts not subject to an allocation fraction is provided in paragraph (d) of this section. Paragraphs (e), (f), and (g) of this section set forth procedures by which new wholesale purchasers, new end-users and new importer-consumers, respectively, determine their entitlement and suppliers. Paragraph (h) of this section provides special relief for purchasers which are denied access to a fuel source by Federal or State order.

(b) *Entitlements*—(1) *Wholesale purchaser-reseller.* A wholesale purchaser-reseller shall be entitled to receive a volume of an allocated product equal to the sum of the volumes allocable to it from each of its suppliers. The volume supplied to a wholesale purchaser-reseller by each of its suppliers shall equal the sum of (i) any amounts which that purchaser has certified to a supplier to be for ultimate use under an allocation level not subject to an allocation fraction plus (ii) the product of that supplier's allocation fraction multiplied by an amount equal to that part of that wholesale purchaser's base period use purchased or obtained from that supplier minus any amounts which that purchaser has certified to be for ultimate use under an allocation level not subject to an allocation fraction.

(2) *Wholesale purchaser-consumers and end-users.* A wholesale purchaser-consumer or end-user shall be entitled to receive a volume of an allocated product equal to the sum of the volumes allocable to it from each of its suppliers. The volumes supplied to a wholesale purchaser-consumer or end-user by each of its suppliers shall equal the sum of (i) that part of the wholesale-purchaser's or end-user's allocation requirements supplied directly by that supplier under

an allocation level not subject to an allocation fraction plus (ii) that part of the wholesale purchaser's or end-user's allocation requirements supplied by that supplier under an allocation level subject to an allocation fraction.

(c) *Base period volume determination.* (1) By July 1, 1974, each supplier which was not previously subject to this paragraph prior to May 1, 1974 and which sells an allocated product to a wholesale purchaser or end-user entitled to an allocation level which is a percentage of a base period use shall report to each of those purchasers with respect to each allocated product, the volume of product which it sold to or transferred to that purchaser in each base period.

(2) If, after receipt of a supplier's report, a purchaser questions the accuracy of a supplier's report, it shall notify that supplier and attempt to resolve the disagreement as to base period purchases of the purchaser.

(3) If the supplier and purchaser are unable to resolve their differences, the supplier shall commence allocations based on the supplier's records, in accordance with the allocation provisions in this part, and the purchaser should make application to the appropriate FEO regional office for a corrected base period volume in accordance with FEO forms and instructions. Copies of the purchaser's records for base period purchases should be included with the application.

(4) If the FEO determines that the purchaser's application for a corrected base period volume is valid, it may order the supplier to adjust the purchaser's base period volume and to supply the purchaser with additional volumes of the allocated product equal to the adjusted amount the purchaser should have received if allocation had initially been based on the corrected base period volume.

(d) *Determination of amounts not subject to an allocation fraction.* (1) Any wholesale purchaser-reseller which directly supplies end-users or wholesale purchaser-consumers entitled to an allocation level of 100 percent of current requirements which is not subject to an allocation fraction shall certify its requirements for such end-users or wholesale purchaser-consumers on an annual basis to its supplier (consistent with any energy conservation program such as the temperature reduction restrictions found in that end-user's allocation level). Any increase above the initial level of allocation requirements certified shall also be certified to the supplier. In the event that the wholesale purchaser-reseller and its supplier cannot agree on the volume which the wholesale purchaser-reseller is entitled to receive to meet the requirements of the end-user and the wholesale purchaser-consumer customers of the wholesale purchaser-reseller, an application for validation may be referred by the wholesale purchaser-reseller to FEO. During the period that a request for validation is pending, the supplier shall supply the wholesale purchaser-reseller at the level of requirements which is not disputed by the supplier. If the FEO determines that the wholesale purchaser-reseller is entitled to increased requirements in excess of those supplied by the supplier during the period that the request for validation is pending, FEO may order the supplier to supply such increased requirements and to supply the wholesale purchaser-reseller with additional volumes of the allocated product equal to the amount the wholesale purchaser-reseller would have received if the increased requirements had been supplied during such period.

(2) All suppliers which receive a certification of allocation requirements not subject to an allocation fraction pursuant to paragraph (d)(1) of this section or which receive a certification from any other supplier of allocation requirements not subject to an allocation fraction which have been certified to that other supplier shall in turn certify to their suppliers such allocation requirements not subject to an allocation fraction.

(3) Any end-user or wholesale purchaser-consumer engaged in agricultural production and entitled to an allocation level of 100 percent of current requirements not subject to an allocation fraction which disputes the certification of such requirements by its supplier, or any supplier which disputes the entitlement claimed by any wholesale purchaser-consumer or end-user engaged in agricultural production may apply to the Agricultural Stabilization and Conservation Service Office for assistance in mediating the dispute. Whenever a wholesale purchaser-consumer or end-user entitled to an allocation level not subject to an allocation fraction contends that it is not being supplied with 100 percent of its current requirements, such wholesale purchaser-consumer or end-user may apply to the regional FEO for validation of the amounts of its current requirements.

(4) Within five (5) days of the end of each period which corresponds to a base period, wholesale purchaser-resellers certifying pursuant to this paragraph shall certify to their suppliers the quantity of product delivered by the wholesale purchaser-reseller to end-users and wholesale purchaser-consumers for uses under an allocation level not subject to an allocation fraction during the period and shall certify that none of the quantity of product delivered to the wholesale purchaser-reseller by the supplier for delivery to end-users and wholesale purchaser-consumers for uses under an allocation level not subject to an allocation fraction was diverted to other uses during the period. Any quantities of product delivered for a period which corresponds to a base period to a wholesale purchaser-reseller for delivery to end-users and wholesale purchaser-consumers for uses under an allocation level not subject to an allocation fraction which is not delivered by the wholesale purchaser-reseller to such users during the period shall be used to adjust the quantity of product to be received by the wholesale purchaser-reseller for such uses in a subsequent period which corresponds to a base period. Suppliers shall in turn make adjustments to reflect adjustments made by suppliers of a wholesale purchaser-reseller under this subparagraph.

(e) *New wholesale purchasers.* Wholesale purchasers which do not have base period suppliers and wholesale purchasers whose base period suppliers are unable to supply them with sufficient amounts of an allocated product shall be supplied as provided in this paragraph.

(1) *Mutual arrangements for wholesale purchaser-consumers.* Wholesale purchaser-consumers without a base period supplier or a new supplier as provided in § 211.10(e)(1) are encouraged to make mutually acceptable arrangements with suppliers. Suppliers are encouraged to continue any existing supplier/purchaser relationships with such wholesale purchaser-consumers and to accept wholesale purchaser-consumers as new purchasers.

(i) Wholesale purchaser-consumers without a base period supplier or a new supplier as provided in § 211.10(e)(1) and existing or prospective suppliers may agree upon a proposed base period volume for the wholesale purchaser-consumer.

(ii) The supplier shall within 10 days of making the mutual arrangement notify FEO by certified mail in accordance with FEO forms and instructions of the proposed base period volume and the basis upon which the proposed base period volume was determined. In no event may the supplier commence delivery of any quantity of an allocated product pursuant to the proposed base period volume prior to the required notification to the FEO. The proposed base period volume is subject to adjustment by FEO. FEO may also assign the wholesale purchaser-consumer to another supplier.

(iii) After FEO has been notified by the supplier and during the period that FEO has the proposed supplier/purchaser relationship (including the proposed base period volume) under consideration, the supplier may provide the wholesale purchaser-consumer with interim supplies in accordance with the proposed base period volume.

(2) *New wholesale purchaser-resellers.* (i) Suppliers which have accepted as new purchasers wholesale purchaser-resellers prior to June 1, 1974, shall notify the FEO of the names of all such new purchasers, the proposed base period volume for each purchaser and the basis upon which the proposed base period volume was determined. The proposed base period volume is subject to adjustment by FEO. FEO may also assign the wholesale purchaser-reseller to another supplier. Suppliers may provide interim supplies to such wholesale purchaser-resellers pending FEO assignment of a supplier and a base period volume.

(ii) Wholesale purchaser-resellers without a base period supplier or a new supplier as provided in § 211.10(e)(1) must apply to FEO for assignment to a supplier and for assignment of a base period volume.

(iii) Firms which intend to operate new retail sales outlets should advise FEO as soon as practicable (preferably before construction begins) of their intention and the anticipated base period volume requirements for such new retail sales outlets.

(iv) Suppliers shall not make interim deliveries to wholesale purchaser-resellers or retail sales outlets covered by paragraphs (e)(2)(ii) and (e)(2)(iii) of this section until FEO has assigned a supplier and a base period volume to the wholesale purchaser-reseller or the retail sales outlet.

(3) *Assignments.* Any wholesale purchaser which does not have a base period supplier or a new supplier as provided in § 211.10(e)(1) (including all wholesale purchaser-consumers which cannot locate a supplier under paragraph (e)(1) of this section) or whose base period supplier(s) or new supplier as provided in § 211.10(e)(1) is unable to supply it with sufficient amounts of an allocated product may petition FEO as provided in Part 205 of this Chapter to be assigned a supplier and a base period volume on an interim or permanent basis.

(i) To the extent practicable, the FEO shall continue any existing supplier/purchaser relationships in making such assignments.

(ii) The wholesale purchaser shall certify to the FEO documented evidence justifying its proposed base period volume as normal and reasonable for the intended use.

(iii) FEO may assign the wholesale purchaser to one or more suppliers and will assign a base period volume to the wholesale purchaser when the assignment to a supplier(s) is made. In assigning base period volumes, FEO will consider, among other relevant criteria, the quantity of allocated product previously sold or purchased at the purchaser's site, the projected volume as calculated prior to construction of the purchaser's site, and the criteria specified in § 211.13(c)(1).

(4) Any assigned base period volume under the provisions of this paragraph will be deemed to have been adjusted for growth under § 211.13(b) through the date of the assignment and may be adjusted thereafter under the provisions of § 211.13 (c) or (d). Base period volumes will not be assigned on any basis which gives a wholesale purchaser which is a new purchaser an unfair advantage over wholesale purchasers which have base period suppliers or new suppliers as provided in § 211.10(e).

(5) Any purchaser which is assigned to or accepted by a supplier under the provisions of this paragraph shall be accepted by the supplier for the duration of the program or until otherwise directed by the FEO.

(f) *New end-users.* (1) Suppliers to the maximum extent possible shall accept new end-users where such purchaser, under normal business practices, could logically have been served by the supplier in accordance with its base period business practices. Suppliers shall allocate to new end-users in a manner consistent with the allocation methods set forth in this chapter.

(2) If the supplier and new end-user cannot agree on an allocation requirement for the end-user or if the end-user cannot locate a supplier, the end-user may apply to the appropriate State office in accordance with the procedure specified in Subpart I of Part 205 of this chapter. In this event, the new end-user shall certify to the State office documented evidence justifying the proposed allocation requirement as normal and reasonable for the intended use.

(g) *End-user and wholesale purchaser-consumer importers.* End-users and wholesale purchaser-consumers which import an allocated product in excess of the volumes which they imported in the base period, and end-users and wholesale purchaser-consumers which have not previously imported an allocated product may import that product for their own use subject to § 211.10(g)(8). Such imports will not otherwise affect their allocation entitlement except to the extent that FEO determines that such imports, without a reduction in domestic allocation entitlements, are inconsistent with the objectives of the Act. Should the circumstances warrant, FEO may require that such imports be allocated to other end-users or suppliers. End-user and wholesale purchaser-consumer importers are required to report to both national and regional FEO as provided in § 211.225.

(h) *Curtailment of certain energy sources by Federal or State rule or order.* Any end-user or wholesale purchaser-consumer which has been denied access to a source of energy other than an allocated product as a consequence of curtailment by, or pursuant to, a plan filed in compliance with a rule or order of a Federal or State agency, or where the end-user's or wholesale purchaser-consumer's supply of such fuel is unobtainable by reason of an abandonment of service permitted or ordered by a Federal or State agency may apply to the FEO, under the provisions of this section as a new purchaser for an allocated product, provided, however, that a wholesale purchaser which is an interruptible customer for a source of energy other than an allocated product shall continue its base period supplier/purchaser relationships for an allocated product.

§ 211.13 Adjustments to base period volume.

(a) *Scope.* (1) The adjustment procedures under this section are applicable to the allocation of propane, butane, motor gasoline, middle distillate, aviation fuels (except allocations to civil air carriers), and residual fuel oil (except allocations to utilities) and other products subject to Subpart K of this part. This section describes the means by which wholesale purchasers and end-users may receive adjustments to their base period volumes. All adjustments made pursuant to this section are subject to verification by FEO audit.

(2) Paragraph (b) of this section provides for supplier-initiated and wholesale purchaser-initiated adjustments of a wholesale purchaser's base period volumes for each month of the appropriate base period year for unusual growth based upon actual sales volumes in 1972 and 1973. Paragraph (c) of this section provides for an adjustment of wholesale purchasers' and certain end-users' base period uses to account for changed circumstances. Paragraph (d) of this section provides an adjustment to base period uses when increased requirements are certified by end-users and wholesale purchaser-consumers entitled to receive an allocation level of 100 percent of current requirements subject to an allocation fraction.

(3) Paragraph (e) of this section requires non-discrimination between wholesale purchasers in granting adjustments. Paragraph (f) of this section requires purchasers to certify applications for adjustments.

(b) *Adjustments for unusual growth—*(1) *Supplier-initiated wholesale purchaser unusual growth adjustment.* Wholesale purchasers which purchased an allocated product (other than residual fuel oil which is assigned 1973 base periods) shall receive a supplier-initiated adjustment to their base period volumes by their suppliers to compensate for unusual growth between the 1972 base periods and the corresponding months in 1973.

(i) For purposes of this paragraph, that part of any growth which exceeds 10 percent for the periods compared for motor gasoline or 5 percent for the periods compared for any other allocated product is defined as "unusual growth." Wholesale purchasers will be granted an adjustment only for that part of growth which was in excess of 10 percent for motor gasoline and 5 percent for other allocated products.

(ii) A supplier shall adjust the base period volume for unusual growth in each month of the base period year for each wholesale purchaser which purchased the allocated product from the supplier in 1972. There is no requirement that a wholesale purchaser apply to the supplier for this adjustment. A supplier shall make the adjustment without a request by the wholesale purchaser to the extent that the supplier's records indicate that any wholesale purchaser is eligible for the adjustment.

(iii) The adjustment made pursuant to this paragraph shall be based upon a comparison of the volume of the allocated product purchased from the supplier in 1972 and the volume purchased in 1973. If the supplier did not supply the wholesale purchaser for all of 1972 the adjustment shall be made by a com-

parison of the volume for the period in 1972 that the supplier did supply the wholesale purchaser and the volume purchased by the wholesale purchaser during the corresponding period of 1973. A wholesale purchaser's 1973 volume in excess of its 1972 volume shall be expressed as a percentage of the 1972 volume to determine growth rate. Unusual growth shall then be determined by subtracting from the growth rate the appropriate percentage figure set forth in subparagraph (i) above. The resulting percentage shall be multiplied by the wholesale purchase's base period volume for each base period for which the supplier is obligated to supply the wholesale purchaser to provide the amount by which each base period volume shall be increased for unusual growth.

EXAMPLE: Firm A, a wholesale purchaser, purchased 100,000 gallons of motor gasoline from Firm B in 1972 and 150,000 gallons in 1973. Firm A's 1973 growth rate is 50 percent (1973 volume minus 1972 volume divided by 1972 volume). Firm A's unusual growth is 40 percent (that growth in excess of first 10 percent). Firm B therefore will increase by 40 percent each of Firm A's base period volumes (the volumes sold in each month of 1972) to be supplied by Firm B.

(iv) Unusual growth adjustments under this paragraph shall be certified by the supplier in accordance with FEO forms and instructions and filed with FEO.

(v) The adjustments under this paragraph shall be made by the supplier, and the certified form required by paragraph (b)(1)(iv) of this section, shall be filed with FEO on or before July 1, 1974. There is no requirement that FEO validate any adjustment made under this paragraph. Suppliers shall commence deliveries on the basis of adjustments to base period volumes which reflect unusual growth no later than July 1, 1974. A supplier may commence deliveries of an allocated product reflecting adjustments to base period volumes for unusual growth prior to July 1, 1974, provided that adjustments for all of its eligible wholesale purchasers of that allocated product have been made and such deliveries are commenced at the same time for all such wholesale purchasers.

(vi) Suppliers shall notify all wholesale purchasers for each base period of the base period year of any adjustment for unusual growth made under this subparagraph. The notice shall be given on or before July 1, 1974.

(vii) Each supplier shall notify all of its wholesale purchasers which do not receive an adjustment under this subparagraph. The notice shall be given on or before the date the required certified form is filed with FEO. The notice shall advise each such wholesale purchaser that it may apply to the supplier for an adjustment to base period volume(s) for unusual growth under paragraph (b)(3) of this section.

(viii) No wholesale purchaser which has received an adjustment for unusual growth in 1973 shall receive an additional adjustment under this paragraph except to the extent that such initial adjustment did not fully compensate the wholesale purchaser for unusual growth as allowed by this subparagraph. A supplier shall not decrease the base period volume (or adjusted base period volume) of a wholesale purchaser under this subparagraph if that purchaser's 1973 volume is less than that purchaser's 1972 volume.

(ix) No wholesale purchaser shall accept an adjusted base period volume initiated by a supplier under this paragraph which, when combined with the adjusted base period volumes supplied to the wholesale purchaser by its other base period suppliers, would exceed the wholesale purchaser's actual unusual growth for a base period. A wholesale purchaser offered such an adjusted base period volume shall immediately notify FEO in accordance with forms and instructions issued by FEO. The FEO may require suppliers of the wholesale purchaser to adjust the wholesale purchaser's base period volume as adjusted by its suppliers under this paragraph and to adjust the wholesale purchaser's future allocations to compensate for any excess product received by the wholesale purchaser.

(2) *Additional unusual growth adjustment for wholesale purchaser-resellers.* This subparagraph provides an additional adjustment for wholesale purchaser-resellers following an adjustment of their base period volume under paragraph (b)(1) above. If the base period volume of a wholesale purchaser-reseller as adjusted for unusual growth pursuant to paragraph (b)(1) of this section minus the 1973 allocation requirements of its purchasers for use under an allocation level which is not now subject to an allocation fraction is less than the wholesale purchaser-reseller's adjusted base period volume minus such allocation requirements as calculated under this paragraph, the wholesale purchaser-reseller may apply to its supplier for an adjustment to be calculated as follows:

(i) The wholesale purchaser-reseller will determine its 1972 volume less those volumes delivered to purchasers for use under an allocation level which is not now subject to an allocation fraction. A wholesale purchaser-reseller may calculate such volume by subtracting from its 1972 volume either:

(A) those actual volumes delivered in 1972 to purchasers for use under an allocation level which is not now subject to an allocation fraction and certified as accurate by the wholesale purchaser-reseller, or

(B) that volume which as a percentage of its 1972 volume corresponds to the percentage of the total volume delivered in 1973 to purchasers for use under an allocation level which is not now subject to an allocation fraction.

(ii) The wholesale purchaser-reseller will determine its 1973 volume less those volumes delivered in 1973 to purchasers for use under an allocation level which is not now subject to an allocation fraction.

(iii) The wholesale purchaser-reseller may then calculate its unusual growth adjustment using its 1972 and 1973 volumes less the volume in both years delivered to purchasers for use under an allocation level which is not now subject to an allocation fraction as otherwise provided in subparagraph (1) of this paragraph.

(iv) If the aggregate adjusted base period volumes calculated under this subparagraph are greater than the aggregate adjusted base period volumes calculated under paragraph (b)(1) of this section minus the 1973 allocation requirements of the wholesale purchaser-reseller's purchasers which are not subject to an allocation fraction, then the wholesale purchaser-reseller's aggregate adjusted base period volumes may be further adjusted to reflect the difference between those two amounts.

EXAMPLE: Firm A, a wholesale purchaser, purchased 100,000 gallons of motor gasoline from Firm B in 1972 and 150,000 gallons in 1973. Firm B under paragraph (b)(1) notified Firm A that the base period volumes supplied by Firm B to Firm A would be increased by 40 percent. See example following b(1)(iii). Since the aggregate of Firm A's base period volumes is 100,000 gallons, the aggregate of Firm A's base period volumes (as adjusted under paragraph (b)(1)) will be 140,000 gallons (100,000+40 percent of 100,000).

The 1973 requirements of Firm A's purchasers for use under an allocation level not now subject to an allocation fraction was 90,000 gallons. Firm A does not know the actual sales to such purchasers for such uses in 1972. To determine whether Firm A is entitled to an adjustment under § 211.13(b)(2). Firm A makes the following calculations:

(1) Under § 211.13(b)(2)(i)(B) Firm A assumes that 60 percent of its 1972 sales were to purchasers for use under an allocation level not now subject to an allocation fraction because 60 percent of its 1973 sales were in this category (90,000 divided by 150,000). Firm A then determines that it sold 40,000 gallons to purchasers for use under an allocation level not now subject to the allocation fraction in 1972 by multiplying 60 percent times 100,000 and subtracting that product (60,000) from 100,000.

(2) Firm A's 1973 volume less those volumes delivered to purchasers for use under an allocation level not now subject to an allocation fraction is 60,000 (150,000 −90,000).

(3) Firm A next calculates its unusual growth adjustment using its 1972 and 1973 volumes less the volume in both years delivered to purchasers for use under an allocation level not now subject to an allocation fraction. Firm A's 1973 growth rate using this method of calculation is 50 percent (60,000−40,000 divided by 40,000). Firm A's unusual growth rate is 40 percent (that growth in excess of 10 percent). If Firm A increases its 1972 volume less the volume delivered to purchasers for use under an allocation level but not now subject to an allocation fraction, by 40 percent, the volume will be 56,000 (40,000 plus 40 percent of 40,000).

(4) Firm A then calculates its aggregate base period volumes adjusted for unusual growth pursuant to § 211.13(b)(1) which is 140,000 gallons. That volume minus the 1973 volume sold to purchasers for use under an allocation level not subject to an allocation

fraction equals 50,000 gallons (140,000 −90,000).

(5) Since the aggregate adjusted base period volumes calculated under paragraph (3) of this example are greater than the aggregate adjusted base period volumes as calculated under paragraph (4) of this example, Firm A may apply to Firm B for an additional adjustment to its aggregate base period volumes of 6,000 gallons (56,000 minus 50,000). Firm A's newly aggregated adjusted base period volumes will then equal 146,000 gallongs (140,000 + 6,000). If Firm B supplied Firm A in each month of 1972, Firm B will increase each base period volume as adjusted under b(1) by 500 gallons (6,000 divided by 12).

(3) *Wholesale purchaser initiated unusual growth application.* (i) Any wholesale purchaser which does not receive an adjustment under paragraph (b)(1) of this section or which disputes the adjustment made thereunder by one of its suppliers may apply to that supplier for an adjustment of its base period volume to compensate for unusual growth in 1973 in accordance with FEO forms and instructions.

(ii) Any adjustment made under this subparagraph shall be based solely on actual volumes supplied or purchased in 1972 and 1973 as indicated by the records of the supplier and the wholesale purchaser. Unusual growth has the same meaning under this subparagraph as under paragraph (b)(1) of this section. Adjustments to base period volumes for unusual growth under this subparagraph shall be calculated in the same manner as such adjustments under paragraph (b)(1) of this section.

(iii) Base period suppliers of wholesale purchasers shall include in an adjustment for unusual growth their proportionate share of that part of a wholesale purchaser's 1973 volume which was not supplied to that wholesale purchaser by a base period supplier of the wholesale purchaser. Wholesale purchasers shall certify to their base period suppliers the 1973 volumes purchased by the wholesale purchaser from suppliers which were not base period suppliers of the wholesale purchaser. A base period supplier's share of such 1973 volumes shall be equal to that supplier's proportionate share of the 1972 volumes supplied to the wholesale purchaser by all suppliers which supplied that purchaser during the base period.

(iv) Upon receipt of an application for unusual growth under this subparagraph, the supplier shall adjust the wholesale purchaser's base period volume within ten (10) days. If the supplier disagrees with the application, it may request validation from the appropriate regional FEO; *Provided, however,* That the supplier shall immediately make an interim adjustment to the applicant's base period volume commencing with the first period which corresponds to a base period and which commences later than twenty (20) days after receipt of the application in the proposed adjusted amount during the pendency of any FEO validation proceeding. If the FEO validation proceeding results in an adjusted amount less than that supplied during the pendency of such proceeding, FEO may require the supplier to adjust the wholesale purchaser's future allocations to compensate for any excess product supplied during the interim period.

(v) No wholesale purchaser which has received an adjustment for unusual growth in 1973 shall receive an additional adjustment under this subparagraph except to the extent that such initial adjustment did not fully compensate the wholesale purchaser for unusual growth as allowed by this subparagraph.

(c) *Adjustments for changed circumstances*—(1) *Wholesale purchasers.* Wholesale purchasers may apply to the FEO pursuant to § 205.22 of this chapter for adjustments to their base period use for changed circumstances since January 1, 1973, which have not been reflected in an adjustment under paragraph (b) of this section. In processing such applications, the FEO may consider situations that indicate a need for increased amounts over base period use including but not limited to plant expansions, changed traffic patterns, closed retail sales outlets which have caused increased demand upon remaining retail sales outlets, changes in the local economy, unusual seasonal fluctuations, new population, industrial growth, acceptance of new end-users or unusual growth problems such as could occur at truck stops on new highways. A wholesale purchaser-reseller which operated in a marketing area that experienced unusual growth or other changed circumstances during 1973 but which was unable to increase its sales to meet the increased demand because its supplier imposed an allocation fraction under the Voluntary Petroleum Allocation Program may apply for an adjustment under this paragraph.

(2) *End-users.* End-users whose allocation level is a percentage of base period use may apply to the appropriate State office to receive an adjustment to their base period volume for changed circumstances after January 1, 1974. The State office shall process the petition for adjustment and make recommendations to the FEO in accordance with the procedure specified in Subpart I of Part 205 of this chapter.

(3) Wholesale purchasers and end-users shall submit their applications for adjustments to their base period use under this paragraph to their suppliers prior to submission to FEO or the appropriate State office. The supplier shall certify information with respect to the application in accordance with forms and instructions issued by FEO and submit the application together with its certification to FEO or the appropriate State office not later than ten (10) days following receipt of the application from the wholesale purchaser or end-user.

(4) *FEO action.* FEO shall only make adjustments for changed circumstances when there are compelling situations requiring relief. Such adjustments shall be based upon applications which are fully supported by detailed facts, figures and other relevant documentation.

(d) *Adjustments for increased current requirements.* (1) Any end-user or wholesale purchaser-consumer entitled to an allocation level of 100 percent of current requirements which is subject to an allocation fraction shall certify to its supplier any increased requirements (consistent with any energy conservation program such as the temperature reduction restrictions found in that end-user's allocation level) above the level of requirements on January 1, 1974. In the event that the end-user or wholesale purchaser-consumer and supplier cannot agree on a volume to be supplied, an application for validation may be referred by the end-user or wholesale purchaser-consumer to the office specified in § 205.13 of this chapter.

The request for validation shall be made in accordance with forms and instructions issued by FEO and may be made not sooner than ten (10) days after the certification has been presented to the supplier. During the period that a request for validation is pending, the supplier shall supply the wholesale purchaser-consumer or end-user at the level of requirements which is not disputed by the supplier. If the FEO determines that the purchaser is entitled to increased requirements in excess of those supplied by the supplier during the period that the request for validation is pending, FEO may order the supplier to supply such increased requirements and to supply the purchaser with additional volumes of the allocated product equal to the amount the purchaser would have received if the increased requirements had been supplied during such period.

The FEO may subsequently require the supplier to adjust such end-user's or wholesale purchaser-consumer's allocation requirements to compensate for any excess product supplied during the validation period.

(2) All suppliers which, in their capacity as wholesale purchaser-resellers, receive a certification of increased requirements pursuant to paragraph (d)(1) of this section or which receive a certification from any other supplier of increased requirements which have been certified to that other supplier, shall in turn certify to their suppliers these increased requirements and be assigned a proportionate adjustment to that part of their base period volume received from each supplier to cover the certified increases in volume granted under this paragraph.

(3) End-users and wholesale purchaser-consumers which claim increases under this paragraph must be prepared to establish their historic requirements and justify their increased requirements.

(e) *Non-discrimination among wholesale purchasers.* In granting adjustments to base period use under this section, the supplier shall not discriminate among branded independent marketers, nonbranded independent marketers and wholesale purchaser-resellers operated by the supplier.

(f) *Certifications and downward adjustments of base period uses.* The chief executive officer (or his authorized agent) of a purchaser applying to a supplier for an adjustment under this section shall certify such application for

accuracy. Such applications shall contain a statement that increased allocations shall be used only for the purpose stated in the application, shall not be diverted for other uses; and that if its needs decline, the purchaser shall file an amended application for a downward adjustment to its base period use.

§ 211.14 **Redirection of products.**

(a) To meet imbalances that may occur in the supplies of any allocated product, the regional or National FEO may order the transfer of specified amounts of any such product from one area to another or may order that different allocation fractions be used in different areas. An area, as used in this section, means a State, a group of States within a region, or any geographical part of a State or States within a region. The National FEO may also order the transfer of specified amounts of any allocated product from one region to another region or may order that different allocation fractions be used in different regions to meet such imbalances. Further, the FEO may transfer supplies of allocated products among suppliers in order to remedy supply imbalances. The regional or National FEO will not order the transfer of an allocated product under this section from one area within a State to another within the State without the receipt of a recommendation by the State Office.

(b) Refiners and importers are authorized to reduce the monthly allocable supply to purchasers of those allocated products covered under Subparts D, E, F, G, H (except Civil Air Carriers) and I (except utilities) for any region or area by up to five (5) percent and to increase the total quantity of any of these allocated products available in another region or area experiencing shortages significantly greater than are being experienced elsewhere in the nation to meet regional imbalances due to weather variation, seasonal demand, or other circumstances beyond their control. Such action may be accomplished without prior approval from the Administrator, FEO, but must be reported immediately after the adjustment occurs to the National FEO, the appropriate regional FEO, and the State Office of any State within a region or area directly affected by the reduction or increase. Redistribution involving reduction of product volumes greater than five (5) percent from any State shall require approval from the Administrator, FEO, prior to any action by any refiner or importer. The adjustment provided for in this section shall not be cumulative. Allocation fractions for a region or area which are reduced by such a reduction of an allocated product shall be returned to prereduction levels as soon as practicable.

(c) Shifts made pursuant to paragraph (b) of this section shall be employed solely to effect a better regional distribution of allocated products and shall not discriminate against branded or nonbranded independent marketers, independent refiners, or small refiners.

(d) Any refiner, importer, or other supplier which has significantly reduced or which intends to reduce marketing or distribution activities in any region or area and which is required by FEO regulations to supply its base period and assigned wholesale purchasers in that region or area may apply to the National FEO to seek a change in the method of supplying such wholesale purchasers. The FEO may order the reassignment of wholesale purchasers or end-users from one supplier to another. Pending action by the National FEO on such application, such refiners, importers and suppliers are under a continuing obligation to provide allocations to all their base period and assigned wholesale purchasers in any region or area either directly or through a substitute supplier in accordance with § 211.25.

§ 211.15 **State offices of petroleum allocation.**

(a) Any state may apply to the National Office of the FEO, to create a State Office of Petroleum Allocation within the State.

(b) Upon certification by the FEO such State Office of Petroleum Allocation will be delegated authority to administer the state set-aside program, to provide assistance in obtaining adjustments specified in § 211.13 and such other authorities specified in this part, or in orders issued by the FEO.

§ 211.17 **State set-aside.**

(a) *Scope and purpose.* A state set-aside system shall be established for propane, middle distillate, motor gasoline and residual fuel oil (except as used by utilities or as bunker fuel for maritime shipping). Authority may be delegated to a State office to administer the state set-aside for that State. The state set-aside shall be utilized by a State office to meet hardship and emergency requirements of all wholesale purchaser-consumers and end-users within that state from the state set-aside volumes, including wholesale purchaser-consumers and end-users which are part of any governmental organization. To facilitate relief of the hardship and emergency requirements of wholesale purchaser-consumers and end-users, the State office may direct that a wholesale purchaser-reseller be supplied from the state set-aside in order that the wholesale purchaser-reseller can supply the wholesale purchaser-consumers and end-users experiencing the hardship or emergency.

(b) *State set-aside volume.* (1) A prime supplier shall inform each appropriate State office and each appropriate regional FEO office monthly in accordance with § 211.222(b) by each product subject to State set-aside, of the estimated volume of each product to be sold into that State for consumption within that State.

(2) The FEO shall determine the state set-aside percentage level for each product. The initial percentage levels for the state set-aside system are specified in appropriate subparts of this part. The FEO will publish any changes in these percentages.

(3) The set-aside volume available to a State office for a particular month shall be the sum of the amounts calculated by multiplying the state set-aside percentage level by each prime supplier's estimated portion of its total supply for that month which will be sold into that State's distribution system for consumption within the State.

(4) The state set-aside for a particular month cannot be accumulated or deferred; it shall be made available from stocks of prime suppliers whether directly or through their wholesale purchaser-resellers.

(c) *State representative.* Each supplier shall designate a representative within each State in which the supplier is a prime supplier to act for and in behalf of the prime supplier with respect to state set-aside petitions and assignments from the state set-aside to be supplied by that prime supplier. Each prime supplier for a State shall designate its representative for that State and shall notify in writing the appropriate State office of such designation by June 15, 1974. The designated representative for a State shall be a firm which maintains a place of business within the State. The State office shall to the maximum extent possible consult with a prime supplier's representative prior to issuing any authorizing document affecting state set-aside volumes to be provided by the prime supplier.

(d) *State action.* (1) All hardship and emergency petitions for assignment from the state set-aside and appeals shall be filed with and resolved by the appropriate State office in accordance with Subpart I of Part 205. Petitioners shall identify their existing supplier, or if they do not have a supplier, at least two suppliers which the petitioner has contacted and which could provide the allocated product. The final decision afforded by the State office on an appeal from a hardship or emergency petition shall be subject to judicial review in the manner prescribed by section 211 of the Economic Stabilization Act of 1970.

(2) If a State office approves a hardship or emergency petition, it shall assign a prime supplier and amount from the state set-aside to the petitioner. To determine an appropriate prime supplier, the State office may coordinate with the State representatives of the prime suppliers.

(e) *Authorizing document.* The State office shall issue to the purchaser granted an assignment a document authorizing the assignment. A copy of the authorizing document (or a summary) shall also be provided by the State office to the designated State representative of the prime supplier assigned to the purchaser. An authorizing document issued by the State office pursuant to this section is effective upon issuance and represents a call on the prime supplier's set-aside volumes for the month of issuance, irrespective of the fact that delivery of the product subject to the authorizing

document cannot be made until the following month. Any authorizing document not presented to either the prime supplier or a designated local distributor of the prime supplier within ten (10) days of issuance shall expire after that time.

(f) *Supplier's responsibilities.* Suppliers shall provide the assigned amount of an allocated product to a purchaser when presented with an authorizing document. The authorizing document shall entitle the purchaser to receive product from any convenient local distributor of the prime supplier from which the set-aside assignment has been made. Wholesale purchaser-resellers of prime suppliers shall, as non-prime suppliers, honor such authorizing documents upon presentation, and shall not delay deliveries required by the authorizing document while confirming such deliveries with the prime supplier. Any non-prime supplier which provides an allocated product pursuant to an authorizing document shall in turn receive from its supplier an equivalent volume of the allocated product which shall not be considered part of its allocation entitlement otherwise authorized by this part.

(g) *Prime suppliers.* All prime suppliers shall supply products from their state set-aside volume each month, as directed by the State office, not to exceed the total state set-aside volume for each product for that month. That portion of a prime supplier's state set-aside volume for a particular month which is not allocated by the State office during that month or which is not subject to an authorizing document issued no later than the last day of that month shall become a part of the prime supplier's total supply for the subsequent month and shall be distributed according to the allocation procedures set forth in this part.

(h) *Release of State set-aside.* (1) At any time during the month, the State Office may order the release of part of all of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the State.

(2) From time to time, the State office may designate certain geographical areas within the State as suffering from an intra-State supply imbalance. At any time during the month, the State office may order some or all of the prime suppliers with purchasers within such geographical areas to release part or all of their set-aside volume through their normal distribution systems to increase the allocations of all of the supplier's purchasers located within such areas.

(3) Orders issued pursuant to this paragraph shall be in writing and effective immediately upon presentation to the prime supplier's designated State representative. Such orders shall represent a call on the prime supplier's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

§ 211.21 Energy conservation.

To promote the goal of increased energy conservation, every wholesale purchaser or end-user receiving an allocation pursuant to the operation of this part shall certify that it has an energy conservation program in effect. Every end-user or wholesale purchaser-consumer whose allocation level is one hundred (100) percent of current requirements for any allocated product shall make a similar certification to its supplier.

§ 211.22 Administrative actions.

(a) *Inventories of crude oil and allocated products.* No refiner, importer, wholesale purchaser or end-user shall accumulate inventories of any crude oil or allocated product which exceed customary inventories maintained by that refiner, importer, wholesale purchaser or end-user in the conduct of its normal business practices unless otherwise directed by the FEO. Normal inventory practices shall be observed in determining allocable supplies of crude oil or allocated products in each period which corresponds to a base period. The FEO may review inventory practices and direct an increase or decrease in inventories if:

(1) The inventory practices employed are inconsistent with the provisions of this part;

(2) The inventory practices circumvent or otherwise violate other provisions of this part; or

(3) The FEO determines that an adjustment is necessary in order to allocate crude oil or allocated product supplies consistent with the objectives of the Mandatory Petroleum Allocation Program.

(b) *Adjustment to calculations.* Upon a finding that incorrect or otherwise inaccurate data have been used in calculating the allocation of any crude oil or allocated product subject to this part, the FEO may take appropriate action to adjust any such figures or data and any allocations based thereon to account for the error.

§ 211.23 Normal business practices.

Nothing in this part is intended to exclude or supersede exchange or borrow/payback operations which are normal operating procedures provided these procedures are not used to circumvent the intent of this part.

§ 211.25 Supplier substitution.

(a) Any supplier may arrange to supply any purchaser which is entitled to receive an allocation from it through another supplier or suppliers in accordance with normal business practices. The purchaser shall, however, be entitled to receive the same amount of an allocated product from the substituted supplier that it would receive if it were directly supplied by the original supplier using that supplier's allocation fraction.

(b) In order to alleviate imbalances, suppliers may make normal business exchanges among themselves.

(c) To accommodate seasonal and other fluctuations in both supply and demand, such as requirements for agricultural production, suppliers and wholesale purchasers may agree between and among themselves either to borrow on future allocations or to defer current allocations or both on a volume for volume basis within the total allocations for one calendar year as long as such arrangements do not result in an involuntary reduction in allocations to other wholesale purchasers.

§ 211.26 Department of Defense allocations.

(a) Allocations of crude oil or any allocated product to the Department of Defense (except for housekeeping requirements) shall be supplied at an allocation level of one hundred (100) percent of current requirements without being subject to an allocation fraction.

(b) The Department of Defense shall report to the President on a semi-annual basis a bulk product purchase program, and, on an annual basis, the purchase program needed in support of the "Posts, Camps, and Stations", "Into-Plane Refueling" (at commercial/civil airports), "Marine Bunkers", and "Lubes, Greases and Specialty Products" programs. These programs shall take effect only following the approval of the President. Whenever necessary to assure that the Department of Defense is fully supplied with its current requirements, the Administrator, FEO, shall assign to suppliers the volumes of crude oil and allocated products to be allocated to the Department of Defense.

(c) The Defense Fuel Supply Center, which serves as the sole authorized procurement agency for the Department of Defense, shall be deemed a wholesale purchaser for purposes of this part.

(d) All Department of Defense requirements shall be consistent with ambient indoor temperature adjustments and other fuel saving measures taken in promoting the goal of increased energy conservation.

§ 211.27 Construction industry.

Any firm planning to award a construction contract to contractors (which may be wholesale purchaser-consumers or end-users) may apply as a new purchaser to a supplier or FEO as appropriate to be assigned a base period volume. The base period volume shall be estimated as the minimum amount sufficient to complete the proposed contract. Upon awarding the contract to a contractor, the assigned base period volume shall be transferred to the contractor by the FEO unless the contractor or its sub-contractors have a base period volume with suppliers in the area of the construction sufficient to perform the contract. If the contractor or its subcontractors have a base period volume with suppliers in the area of the construction sufficient to perform the contract, or if construction plans are terminated, FEO shall be notified by the firm and the contractor and any base period volume assigned for the construction shall terminate. To the extent that the base period volume established for the

construction is found to exceed construction requirements or the contractor or its sub-contractor has a base period volume with suppliers in the area of the construction partially sufficient to perform the contract, the firm and the contractor shall not accept any duplicating quantities and shall notify FEO immediately. Upon such notification, the FEO will adjust the base period volume accordingly. Contractors and suppliers are encouraged to arrange for exchange agreements between suppliers.

§ 211.28 Price.

The pricing provisions applicable to this part are provided in Part 212 of this chapter including provisions which allow any importer which imports an allocated product solely for his own end-use, and not for resale, to charge a margin for any volumes of that imported product it is required to sell under the provisions of this part.

§ 211.29 Synthetic Natural Gas Production.

Notwithstanding any inconsistent provision of § 211.12 and § 211.13 a firm which purchases crude oil and allocated products for use as feedstock in a synthetic natural gas plant which has requirements that exceed its base period volume or which has no base period volume may seek an adjustment of its base period volume or establishment of a base period volume only by application to National FEO, in accordance with forms and instructions issued by the FEO. Firms which plan to construct new synthetic natural gas plants after May 1, 1974 or enter into a plant expansion program should petition the FEO for assignment of supplier and a base period volume prior to commencing construction of such facilities. The FEO shall, in granting or denying such assignment or adjustment, consider along with the criteria listed in § 205.24 the following factors:

(a) The degree to which the wholesale purchaser has curtailed supplies of natural gas and synthetic natural gas;

(b) Projected synthetic natural gas consumption and projected market growth over the period of allocation;

(c) The source and volume of anticipated feedstocks; and

(d) Attempts by the firm to obtain alternative supplies of gas and/or feedstock sources.

2. Subpart B is revised to read as follows:

Subpart B—Definitions

§ 211.51 General definitions.

"Adjusted base period volume" means base period volume as adjusted pursuant to § 211.13 or as provided otherwise in Subparts D through K.

"Agricultural production" means all the activities classified under the industry code numbers specified in paragraph (a) below as set forth in the Standard Industrial Classification Manual, 1972 edition, except those industry code numbers listed in paragraph (b) which are excluded:

(a) *Activities included.* (1) All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in paragraph (b) of this section.

(2) All industry code numbers included in Major Group 20, Food and Kindred Products, of Division D, Manufacturing, including grain and seed drying, except as specified in paragraph (b) below; and

(3) All the following other industry code numbers:

1474	Potash, Soda and Borate Minerals (Potash mining only);
1475	Phosphate Rock;
2141	Tobacco Stemming and Redrying;
2411	Logging Camps and Logging Contractors;
2421	Sawmills and Planing Mills;
2819	Industrial Inorganic Chemicals, Not Elsewhere Classified (dicalcium phosphate only);
2873	Nitrogenous Fertilizers;
2874	Phosphatic Fertilizers;
2875	Fertilizers, Mixing Only;
2879	Pesticides and Agricultural Chemicals Not Elsewhere Classified;
4212	Local Trucking Without Storage (Farm to market hauling and log trucking only);
4971	Irrigation Systems (for farm use); and
5462	Retail Bakeries, Baking and Selling.

(b) *Activities excluded.* (1) All the following industry code numbers, otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:

0271	Fur-Bearing Animals and Rabbits (except rabbit farms which are included in the definition);
0279	Animal Specialties, Not Elsewhere Classified, (except apiaries, honey production and bee, catfish, fish and frog farms which are included in the definition);
0742	Veterinary Services for Animal Specialties;
0752	Animal Specialty Services;
0781	Landscape Counseling and Planning;
0782	Lawn and Garden Services; and
0849	Gathering of Forest Products, Not Elsewhere Classified.

(2) All the following industry code numbers, otherwise listed under Major Group 20, Food and Kindred Products, of Division D, Manufacturing, are excluded from the definition:

2047	Dog, Cat and Other Pet Food;
2067	Chewing Gum; and
2085	Distilled, Rectified and Blended Liquors.

"Allocable supply" means allocable supply as defined in § 211.10(b)(1).

"Allocated products" means residual fuel oil and refined petroleum products.

"Allocation fraction" means allocation fraction as defined in § 211.10(b).

"Allocation level" means allocation level as defined in § 211.10(b)(2)(iv).

"Allocation requirement" means allocation requirement as defined in § 211.10(b)(2)(iii).

"API" means American Petroleum Institute.

"Asphalt" means asphalt as defined in ASTM standard D-288.

"ASTM" means American Society for Testing Materials.

"Assignment" means an action taken by the FEO, or an authorized State official, designating that an authorized purchaser be supplied at an allocation entitlement level determined by the FEO or authorized State official, by a specified supplier.

"Base period" means the historical period designated in Subparts C through K of this part.

"Base period volume" means base period volume as defined in § 211.10(b)(2)(ii).

"Bonded fuels" means those fuels produced outside the customs limits of the United States, held in bond under continuous United States customs custody in accordance with Treasury Department Regulations, and destined for use outside of the United States, its territories or possessions.

"Branded independent marketer" means a firm which is engaged in the marketing or distributing of refined petroleum products pursuant to—

(a) An agreement or contract with a refiner (or a firm which controls, is controlled by, or is under common control with such refiner) to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner (or any such firm), or

(b) An agreement or contract under which any such firm engaged in the marketing or distributing of refined petroleum products is granted authority to occupy premises owned, leased, or in any way controlled by a refiner (or firm which controls, is controlled by, or is under common control with such refiner), but which is not affiliated with, controlled by, or under common control with any refiner (other than by means of a supply contract, or an agreement or contract described in paragraph (a) or (b) of this definition), and which does not control such refiner.

"Coker feedstock" means any crude oil or unfinished oil, as defined by Oil Import Regulation 1, Revision 5 (32A CFR OI Reg. 1.22(f)-(h)) which is used as a feedstock to any of the various types of process units in a refinery known as "cokers."

"Commercial use" means usage by those purchasers engaged primarily in the sale of goods or services and for uses other than those involving industrial activities and electrical generation.

"Complaint" means an allegation, supported by relevant facts, of a violation of the regulations or an order issued thereunder.

"Crude oil" means a mixture of liquid hydrocarbons including lease condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities.

"Current requirements" means the supply of an allocated product needed by an end-user or wholesale purchaser-consumer to meet its present supply requirements for a particular use of that product, but does not include any amounts which the end-user or wholesale purchaser-consumer (a) purchases or obtains for resale, (b) accumulates as an

inventory in excess of that purchaser's customary inventory maintained in the conduct of its normal business practices, or (c) uses in excess of the supply necessary to meet present supply requirements as constrained by the implementation of the energy conservation program required in § 211.21.

"Degree-day formula" means any one of the various systems in use by retailers to provide wholesale purchaser-consumers or end-users with automatic delivery service of an allocated product for space-heating.

"Degrees API" or "°API" is the hydrometer scale established by the American Petroleum Institute and used to measure the specific gravity of liquids.

"Emergency Services" means law enforcement, fire fighting, and emergency medical services.

"End-user" means any firm which is an ultimate consumer of an allocated product other than a wholesale purchaser-consumer.

"Energy production" means the exploration, drilling, mining, refining, processing, production and distribution of coal, natural gas, geothermal energy, petroleum or petroleum products, shale oil, nuclear fuels, and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, mining equipment and similar capital goods. Excluded from this definition are synthetic natural gas manufacturing and electrical generation whose power source is petroleum based.

"Ethane" means a hydrocarbon whose chemical composition is C_2H_6.

"FEO" means the National Federal Energy Office, the appropriate regional Federal Energy Office or the delegate of either.

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal Government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments. The FEO may, in regulations and forms issued in this part, treat as a firm:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (b) a parent and its consolidated entities, (c) an unconsolidated entity, or (d) any part of a firm.

"Gas processing plant" means a facility which recovers ethane, propane, butane, and/or other natural gas products by a process of absorption, adsorption, compression, refrigeration cycling, or a combination of such processes, from mixtures of hydrocarbons that existed in a reservoir.

"Importer" means any firm (excluding the Department of Defense) that owns at the first place of storage any allocated product or crude oil brought into the United States.

"Independent marketer" means either a branded independent marketer or a non-branded independent marketer.

"Independent refiner" means a refiner which (a) obtained, directly or indirectly, in the calendar quarter which ended immediately prior to November 27, 1973, more than 70 percent of its refinery input of domestic crude oil or 70 percent of its refinery input of domestic and imported crude oil from producers which do not control, are not controlled by, and are not under common control with such refiner, and (b) marketed or distributed in such quarter and continues to market or distribute a substantial volume of gasoline refined by it through branded independent marketers or non-branded independent marketers.

"Industrial use" means usage by those firms primarily engaged in a process which creates or changes raw or unfinished materials into another form or product.

"Interruptible customers" means those purchasers receiving an allocated product pursuant to a contract which can be abrogated unilaterally by the supplier.

"LPG" means liquefied petroleum gas, and includes propane and butane, and propane/butane mixes, but not ethane.

"Local governmental unit" means any county, city, or other governmental subdivision of a State, and any special purpose district.

"Lubricants" means all grades of lubricating oils which have been blended with the necessary lubricant additives so as to produce a lubricating oil composition in a form that is designed to be used for lubricating purposes in industrial, commercial and automotive use without further modification, and lubricating greases which are solid semi-fluid products comprising a dispersion of a thickening agent in a liquid lubricant, wherein said lubricating oils and lubricating greases are comprised of greater than 10 percent of refined petroleum products by weight.

"Medical and nursing buildings" means buildings that house medical, dental or nursing activities including, but not limited to those listed in Appendix I of 6 CFR 300.18–300.19, the use of clinics, hospitals, nursing homes and other facilities.

"Middle distillate" means any derivatives of petroleum including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which have a fifty percent boiling point in the ASTM D86 standard distillation test falling between 371° and 700° F. Products specifically excluded from this definition are kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in VV–F–815C or ASTM D–396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and all specialty items such as solvents, lubricants, waxes and process oil.

"Modified allocation level" means an allocation level used in accordance with the provisions of § 211.10(g) when a supplier's allocation fraction exceeds one (1.0).

"Motor gasoline" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine, whose major components are hydrocarbons with boiling points ranging from 140° to 390° F and whose source is distillation of petroleum and cracking, polymerization, and other chemical reactions by which the naturally occurring petroleum hydrocarbons are converted to those that have superior fuel properties.

"Natural gas" means natural gas as defined by the Federal Power Commission.

"Nonbranded independent marketer" means a firm which is engaged in the marketing or distribution of refined petroleum products, but which (a) is not a refiner, (b) is not a firm which controls, is controlled by, is under common control with, or is affiliated with a refiner (other than by means of a supply contract), and (c) is not a branded independent marketer.

"PAD District" or "District" means any of the Petroleum Administration for Defense (PAD) Districts.

"Passenger transportation services" means (a) surface, including water and rail facilities and services for carrying passengers whether publicly or privately owned, including tour and charter buses and taxicabs which serve the general public; and (b) bus transportation of pupils to and from school and school sponsored activities.

"Peak shaving" means the use of propane or butane mixtures to supplement supplies of pipeline gas for distribution by gas utilities during periods of high demand.

"Petrochemical feedstock use" means usage of crude oil, residual fuel oil, and refined petroleum products for processing in a petrochemical plant.

"Petrochemical plants" means those industrial plants, regardless of capacity, that process petrochemical feedstocks and obtain at least thirty (30) percent conversion, by weight, to petrochemicals or other products that are converted to petrochemicals, so long as the weight of hydrocarbon contained in the final petrochemical is equal to at least thirty (30) percent of the initial petrochemical feedstock fed to the plant under consideration.

"Petrochemicals" means the items defined as such in section 25A of Oil Import Regulation 1 (Revision 5), (32A CFR OI Reg. 1.25A).

"Petroleum coke" means a solid residue, the final product of the condensation process in cracking, consisting mainly of highly polycyclic aromatic hydrocarbons very poor in hydrogen, including petroleum coke which when calcinated yields almost pure carbon or artificial graphite suitable for production of carbon or graphite electrodes, structural graphite, motor brushes, dry cells, etc. It includes both forms listed below:

(a) *Marketable.* Those grades of coke produced in delayed or fluid cokers which may be recovered as relatively pure carbon. This "green" coke may be further purified by calcinating or may be sold in the "green" state.

(b) *Catalyst.* In many catalytic operations (i.e., catalytic cracking) carbon is deposited on the catalyst, deactivating the catalyst. The catalyst is reactivated by burning off the carbon, using it as a fuel in the refinery process. This carbon or coke is not recoverable in a concentrated form. For statistical purposes, the amount of catalyst coke may be estimated by using an average weight percent (1.5 percent—8.5 percent) of charging stock.

"Petroleum wax" means petroleum wax as defined in ASTM standard D–238.

"Prime supplier" means the supplier, or producer as defined in Subpart D, which makes the first sale of any allocated product subject to the state set-aside into the state distribution system for consumption within the state.

"Purchaser" means a wholesale purchaser, an end-user, or both.

"Refined petroleum product" means gasoline, kerosene, middle distillate (including Number 2 fuel oil), LPG, refined lubricating oils, or diesel fuel.

"Refineries" means those industrial plants, regardless of capacity, processing crude oil feedstock and manufacturing refined petroleum products, except when such plant is a petrochemical plant.

"Refiners" means those firms that own, operate or control the operations of one or more refineries.

"Refinery gas" means a form of gas normally produced in the refining of crude oil which is predominantly used for refinery fuel.

"Region" means one of the ten regions served by FEO's regional offices.

"Regional office" means a regional office of the FEO. The regional offices are located in Boston, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; Kansas City, Missouri; Denver, Colorado; San Francisco, California; and Seattle, Washington.

"Residential use" means direct usage in a residential dwelling or church or other place of worship for space heating, refrigeration, cooking, water heating, and other residential uses.

"Residual fuel oil" means the fuel oil commonly known as: (a) No. 4, No. 5 and No. 6 fuel oils; (b) Bunker C; (c) Navy Special Fuel Oil; (d) crude oil when burned directly as a fuel; and all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D–86 standard distillation test.

"Retail sales outlet" means a site on which a supplier maintains an on-going business of selling any allocated product to end-users or wholesale purchaser-consumers.

"Road oil" means any heavy petroleum oil, including residual asphaltic oils, used as a dust palliative and surface treatment of roads and highways. It is generally produced in six grades from 0, the most liquid, to 5, the most viscous.

"Sanction" means the penalties as described in Subpart F of Part 210 of this chapter.

"Sanitation services" means the collection and disposal for the general public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities during emergency conditions.

"School" means an educational institution up through the secondary level that maintains a regular facility and curriculum and has a regularly organized body of students, in attendance at the place where its educational activities are regularly carried on. It does not include post-secondary education facilities.

"Shortfall" means the difference between supply and demand for crude oil or an allocated product during any period.

"Small refiner" means a refiner whose total refinery capacity (including the refinery capacity of any firm which controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day.

"Social service agency use" means usage by private, non-profit social service agencies which operate programs for provision of essential health and welfare services.

"State" means each of the 50 States, the District of Columbia, Puerto Rico, possessions and territories of the United States, other than the Panama Canal Zone.

"State set-aside" means, with respect to a particular prime supplier, the amount of an allocated product which is made available from the total supply of a prime supplier pursuant to § 211.17 for utilization by a State to resolve emergencies and hardships due to fuel shortages. The state set-aside amount for a particular month and state is calculated by multiplying the state set-aside percentage level by the prime supplier's estimated portion of its total supply for that month which will be sold into that state's distribution system for consumption within the state. The initial state set-aside percentage level for an allocated product is specified in the appropriate subpart for that product but is subject to change by notice of the FEO.

"State office" means the State Petroleum Allocation Office certified by FEO pursuant to § 211.15.

"Supplier" means any firm or any part or subsidiary of any firm other than the Department of Defense which supplies, sells, transfers or otherwise furnishes (as by consignment) any allocated product or crude oil to wholesale purchasers or end-users, including but not limited to refiners, importers, resellers, jobbers, and retailers.

"Supply obligation" means supply obligation as defined in § 211.10(b)(2).

"Synthetic natural gas plant" means a facility producing synthetic natural gas which results from the manufacture, conversion or reforming of petroleum hydrocarbons, and which may be easily substituted for or interchanged with pipeline quality natural gas.

"Telecommunications services" means the repair, operation, and maintenance of voice, data, telegraph, video, and similar communications services to the public by a communications common carrier, during periods of substantial disruption of normal service.

"Total supply" means the sum of a supplier's estimated production, including amounts received under processing agreements, imports, purchases and any reduction in inventory of an allocated product made pursuant to § 211.22 except as otherwise ordered by FEO. Any existing inventory, or production, importation or purchase of an allocated product used to increase that inventory consistent with the provisions of § 211.22 shall not be included in the total supply of that product.

"Utility" means a facility that generates electricity, by any means, and sells it to the public.

"Wholesale purchaser" means a wholesale purchaser-reseller or wholesale purchaser-consumer, or both.

"Wholesale purchaser-consumer" means any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains an allocated product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which either (a) purchased or obtained more than 20,000 gallons of that allocated product for its own use in agricultural production in any completed calendar year subsequent to 1971; (b) purchased or obtained more than 50,000 gallons of that allocated product in any completed calendar year subsequent to 1971 for use in one or more multi-family residences; or (c) purchased or obtained more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971.

"Wholesale purchaser-reseller" means any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form.

3. Subpart D of Part 211 is revised to read as follows:

Subpart D—Propane

§ 211.81 Scope.

(a) This subpart describes the allocation program for propane and propane-butane mixes produced in or imported into the United States. This subpart does not apply to:

(1) Sales of bottled propane; and

(2) Propane in mixtures of light hydrocarbons produced in a refinery and used in that refinery for use other than as a feedstock.

(b) This subpart provides for a State set-aside.

§ 211.82 Definitions.

For purposes of this subpart—

"Base period" means each calendar quarter during the period April 1, 1972, through March 31, 1973, which corresponds to the present calendar quarter.

"Bottled propane" means propane bottled in cylinders with a capacity of one hundred (100) pounds or less, provided that the cylinders are not manifolded at the time of sale.

"Dispensing station" means those retail sales outlets which sell less than 15,000 gallons per year and sell or fill only bottled propane.

"Merchant storage facility" means any facility which is utilized to store propane for firms other than the owner or operator of such a facility.

"Plant protection fuel" means the use of propane in the minimum volume required to prevent physical harm to the plant facilities or danger to plant personnel. This includes the protection of such material and equipment which would otherwise be damaged, but does not include sufficient quantities of propane required to maintain plant production. Propane may not be considered plant protection fuel if an alternate fuel is available and technically feasible for substitution.

"Producer" means a firm which produces propane in a refinery, natural gas processing plant or fractionating plant, or imports more than 2,000,000 gallons per year, including firms which produce natural gas and have their gas processed for their account by others but retain title.

"Producer-purchaser" means a producer which purchases or obtains propane from another producer.

"Producer-supplier" means a producer which supplies propane to another producer.

"Process fuel" means propane used to convert a substance from one form to another such as in applications requiring precise temperature controls or precise flame characteristics. Propane may not be considered process fuel if an alternate fuel is available and technically feasible for substitution.

"Propane" means the chemical C_3H_8 in its commercial forms including propane-butane mixes and the propane in other mixtures in which propane constitutes greater than ten (10) percent of the mixture by weight.

"Propane-butane mix" means a mix containing ten (10) percent or more propane by weight.

"Standby volumes" means those volumes of propane used by an industry as a temporary substitute for another product (such as natural gas) in times of shortage or curtailment of the other product. Volumes of propane which are used as a temporary substitute for a process fuel or plant protection fuel are not considered standby volumes for purposes of this subpart.

"Where no substitute for propane is available" means those circumstances in which no alternate fuel is available or in which a firm has historically relied upon propane as its sole fuel source.

§ 211.83 Allocation levels.

(a) *General.* The allocation levels in this paragraph only apply to allocations made by suppliers or producers to wholesale purchaser-consumers and end-users. Except as otherwise provided in this subpart, suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase propane under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users and wholesale purchase-consumers which are entitled to purchase propane under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* One hundred (100) percent of current requirements for the following uses:

(1) Agricultural production;

(2) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by the application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Sanitation services;

(iv) Telecommunications services;

(v) Passenger transportation services;

(vi) Medical and nursing buildings;

(vii) Aviation ground support vehicles and equipment; and

(viii) Start-up, testing and flame stability of electrical utility plants.

(2) One hundred (100) percent of base period volumes for:

(i) Petrochemical feedstock use;

(ii) Synthetic natural gas plant feedstock use;

(iii) Industrial use as a process or plant protection fuel or where no substitute for propane is available; and

(iv) Governmental use.

(3) Ninety-five (95) percent of base period use for all residential use.

(4) Ninety (90) percent of base period use for the following uses:

(i) Commercial use (The maximum volume which may be obtained for this use, however, is 210,000 gallons per year);

(ii) Standby volumes or any other industrial use;

(iii) Transportation services other than passenger transportation services or aviation ground support vehicles, for vehicles equipped to use propane as of December 27, 1973; and

(iv) Schools.

(d) *Gas utilities.* The use of propane for peak shaving by gas utilities is limited to the volumes of propane equal to those amounts contracted for, held in storage by, or purchased for delivery during the base period, regardless of whether those volumes were used during the period. Propane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any customer who can use an alternate fuel other than natural gas or propane.

§ 211.84 Modified allocation levels.

(a) For purposes of § 211.10(g), the modified allocation levels for propane which apply when a supplier's allocation fraction is in excess of one (1.0) are listed below.

(b) *Modified allocation levels not subject to an allocation fraction.* One hundred (100) percent of current requirements for the following uses:

(1) Agricultural production;

(2) Department of Defense use as specified in § 211.26.

(c) *Modified allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by the application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Sanitation services;

(iv) Telecommunications services;

(v) Passenger transportation services;

(vi) Medical and nursing buildings;

(vii) Aviation ground support vehicles and equipment;

(viii) Start-up, testing and flame stability of electrical utility plants;

(ix) Residential use;

(x) Schools;

(xi) Commercial; and

(xii) Transportation services other than passenger transportation services or aviation ground support vehicles.

(2) One hundred ten (110) percent of base period volume for:

(i) Industrial use as a process or plant protection fuel, or where no substitute for propane is available;

(ii) Petrochemical feedstock use; and

(iii) Governmental use.

(3) One hundred (100) percent of base period volumes for:

(i) Standby volumes, or any other industrial use;

(ii) *Gas utilities.* The use of propane for peak shaving by gas utilities is limited to the volumes of propane equal to those amounts contracted for, held in storage by, or purchased for delivery during the base period, regardless of whether those volumes were used during the period. Propane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any customer who can use an alternate fuel other than natural gas or propane; and

(iii) Synthetic natural gas plant feedstock use.

§ 211.85 Supplier/purchaser relationships.

Supplier/purchaser relationships shall be as set forth in § 211.9–13, unless otherwise specified in this subpart.

§ 211.86 Method of allocation.

(a) *General.* Except as specifically otherwise provided in this subpart, the allocation of propane shall be as specified in § 211.10. Adjustments to a wholesale purchaser's base period volume specified in § 211.13 shall apply to this subpart except for those provisions for supplier initiated unusual growth adjustments found in § 211.13(b). New wholesale purchasers and end-users are subject to the requirements of § 211.12. Notwithstanding the provisions of § 211.12(c), each supplier or producer which sells propane to a wholesale purchaser-consumer, end-user or dispensing station shall determine the base period volume of those purchasers but is not required to report that determination to such purchasers except on written request by a purchaser.

(b) *State set-aside.* The initial State set-aside level for propane is three (3) percent of a prime supplier's estimated portion of its total supply for that month which will be sold into the State's distribution system for consumption within the State. Section 211.17 shall control the distribution of propane from the State set-aside.

(c) *Dispensing stations.* Notwithstanding the provisions of § 211.10, dispensing stations which sell only bottled propane to end-users shall be entitled to receive a volume of propane equal to one hundred (100) percent of the volume necessary to supply the current requirements of all end-users purchasing from them, without being subject to an allocation fraction. The maximum volume which may be obtained pursuant to this paragraph may not exceed 15,000 gallons per year.

(d) *Producers.* Notwithstanding the provisions of § 211.9–13, producers shall allocate their allocable supply in the following manner:

(1) A firm which operates both in the capacity of a producer and in the capacity of a wholesale purchaser-reseller shall only be considered as a producer for purposes of this subpart.

(2) Producer-suppliers shall allocate their total supply in the following manner:

(i) Each producer-supplier shall first allocate to each producer-purchaser which purchased from it during the base period a volume of propane equal to the same proportion of its total propane available for sale, transfer or internal use as a raw material feedstock as was provided to the producer-purchaser during the base period.

(ii) After meeting the requirements of paragraph (d)(2)(i), above, a producer-supplier shall allocate the remainder of its total supply to its purchasers in accordance with § 211.10.

(3) Producer-purchasers shall allocate their total supply in accordance with § 211.10 except that if a producer-purchaser also supplies wholesale purchaser-resellers which have certified amounts of propane to be for ultimate use under an allocation level not subject to an allocation fraction that producer-purchaser may not recertify such amounts to the producer-supplier which supplies it.

(4) A firm which qualifies as both a producer-purchaser and producer-supplier shall allocate as if it were a producer-supplier except that if such firm also supplies wholesale purchaser-resellers which have certified amounts of propane to be for ultimate use under an allocation level not subject to an allocation fraction that firm may not recertify such amounts to the producer-supplier which supplies it.

(5) A wholesale purchaser-reseller which receives a certification of allocation requirements not subject to an allocation fraction may recertify those amounts to a producer in the same manner as such amounts may be recertified to a supplier pursuant to § 211.12(d).

(6) Except as provided in this subpart, all provisions pertaining to suppliers in Subpart A shall also pertain to producers.

(e) Operators of storage facilities shall not release for shipment to gas utilities any quantity of propane which, when taken together with other amounts of propane supplied to that utility for that allocation quarter, exceeds its quantity of propane which may be supplied under the allocation level for utilities in § 211.83(d).

(f) Suppliers or producers with two or more distribution subsystems or regions independent of one another may calculate separate allocation fractions for each such area provided that the supplier or primary producer notifies the FEO by certified mail of the use of multiple allocation fractions and fully justifies such practices at least fifteen days prior to distributing any supplies pursuant to multiple allocation fractions. The FEO may disallow the use of multiple allocation fractions to the extent that it determines that such a practice contravenes the intent of this part.

(g) Producers, suppliers and wholesale purchasers (except gas utilities and industrial users) shall be permitted to accumulate an inventory of propane during the summer in quantities which are normal and reasonable for seasonal usage in accordance with its normal business practices. Inventories controlled by gas utilities and industrial users (including petrochemical producers) shall be limited to:

(1) One hundred (100) percent of inventories used for gas utilities during April 1, 1972 through March 31, 1973; and

(2) One hundred twenty (120) percent of the volumes used for all industrial uses (including standby volumes) during April 1, 1972 thorugh March 31, 1973.

If a firm currently controls greater than the above-mentioned inventories, it shall not accept an allocation from a supplier or producer until its inventories are reduced to conform to the limits imposed in this paragraph.

§ 211.87 Procedures and reporting requirements.

(a) All owners of merchant storage facilities (or operators thereof) with a capacity in excess of 500,000 gallons which store propane shall report to the Administrator, FEO, the total volume, locations, and ownership of propane in storage including that owned by the storage owner or operator of affiliated companies, and that held in transit. If it is not possible to report each separate account of "in transit" storage, then the total volume shall be reported. This same information shall be reported as of the end of each month on form FEO 103 B and filed within fifteen (15) days after the close of that month. All owners of propane in storage shall file form FEO 101 with the operator of the storage facility. These reports shall be kept on file by the storage operator, and are subject to FEO audit.

(b) All matters pertaining to the allocation of propane shall be addressed to the appropriate State office or regional FEO office as specified in § 205.13.

(c) The general reporting and recordkeeping requirements contained in subpart L of this part apply to this subpart except that the information required to be kept on FEO forms in § 211.223 may be kept by suppliers or producers in accordance with that firm's customary recordkeeping practices.

(d) A hardship application may be submitted to the appropriate State office as provided in § 211.17 for undue hardship to any wholesale purchaser-consumer or end-user resulting from the provisions of this subpart.

(e) Producers and specified wholesale purchaser-resellers shall report in accordance with forms and instructions to be issued by the FEO.

4. Subpart F is revised to read as follows:

Subpart F—Motor Gasoline

§ 211.101 Scope.

(a) This subpart applies to the mandatory allocation of all motor gasoline produced in or imported into the United States.

(b) This subpart provides for a State set-aside of motor gasoline.

§ 211.102 Definitions.

For purposes of this subpart—

"Base period" means the month of 1972 corresponding to the current month.

"Bulk purchaser" means any firm which is an ultimate consumer which, as part of its normal business practices, purchases or obtains motor gasoline from a supplier and either (a) receives de-

livery of that product into a storage tank substantially under the control of that firm at a fixed location, (b) with respect to use in agricultural production, receives delivery into a storage tank with a capacity not less than 50 gallons substantially under the control of that firm, or (c) receives delivery of that product for use in cargo, freight and mail hauling by truck.

"Truck" means a motor vehicle with motive power designed primarily for the transportation of property or special purpose equipment and with a gross vehicle weight rating for a single vehicle (the value specified by the manufacturer as the loaded weight of the vehicle) or the equivalent thereof in excess of 20,000 pounds, or in the case of trucks designed primarily for drawing other vehicles and not so constructed as to carry a load other than part of the weight of the vehicle and the load so drawn, with a gross combination weight rating (the value specified by the manufacturer as the loaded weight of the combination vehicle) or the equivalent thereof in excess of 20,000 pounds.

§ 211.103 Allocation levels.

(a) *General.* The allocation levels listed in this section only apply to allocations made by suppliers to end-users which are bulk purchasers and to wholesale purchaser-consumers. Suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* One hundred (100) percent of current requirements for the following uses:

(1) Agricultural production;

(2) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by application of the allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Sanitation services;

(iv) Telecommunications services;

(v) Passenger transportation services;

(vi) Cargo, freight and mail hauling by truck;

(vii) Aviation ground support vehicles and equipment.

(2) One hundred (100) percent of base period use (as reduced by application of the allocation fraction) for the following uses:

(i) Industrial use;

(ii) Commercial use;

(iii) Governmental use; and

(iv) Social service agency use.

(d) *Purchasers without an allocation level.* There shall be no allocation levels for end-users which are not bulk purchasers or for purchasers which are not otherwise described in paragraphs (b) and (c) of this section. Such end-users shall be supplied in accordance with the provisions of § 211.10(d)(2).

(e) *Wholesale purchaser-resellers.* Wholesale purchaser-resellers shall receive allocations on the basis of their base period volumes as determined by § 211.12(c) and adjusted in accordance with § 211.13.

§ 211.104 Modified allocation levels.

(a) For purposes of § 211.10(g), the modified allocation levels for motor gasoline which apply when a supplier's allocation fraction is in excess of one (1.0) are listed below.

(b) *Allocation levels not subject to an allocation fraction.* One hundred (100) percent of current requirements for the following uses:

(1) Agricultural production;

(2) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by application of the allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Sanitation services;

(iv) Telecommunications services;

(v) Passenger transportation services;

(vi) Cargo, freight and mail hauling by truck;

(vii) Aviation ground support vehicles and equipment;

(viii) Industrial use;

(ix) Commercial use;

(x) Governmental use; and

(xi) Social service agency use.

§ 211.105 Supplier/purchaser relationships.

Supplier/purchaser relationships are set forth in § 211.9–211.13 except as provided in § 211.106.

§ 211.106 Retail sales outlets.

(a) *General.* Notwithstanding the provisions of § 211.11, the provisions of this section shall apply to retail sales outlets which sell motor gasoline.

(b) *Retail sales outlets as a firm.* (1) Each firm or part of a firm which operates an ongoing business at a retail sales outlet shall be considered a separate firm with respect to each such outlet for purposes of this subpart and, therefore, shall be a separate wholesale purchaser-reseller. The entity which merely holds a real property interest in a retail sales outlet on which another entity operates the ongoing business shall not be considered the wholesale purchaser-reseller with respect to that outlet.

(2) An independent marketer, or a small or independent refiner, which operates two or more retail sales outlets may petition the FEO for treatment of some or all of such outlets as a single firm. The FEO may allow such treatment to the extent that the petitioner can demonstrate that treatment of each outlet as a separate firm would tend to lessen its competitive market position and that allowance of the petition would not result in an inequitable distribution of gasoline in the market areas served by that marketer.

(3) A supplier's obligation to provide motor gasoline shall be determined separately for each wholesale purchaser-reseller, without distinguishing between wholesale purchaser-resellers operated by the supplier and wholesale purchaser-resellers not operated by the supplier. A supplier may not reassign all or part of an allocation entitlement from one wholesale purchaser-reseller to another, including reassignments among its own retail sales outlets, without the express written permission of FEO unless a petition for treatment as a single firm of some or all of such supplier's retail sales outlets has been granted pursuant to paragraph (b)(2) of this section.

(4) To the extent that retail sales outlets have not been considered separate firms and therefore separate wholesale purchaser-resellers in the base period volume determination required under § 211.12(c), an operator of more than one retail sales outlet shall by July 1, 1974, determine the base period volume of each of its retail sales outlets and calculate the adjustment to base period volume for unusual growth as specified in § 211.13(b)(1). To the extent that the sum of all the adjustments for each of its retail sales outlets as calculated by the operator differs from the unusual growth adjustment as calculated by the supplier in accordance with the provisions of § 211.13(b)(1) treating all outlets together as a single firm, the operator of the retail sales outlets shall notify the supplier. If the supplier disputes the automatic growth adjustment as calculated by the operator, the operator shall make application to the appropriate FEO regional office for validation of the adjustment.

(c) *Loss of allocation entitlement for going out of business.* (1) A wholesale purchaser-reseller which operates a retail sales outlet shall be deemed to have gone out of business with respect to that outlet for purposes of § 211.11 if it vacates the site on which it conducts such business. Notwithstanding the foregoing, an independent marketer shall not be deemed to have gone out of business if (i) the independent marketer vacates the site on which it formerly operated a retail sales outlet, (ii) the former site is closed as a retail sales outlet or is operated as such by a firm that is not an independent marketer, and (iii) the independent marketer that occupied the former site, within a reasonable period of time, as determined by FEO, reestablishes another retail sales outlet at another location serving substantially the same customers or market that was served by the former site.

(2) A wholesale purchaser-reseller which operates more than one retail sales outlet and intends to go out of business at one or more sites on which it conducts business may petition the FEO for an adjustment to the base period volumes of its outlets which remain in business. The FEO may allow such adjustments to the extent that it is necessary to maintain the competitive market position of an independent marketer, that the vacating of business at a particular site or sites does not result in an inequitable distribution of gasoline in the market areas served by that marketer and that such an adjustment would not otherwise be inconsistent with the objectives of the allocation program.

(d) *Suppliers of retail sales outlets.* (1) The supplier of a retail sales outlet shall be that part of a firm which actually furnishes or physically delivers the gasoline to the retail sales outlet. The operator of one or more retail sales outlets shall not be considered the supplier of its own retail sales outlets unless it operates a terminal facility from which it furnishes a product to each outlet or unless it otherwise physically delivers the gasoline to each outlet.

(2) Whenever an operator of a retail sales outlet goes out of business with respect to that retail sales outlet under paragraph (c) of this section, the supplier of that outlet shall, in calculating its allocation fraction, remove the amount of the allocation entitlement of that retail sales outlet from its supply obligation, unless the right to such allocation has transferred to a successor wholesale purchaser-reseller under paragraph (e) of this section.

(3) Any supplier which supplies its own operated retail sales outlets shall report to the National and appropriate regional FEO and to the appropriate State office whenever it ceases to supply any retail sales outlet, without regard to whether such retail sales outlet is operated by the supplier.

(e) *Transfer of entitlement.* Whenever a wholesale purchaser-reseller is deemed to have gone out of busines in accordance with paragraph (c) of this section, the right to an allocation with respect to the retail sales outlet shall be deemed to have been transferred to its successor on the site, provided such successor established the same ongoing business on the site within a reasonable period of time, as determined by FEO, after its predecessor vacates the premises.

§ 211.107 Method of allocation.

(a) The initial State set-aside level for motor gasoline for a particular month and state is three (3) percent of a prime supplier's estimated portion of its total supply for that month which will be sold into the State's distribution system for consumption within the State. Subsequent adjustments to the percentage unit will be published by the FEO.

(b) Allocation of motor gasoline to retail sales outlets and all other purchasers shall be made as specified in § 211.10 except that when a supplier has an allocation fraction greater than one (1.0), the supplier may not supply under § 211.10(g)(5) a retail sales outlet with more than 110 percent of its base period use until the FEO has been notified pursuant to the provisions of § 211.10(g)(6). The reporting requirements of § 211.10 (g) (2) and (6) shall also not apply to retail sales outlets of motor gasoline.

(c) Provisions to adjust a wholesale purchaser's base period volume are specified in § 211.13. New wholesale purchasers and end-users are subject to the requirements of § 211.12.

§ 211.108 Procedures and reporting requirements.

(a) All matters pertaining to the allocation of motor gasoline shall be addressed to the appropriate State office or regional FEO office as specified within this part.

(b) The general reporting and recordkeeping requirements contained in Subpart L of this part shall apply to this subpart.

(c) A hardship application may be submitted to the appropriate State office as provided in § 211.17 for undue hardship to any wholesale purchaser or end-user resulting from the provisions of this subpart.

5. Subpart G is revised to read as follows:

Subpart G—Middle Distillate

§ 211.121 Scope.

(a) This subpart applies to all middle distillate fuels produced in or imported into the United States.

(b) This subpart provides for a state set-aside.

§ 211.122 Definitions.

For the purposes of this subpart—

"Base period" means the month of 1972 corresponding to the current month.

§ 211.123 Allocation levels.

(a) *General.* The allocation levels in this section only apply to allocations made by suppliers to wholesale purchaser-consumers and end-users. Suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase middle distillate fuels under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users and wholesale purchaser-consumers which are entitled to purchase middle distillate fuels under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* (1) One hundred (100) percent of current requirements for the following uses:

(i) Agricultural production;

(ii) Department of Defense use as specified in § 211.26.

(2) One hundred (100) percent of base period use for space heating requirements subject to the following specifications:

(i) No reduction for medical and nursing buildings for all uses;

(ii) Six (6) degree F reduction for residences and schools;

(iii) Ten (10) degree F reduction for all others; or

(iv) Reduction of the ambient indoor temperature by the appropriate amount, or other action which results in a fuel saving equivalent to that which would otherwise result under paragraph (b) (2) (ii)–(iii) of this section.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by the application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Manufacture of ethical drugs and related research;

(iv) Sanitation services;

(v) Telecommunications services;

(vi) Passenger transportation services;

(vii) Cargo, freight, and mail hauling except as set forth elsewhere in this section;

(viii) Aviation ground support vehicles and equipment; and

(ix) Nonmilitary marine shipping, both foreign and domestic (except cruise ships carrying passengers for recreational purposes). Sales to vessels engaged in the foreign trade of the United States shall be made on a nondiscriminatory basis in regard to flag of registration, subject to modification by the FEO following consultation with appropriate Federal agencies on a case-by-case basis if required to encourage reciprocal nondiscriminatory allocation of middle distillate fuels in foreign ports to vessels engaged primarily in the foreign trade of the United States.

(2) One hundred ten (110) percent of base period use (as reduced by application of an allocation fraction) for industrial use except for space heating.

(3) *Electric utilities.* (i) One hundred (100) percent of base period use (as reduced by application of an allocation fraction) or as otherwise determined by the FEO upon recommendation by the Federal Power Commission (FPC), but not less than one hundred (100) percent of current requirements for nuclear plants, start-up, testing and flame stability of coal-fired plants (except for peaking uses).

(ii) In determining the middle distillate allocation for each utility, the FEO may take into account but is not limited to the following considerations:

(A) The fact that electric generating plants which now burn middle distillate fuel oil have been identified by the FEO as candidates for conversion to coal and the maximum possible extent to which such plants could be utilized after conversion;

(B) The extent to which any electric generating plants which burn coal may be utilized more fully than at present;

(C) The extent to which it is possible for electric utilities to obtain necessary supplies of coal;

(D) The extent to which certain minimal levels of middle distillate consumption are essential, as determined by the FEO upon recommendation of the FPC, to supply portions of a power system that cannot be supplied by non-middle distillate-fired generation, or for other special considerations (Any volumes so identified shall be counted as part of the utility's total allocation);

(E) The extent to which utilities currently utilizing natural gas supplied under interruptible contracts experience gas service interruptions;

(F) Available stocks of middle distillate held by each utility.

(4) One hundred (100) percent of base period use (as reduced by application of an allocation fraction) for the following uses:

(i) Petrochemical feedstock use;

(ii) Synthetic natural gas plant feedstock use;

(iii) All other non-space heating uses.

§ 211.124 Modified allocation levels.

(a) For purposes of § 211.10(g), the modified allocation levels for middle distillate which apply when a supplier's allocation fraction is in excess of one (1.0) are listed below.

(b) *Allocation levels not subject to an allocation fraction.* (1) One hundred (100) percent of current requirements for the following uses:

(i) Agricultural production;

(ii) Department of Defense use as specified in § 211.26.

(2) One hundred (100) percent of base period use for space heating requirements subject to the specifications set forth in § 211.123(b)(2).

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by the application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Manufacture of ethical drugs and related research;

(iv) Sanitation services;

(v) Telecommunications services;

(vi) Passenger transportation services;

(vii) Cargo, freight, and mail hauling except as set forth elsewhere in this section;

(viii) Aviation ground support vehicles and equipment; and

(ix) Non-military marine shipping, foreign and domestic (except cruise ships carrying passengers for recreational purposes). Sales to vessels engaged in the foreign trade of the United States shall be made on a non-discriminatory basis in regard to flag of registration, subject to modification by the FEO following consultation with appropriate Federal agencies on a case-by-case basis if required to encourage reciprocal non-discriminatory allocation of middle distillate fuels in foreign ports to vessels engaged primarily in the foreign trade of the United States.

(2) For electric utilities, one hundred ten (110) percent of base period use (as reduced by application of an allocation fraction), but not less than one hundred (100) percent of current requirements for nuclear plants, start-up, testing and flame stability of coal-fired plants (except for peaking uses).

(3) One hundred ten (110) percent of base period use (as reduced by application of an allocation fraction) for the following uses:

(i) Industrial use except for space heating;

(ii) Petrochemical feedstock use;

(iii) All other non-space heating uses not included in this section.

(4) One hundred (100) percent of base period use (as reduced by application of an allocation fraction) for synthetic natural gas plant feedstock use.

§ 211.125 Supplier/purchaser relationships.

Supplier/purchaser relationships are set forth in §§ 211.9–211.13.

§ 211.126 Method of allocation.

(a) The initial State set-aside level for middle distillate fuels for a particular month and state is four (4) percent of a prime supplier's estimated portion of its total supply for that month which will be sold into the state's distribution system for consumption within the State. Subsequent adjustments to the percentage unit will be published by the FEO.

(b) Allocation of middle distillate fuels shall be made as specified in § 211.10. Provisions to adjust a wholesale purchaser's base period volume are specified in § 211.13. New wholesale purchasers and end-users are subject to the requirements of § 211.12.

(c) Suppliers shall, to the extent practicable, make deliveries to all space-heating end-users and wholesale purchaser-consumers on the basis of certified need. Certified need for space-heating is the calculated quantity of fuel needed to maintain the ambient indoor temperature of a building at the reduced temperature required in § 211.123(b)(2).

(1) This calculation of certified need shall be done using historical usage factors for each building heated. Where suppliers do not have an historical usage factor for a building, this factor shall be calculated based on gallons of fuel consumed and actual degree-days exposure during the latest thirty (30) day period of normal heating usage before January 15, 1974. If no such period exists, a usage factor for that unit shall be established by an initial period of normal space-heating operations, subject to review by the State Office.

(i) Historical usage factors shall be associated with units and not with end-users or wholesale purchaser-consumers.

(ii) If this calculation of certified need results in undue hardship, the owners or occupants may apply to their State Office to obtain relief.

(2) To the extent practicable, the following procedure shall be followed by heating oil suppliers:

(i) Each space-heating end-user or wholesale purchaser-consumer shall be entitled to an initial fill-up at its first delivery after these regulations become effective, if sufficient supplies are available.

(ii) At the next delivery, the supplier shall again provide a full tank and determine, to the extent possible, compliance with this part. If the space-heating end-user or wholesale purchaser-consumer has clearly not complied, the supplier shall present a warning notice to the end-user or wholesale purchaser-consumer. The warning notice shall indicate that the end-user or wholesale purchaser-consumer faces the danger of running out of fuel if it does not reduce its ambient indoor temperature by the required amount or take equivalent actions to conserve fuel.

(iii) For each subsequent delivery, the supplier shall continue to deliver only the calculated certified need regardless of the quantity required to fill the tank, unless otherwise directed by the State Office.

§ 211.127 Procedures and reporting requirements.

(a) All matters pertaining to the allocation of middle distillate fuels except to utility users shall be addressed to the appropriate State Office or Regional FEO as specified within this part. All matters pertaining to the allocation of middle distillate fuels to utility users shall be addressed to Utilities Fuel Manager, P.O. Box 2887, Washington, D.C. 20013.

(b) The general reporting and recordkeeping requirements contained in Subpart L or this part apply to this subpart.

(c) Hardship applications may be submitted to the appropriate State Office for undue hardship resulting from the provisions of this subpart.

6. Subpart H is revised to read as follows:

Subpart H—Aviation Fuels

§ 211.141 Scope.

(a) This subpart applies to the mandatory allocation of aviation fuels produced in or imported into the United States.

(b) Bonded aviation fuel is excluded from allocation; provision for bonded fuel shortfalls is addressed in § 211.146.

(c) No state set-aside is provided for in this subpart.

§ 211.142 Definitions.

For the purposes of this subpart—

"Adjusted allocable supply" means a supplier's allocable supply for a month plus the sum of the bonded fuel factors for all the international air carriers to be supplied for the month by the supplier.

"Agricultural production flying" means the use of general aviation aircraft under 14 CFR Parts 91, 133, and 137 in agricultural production, including seeding, spraying, fertilizing, and dusting of food and forestry crops by air, the use of aircraft by those engaged in agricultural production to transport priority supplies and personnel to sustain or increase crop and animal yields, to transport crop, forestry, and animal products to distribution points, and in commercial fishing.

"Air taxi"—See "Other air carrier."

"Air travel club flying" means any use of aircraft operated under 14 CFR Part 123.

"Aircraft manufacturing uses" means the consumption of aviation fuels for aircraft production, major overhaul of aircraft, static and flight testing of aircraft and components, the ferrying of aircraft from the manufacturer, and initial type aircraft certification training provided by the manufacturer for the purchaser.

"Aviation fuels" means aviation gasoline and aviation turbine fuel.

"Aviation gasoline" means petroleum based fuels designed for use in aircraft internal combustion engines, and complying with MIL–G–5572 specification (ASTM—specification D–910–70).

"Aviation turbine fuel" means all refined petroleum fuel designed to operate aircraft turbine engines. The basic specification is ASTM D–1655 which covers both Type A (kerosene base) and Type B (naphtha base).

"Base period" means (a) the calendar month of 1972 corresponding to the current month; and (b) after March 31, 1974, the calendar quarter of 1972 corresponding to the current quarter.

"Base period supplier" means for an international air carrier its base period supplier of bonded or non-bonded aviation fuel or its supplier as assigned by FEO.

"Base period volume" means for an international air carrier the volume of bonded and non-bonded aviation fuels purchased by an international air carrier during a base period.

"Bonded fuel factor" means, for each international air carrier to be supplied by a supplier, that amount of bonden aviation fuel which bears the same proportion to the total volume of bonded aviation fuel to be received by the international air carrier from all sources for a month as that amount of the international ain carrier's base period volume which was supplied by the supplier for the base period bears to the international air carrier's base period volume.

"Business flying" means any use of aircraft under 14 CFR Parts 91 and 133 by a firm for the purpose of transportation required by a business in which it is engaged and for the purpose of transporting its employees and/or property. Business flying includes such aerial uses as photography, advertising, survey and helicopter operations.

"Civil air carrier" means (a) a domestic, supplemental, and scheduled cargo air carrier; (b) an international air carrier; (c) an intrastate air carrier; (d) a local service air carrier; or (e) other air carrier.

"Commercial operator" see "Other air carrier."

"Commuter air carrier" see "Other air carrier."

"Domestic, supplemental, and scheduled cargo air carrier" means those air carriers holding a certificate of public convenience and necessity providing for interstate and overseas air transportation, issued pursuant to section 401 of the Federal Aviation Act of 1958, as amended and operating under 14 CFR Part 121.

"Emergency aviation services, safety, and mercy missions" means public or private aircraft dedicated to emergency operations, safety and mercy missions operating under 14 CFR Parts 91 or 137, except however, it does not include mercy missions of the Civil Air Patrol.

"Energy production flying" means the use of general aviation aircraft operating under 14 CFR Parts 91 and 133 in the production of energy sources, including pipeline and powerline patrol, oil and gas exploration activities, necessary movement of supplies and personnel for the production of energy resources, and other essential flying for energy production.

"FAR" means the Federal Aviation Regulations, Title 14, Chapter I, of the Code of Federal Regulations.

"General aviation" means (a) agricultural production flying; (b) air travel club flying; (c) business flying; (d) instructional flying; (e) personal nonbusiness flying; (f) energy production flying; (g) aircraft manufacturing uses; and (h) telecommunications flying.

"Instructional flying" means any use of aircraft operating under 14 CFR Parts 91, 127, and 141 for the purpose of formal instruction.

"International air carrier" means those United States air carriers operating under 14 CFR Part 121 holding a certificate of public convenienec and necessity, providing for foreign air transportation, issued pursuant to section 401 of the Federal Aviation Act of 1958, and foreign air carriers operating under 14 CFR Part 129 holding permits issued pursuant to section 402 of the Federal Aviation Act of 1958, but excluding those with permits which restrict operation to the use of aircraft not exceeding 12,500 pounds gross take-off weight.

"Intrastate air carriers" means those carriers operating under 14 CFR Part 121 licensed by a state regulatory agency, and operating equipment having more than thirty (30) seats or a pay load of at least 7,500 pounds.

"Local service air carriers" means those carriers operating under Part 121 or 127 holding a certificate pursuant to section 401 of the Federal Aviation Act of 1958, and (a) receiving Federal subsidy, or (b) operating solely within the States of Hawaii or Alaska, or (c) operating scheduled helicopter service.

"Non-flying use of aviation fuels" means the consumption of aviation fuels associated with gas turbine engines in industry, utilities and passenger transportation services.

"Other air carriers" means (a) those carriers holding a Federal Aviation Administration Air Taxi/Commercial Operator Certificate issued under 14 CFR Part 135 and operating under the exemption authority of 14 CFR Part 298 of the Civil Aeronautical Board Regulations, including operations by scheduled commuter airlines, and non-scheduled air taxi operations; (b) those foreign carriers operating under Part 129 of the FAR holding permits under section 402 of the Federal Aviation Act of 1958 authorizing casual and infrequent service with aircraft and exceeding 12,500 pounds gross take-off weight; and (c) those commercial operators of large aircraft under Federal Aviation Regulations 14 CFR Part 121, except Intrastate carriers.

"Personal non-business flying" means any use of aircraft under 14 CFR Part 91 for personal purposes not associated with a business or profession and not for hire.

"Public aviation" means any aircraft operating under 14 CFR Parts 91, 133 or 137 used exclusively in the service of the Federal government or the government of the District of Columbia or of any state, territory or possession of the United States, and any political subdivisions thereof, excluding military aircraft.

"Scheduled cargo air carrier" see "Domestic, supplemental and scheduled cargo air carrier."

"Supplemental air carrier" see "Domestic, supplemental, and scheduled cargo air carrier."

"Telecommunications flying" means the use of aircraft operating under 14 CFR Parts 91 and 133 in "telecommunications services" as defined in Subpart B of this part.

§ 211.143 Allocation levels.

(a) *General.* The allocation levels listed in this section apply only to allocations made by suppliers to wholesale purchaser-consumers and end-users. Suppliers shall allocate to all purchasers to which allocation levels apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase aviation fuels under an allocation level not subject to an allocation fraction shall receive first priority and shall be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users and wholesale purchaser-consumers which are entitled to purchase aviation fuels for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* (1) One hundred percent of current requirements for the following uses:

(i) Agricultural production flying;

(ii) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by application of an allocation fraction) for the following uses:

(i) Emergency aviation services, safety and mercy missions;

(ii) Energy production flying;

(iii) Aircraft manufacturing but not to exceed one hundred thirty (130) percent of base period use;

(iv) Telecommunications flying.

(2) One hundred (100) percent of base period use (as reduced by applica-

tion of an allocation fraction) for the following uses:

(i) Local service air carriers, including requirements for crew training and proficiency flying;

(ii) Other air carriers, including requirements for crew training and proficiency flying;

(iii) Non-flying use of aviation fuels.

(3) Ninety-five (95) percent of base period use (as reduced by application of an allocation fraction) for the following uses:

(i) Domestic, supplemental, and scheduled cargo air carriers, including requirements for crew training and proficiency flying;

(ii) International air carriers, including requirements for crew training and proficiency flying—the total of both bonded and non-bonded fuels;

(iii) Intra-state carriers, including requirements for crew training and proficiency flying.

(d) Ninety (90) percent of base period use (as reduced by application of an allocation fraction) for business flying, including requirements for crew training and proficiency flying.

(e) Eight-five (85) percent of base period use (as reduced by application of an allocation fraction) for public aviation.

(f) Seventy-five (75) percent of base period use (as reduced by application of an allocation fraction) for the following uses:

(1) Personal non-business flying;

(2) Instructional flying;

(3) Air travel club flying including requirements for crew training and proficiency flying.

§ 211.144 Modified allocation levels.

(a) For purposes of § 211.10(g), the modified allocation levels for aviation fuels which apply when a supplier's allocation fraction is in excess of one (1.0) are listed below.

(b) *Allocation levels not subject to an allocation fraction.* (1) One hundred (100) percent of current requirements for the following uses:

(i) Agricultural production flying;

(ii) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by application of an allocation fraction) for the following uses;

(i) Emergency aviation services, safety and mercy missions;

(ii) Energy production flying;

(iii) Aircraft manufacturing but not to exceed one hundred thirty (130) percent of base period use;

(iv) Telecommunications flying;

(v) Local service air carriers, including requirements for crew training and proficiency flying;

(vi) Other air carriers, including requirements for crew training and proficiency flying;

(vii) Non-flying use of aviation fuels;

(viii) Domestic, supplemental, and scheduled cargo air carriers, including requirements for crew training and proficiency flying;

(ix) International air carriers, including requirements for crew training and proficiency flying—the total of both bonded and non-bonded fuels;

(x) Intra-state carriers, including requirements for crew training and proficiency flying;

(xi) Business flying, including requirements for crew training and proficiency flying;

(xii) Public aviation;

(xiii) Personal non-business flying;

(xiv) Instructional flying;

(xv) Air travel club flying including requirements for crew training and proficiency flying.

§ 211.145 Supplier/purchaser relationships and adjustments of base period use.

(a) Unless otherwise specified, the provisions of § 211.9–§ 211.13 apply to this subpart.

(b) Civil air carriers may apply to the National FEO for an adjustment to base period use based upon changed circumstances. In processing such applications, the FEO may consider situations that indicate a need for increased amounts over base period use. FEO, following consultation with appropriate Federal agencies, shall only make adjustments for changed circumstances when there are compelling situations requiring relief.

§ 211.146 Method of allocation.

(a) Suppliers of wholesale purchasers and end-users shall allocate aviation fuels in accordance with the provisions of § 211.10.

(b) Aviation fuel for international flights shall be allocated on a non-discriminatory basis among international carriers, subject to modification by the FEO, following consultation with appropriate Federal agencies on a case-by-case basis if required to encourage reciprocal non-discriminatory allocation of aviation fuel for U.S. carriers engaged in international flights.

(c) (1) International air carriers which have traditionally used bonded aviation fuel for international flights shall be allocated non-bonded aviation fuels, including naphtha-base jet fuel, by their base period suppliers to reduce their shortages of bonded aviation fuel. Upon certification by an international air carrier to its base period suppliers that the carrier is unable to purchase or obtain sufficient bonded aviation fuel from its base period suppliers of bonded fuel for a month at prices which do not exceed the lawful price of its base period suppliers of bonded fuel for similar volumes of non-bonded aviation fuel at the desired location, the base period suppliers shall provide non-bonded aviation fuel, including naphtha-base jet fuel to that carrier. Unless the international air carrier certifies that it cannot utilize naphtha-base jet fuel, the base period suppliers may to the extent of the carrier's capability to use such fuel allocate non-bonded naphtha base jet fuel prior to allocating other non-bonded aviation fuels to the international air carrier. International air carriers which do not have base period suppliers or whose base period suppliers are unable to supply them currently with non-bonded aviation fuel shall apply to FEO for assignment of suppliers of non-bonded aviation fuels.

(2) Each base period supplier of bonded fuel shall notify international air carriers, upon request, whether the supplier will provide bonded fuel at the supplier's lawful price for its non-bonded fuel at a station. For the month of April 1974, suppliers shall notify their international air carrier purchasers whether bonded fuel can be so supplied by April 16, 1974.

(3) (i) An international air carrier which files a certification with a supplier under this paragraph shall provide such certification to its supplier at least fifteen days prior to the beginning of the month to which the certification applies. The certification shall specify the volumes of bonded aviation fuel which can be obtained for a month, the international air carrier's base period volume, the amount of the international air carrier's base period volume which was supplied by the supplier, and whether and to what extent the international air carrier can use naptha-base jet fuel.

(ii) For the period April 16, 1974 through April 30, 1974, international air carriers shall provide their suppliers with certifications pursuant to this paragraph by April 17, 1974. Suppliers shall then calculate their allocation fractions for the period April 16 through April 30, 1974, taking into account said certifications and shall make deliveries in accordance with the provisions of this paragraph. For the period of May 1 through May 31, 1974, international air carriers shall provide their suppliers with certifications pursuant to this paragraph by April 20, 1974.

(4) Suppliers of non-bonded aviation fuel shall allocate supplies of non-bonded aviation fuel as follows:

(i) The allocation fraction for providing aviation fuel pursuant to this paragraph shall be equal to the supplier's adjusted allocable supply divided by its base period volume.

(ii) For each civil air carrier to be supplied, the supplier shall multiply the civil air carrier's allocation requirement times the supplier's allocation fraction as determined pursuant to this paragraph. The resulting volume minus the bonded fuel factor for that civil air carrier shall be the amount of non-bonded aviation fuel allocated by the supplier to the civil air carrier for that month. The amount of non-bonded aviation fuel allocated each month to any civil air carrier when added to the bonded aviation fuel available to that civil air carrier shall not exceed the volume of aviation fuel which the civil air carrier would receive if the carrier were to use only non-bonded aviation fuels to meet its base period use.

(iii) If a carrier purchases or otherwise obtains a quantity of bonded avia-

tion fuel for a month regardless of price in addition to the amount of bonded fuel which it certifies is available to it for that month under this paragraph, the carrier shall immediately report such quantity to its supplier by filing an amended certification and its supplier shall reduce by such quantity the amount of non-bonded aviation fuel which would otherwise be allocated to that carrier in the current or a subsequent month.

(5) None of the provisions of this paragraph shall affect existing contracts for the purchase of bonded aviation fuels.

(d) Civil Air Patrol assigned to mercy missions shall be provided aviation fuel from the Department of Defense allocation.

(e) Notwithstanding the provisions of § 211.143(c)(2)(iii), the use of aviation fuel for non-flying purposes by a utility may not exceed those volumes of aviation fuel contracted for or purchased during the base period. Aviation fuel shall not be used for peaking as long as the utility continues service during such peaking to interruptible non-priority industrial users (except where no suitable substitute fuel is available to the user) or to any purchaser which can use a fuel other than aviation fuel.

§ 211.147 Procedures and reporting requirements.

(a) All matters pertaining to the allocation of aviation fuels to civil air carriers (except air taxi/commercial operators) shall be addressed to the Administrator, FEO, Washington, D.C. 20461, unless otherwise provided.

(b) All matters pertaining to the allocation of aviation fuels for general aviation, air taxi/commercial operators, public aviation and non-flying uses of aviation fuels shall be addressed to the appropriate supplier. Any matters unresolved at the supplier level may be referred directly to the appropriate Regional FEO office.

(c) The general reporting and recordkeeping requirements contained in § 211.222 shall apply to this subpart. In addition, civil air carriers (excluding air taxi/commercial operators) shall make a one time only report to the Administrator, FEO, of their base period volume, or adjusted base period volume, of aviation gasoline and of both naphtha-base and kerosene-base jet fuel broken down by month. At the option of the user, this may be modified to reflect one-twelfth (1/12) of the annual allocation volumes for each month or the estimated requirements by month, not to exceed total annual allocation volume. Use of this reporting option shall be applied for purposes of choosing the most realistic figures. The report required by this paragraph shall indicate the purchases of non-bonded fuel for domestic flights, non-bonded fuel for international flights, and bonded fuel for international flights, as applicable.

(d) For general aviation wholesale purchasers, the recordkeeping requirements specified in § 211.223 shall apply provided, however, that such reports need reflect only jet fuel and aviation gasoline usage for local purchasers and their uses and activities and total pumpage per month of jet fuel and aviation gasoline.

7. Subpart I is revised to read as follows:

Subpart I—Residual Fuel Oil

§ 211.161 Scope.

(a) This subpart applies to the mandatory allocation of residual fuel oil produced in or imported into the United States.

(b) This subpart provides for a state set-aside.

§ 211.162 Definitions.

For the purposes of this subpart—

"Base period" means (a) with respect to all non-utility users, the month of 1973 corresponding to the current month and (b) with respect to all utility users the period October 1, 1973, through December 31, 1973.

§ 211.163 Allocation levels.

(a) *General.* The allocation levels listed in this section only apply to allocations made by suppliers to wholesale purchaser-consumers and end-users. Suppliers shall allocate to all purchasers to which allocation levls apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase residual fuel oil under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. Wholesale purchaser-consumers and end-users which are entitled to purchase residual fuel oil for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* (1) One hundred (100) percent of current requirements for the following uses:

(i) Agricultural production; and

(ii) Department of Defense for use as specified in § 211.26.

(2) One hundred (100) percent of base period use for space heating requirements subject to the following specifications:

(i) No reduction for medical and nursing building uses;

(ii) Six (6) degrees F reduction for residences and schools;

(iii) Ten (10) degrees F reduction for all others;

(iv) Reduction of the ambient indoor temperature by the appropriate amount, or other actions which result in a fuel saving equivalent to that which would otherwise result under paragraph (b)(2)(ii)–(iii) of this section.

(3) The allocation level as specified each month by the FEO for utility use. In specifying the allocation levels for each utility the FEO may include but is not limited to the following considerations:

(i) Each utility within appropriate groupings shall absorb an equal percentage cutback in electricity generation, to the maximum extent possible.

(ii) The fact that electric generating plants which now burn residual fuel oil that have been identified by the FEO as candidates for conversion to coal, and the maximum possible extent to which such plants could be utilized after conversion.

(iii) The extent to which any electric generating plants which burn coal may be utilized more fully than at present.

(iv) The extent to which certain minimal levels of residual fuel oil consumption are essential, as determined by the FEO upon recommendation of the Federal Power Commission (FPC) to supply portions of a power system requirement that cannot be supplied by non-oil-fired generation, or for other special considerations. Any volumes so identified shall be counted as part of a utility's total allocation.

(v) The extent to which utilities currently utilize natural gas supplies under interruptible contracts and which have been interrupted.

(vi) Available stocks of residual fuel oil held by each utility.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Manufacture of ethical drugs and related research;

(iv) Non-military marine shipping, foreign and domestic (except cruise ships carrying passengers for recreational purposes). Sales to vessels engaged in the foreign trade of the United States shall be made on a non-discriminatory basis in regard to flag of registration, subject to modification by the FEO following consultation with appropriate Federal agencies on a case-by-case basis if required to encourage reciprocal non-discriminatory allocation of bunker fuels in foreign ports to vessels engaged primarily in the foreign trade of the United States;

(v) Sanitation services;

(vi) Telecommunications services;

(vii) Passenger transportation services.

(2) One hundred (100) percent of base period use for industrial use and all other users and uses of residual fuel oil not included in paragraph (b) or (c)(1) of this section.

§ 211.164 Modified allocation levels.

(a) For purposes of § 211.10(g), the modified allocation levels for residual fuel oil which apply when a supplier's allocation fraction is in excess of one (1.0) are listed below.

(b) *Allocation levels not subject to an allocation fraction.* (1) One hundred (100) percent of current requirements for the following uses:

(i) Agricultural production;

(ii) Department of Defense for use as specified in § 211.26.

(2) One hundred (100) percent of base period use for space heating requirements subject to the specifications set forth in § 211.163(b)(2).

(3) The allocation level as specified each month by the FEO for utility use.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by application of an allocation fraction) for the following uses:

(i) Emergency services;

(ii) Energy production;

(iii) Manufacture of ethical drugs and related research;

(iv) Non-military marine shipping, foreign and domestic (except cruise ships carrying passengers for recreational purposes). Sales to vessels engaged in the foreign trade of the United States shall be made on a non-discriminatory basis in regard to flag of registration, subject to modification by the FEO following consultation with appropriate Federal agencies on a case-by-case basis if required to encourage reciprocal non-discriminatory allocation of bunker fuels in foreign ports to vessels engaged primarily in the foreign trade of the United States;

(v) Sanitation services;

(vi) Telecommunications services; and

(vii) Passenger transportation services.

(2) One hundred ten (110) percent of base period use (as reduced by application of an allocation fraction) for industrial use and all other users and uses of residual fuel oil not included in paragraph (b) or (c)(1) of this section.

§ 211.165 Supplier/purchaser relationships.

Unless otherwise specified, supplier/purchaser relationships are set forth in § 211.9–13.

§ 211.166 Method of allocation.

(a) *State set-aside.* The State set-aside level for residual fuel oil for a particular month and State is three (3) percent of a prime supplier's estimated portion of its total supply of residual fuel oil for non-utility use for that month which will be sold into that State's distribution system for consumption within the State. Subsequent adjustments to the percentage unit will be published by the FEO.

(b) *General.* Based on the estimated total supply of residual fuel oil, on allocation levels set forth in § 211.163, on the State set-aside percentage, and other relevant considerations, the FEO shall determine each month the portion of total supply for non-utility use and the portion of total supply for utility use for delivery the following month in accordance with the provisions of paragraphs (c) and (d) of this section.

(c) *Non-utility.* The portion of each supplier's allocable supply not directed by the FEO to be distributed for utility use shall be allocated pursuant to § 211.10. With respect to space heating uses, suppliers must comply, to the fullest extent practicable, with the provisions of paragraph (e) of this section. Notwithstanding the provisions of § 211.165 or § 211.10, suppliers may not supply a utility in excess of the amounts established pursuant to paragraph (d) of this section until the non-utility allocation levels listed in § 211.163 have been filled, unless otherwise directed by the FEO.

(d) *Utilities.* (1) For purposes of calculating the allocation of residual fuel oil to utilities for delivery during the month of February 1974—

(i) The FEO will determine the amount of residual fuel oil allocated to each utility for delivery during the month of February and publish that determination. The volume of residual fuel oil allocated to each utility shall be based upon the supply available for utilities, the considerations specified in § 211.163(b)(3) and other relevant considerations.

(ii) Based upon total deliveries from suppliers during the base period, each utility shall calculate the percentage of the utility's total deliveries during the base period which were supplied by each supplier. Within 7 days following the date of notification of allocation amounts pursuant to paragraph (d)(1)(i) of this section, each utility shall notify each of its suppliers and the FEO of the amount required to be supplied by each supplier for delivery in February 1974 and of the percentage of the amount allocated to each utility which each supplier must supply. The amount required to be supplied by a supplier shall be calculated by multiplying the utility's specified monthly allocation amount by the percentage of the utility's total deliveries during the base period which were supplied by the supplier.

(iii) Following notification by the utilities of the amounts and percentages required to be supplied by each supplier for delivery in February 1974, FEO will publish these percentages.

(2) For purposes of calculating the allocation of residual fuel oil to utilities for delivery in every month after February 1974—

(i) Each month, the FEO will determine the amount of residual fuel oil allocated to each utility for delivery in the following month. The volume of residual fuel oil allocated to each utility in a particular month shall be based upon the total supply available for utilities, the considerations specified in § 211.163(b)(3) and other relevant considerations.

(ii) Following the determination in paragraph (d)(2)(i) of this section, the FEO will publish the amounts of residual fuel oil allocated to each utility for delivery in the following month and the percentages of those amounts required to be supplied by each supplier for delivery in the following month. The amounts required to be supplied by each supplier will be calculated by multiplying each utility's specified monthly allocation amount by the percentage of the utility's total deliveries during the base period which were supplied by the supplier as computed from the information reported to FEO by the utility pursuant to the provisions of paragraph (d)(1)(ii) of this section.

(3) Within 48 hours of the notification by the utility to the supplier required in paragraph (d)(1)(ii) and, within 7 days of the date of publication by the FEO of the information set forth in paragraph (d)(2)(ii) each supplier of a utility shall notify that utility of its anticipated ability to supply, during the following month, the entire amount of residual fuel required to be supplied by that supplier. If a supplier of a utility is unable to supply its specified amount, the supplier may request an extension to the delivery period in the following month of up to 12 days. Following receipt of a request for extension, the utility must notify the supplier within 48 hours of its determination of the acceptability of the requested extension and of the amount to be delivered during the extension period. If the utility refuses to accept the extension, the supplier and utility shall notify the FEO of the reason for the request for extension by the supplier and the refusal to accept the extension by the utility. The FEO shall then determine the amounts to be delivered and the date or dates for delivery.

(4) Suppliers and utilities may petition the FEO for adjustment to the requirement of § 211.165 and paragraph (d)(1)(i) of this section, or assignment of a new supplier, in accordance with the procedures provided in Subpart B of Part 205 of this chapter. Such petitions must be filed by the 10th day of the current month in order to be considered for decision or interim relief with respect to adjustment to the allocation amounts to be published in the following month or assignment of a new supplier for the following month.

(5) Utilities may, and are encouraged to, by mutual agreement and after notice to FEO, apportion their respective allocated residual fuel oil volumes, other fuel volumes, or generated power among themselves.

(e) *Space heating uses.* To the extent practicable, suppliers shall use the following procedures for residual fuel oil distributed for space heating use. Suppliers to end-users shall calculate the quarterly allotment of their customers for space heating using the most recently available usage factors on or before November 1, 1973, for each building winter, and notify the end-user of its winter, and notify the end-user of his allotment. Where suppliers do not have an historical usage factor for a building, a usage factor shall be calculated based on gallons of fuel consumed and actual degree-days exposure in the base period. For new buildings, the usage factor shall be determined based on gallons of fuel consumed and actual degree-days exposure during the latest thirty (30) day period of normal heating usage before January 15, 1974. If no such period exists, a usage factor of that unit shall be established by an initial period of normal space heating operation, subject to review by the State Office. Suppliers to end-users shall recalculate monthly the quarterly allotment for each space heating user by applying its usage factor to actual degree-days, less an adjustment for the required reduction in ambient indoor temperature. The supplier shall notify the end-user monthly of the end-user's adjusted allotment, and shall inform the end-user whether and by how much its usage rate exceeds that required to achieve the required reduction in ambient indoor temperature, and that

it faces the danger of running out of fuel if it does not reduce its ambient indoor temperature as required by § 211.163(b)(2)(iv). The supplier shall notify the appropriate Regional FEO of any customer whose usage is excessive for two successive months. Suppliers' usage factors shall be associated with units (e.g., an apartment house) and not with end-users. The usage factor of record for a unit shall be used for that unit throughout the duration of his program regardless of changes in occupants or ownership.

§ 211.167 Procedures and reporting requirements.

(a) All matters pertaining to the allocation of residual fuel oil for the electric utility industry shall be addressed separately to the Administrator, FEO, Washington, D.C., and to the Chairman, Federal Power Commission.

(b) All matters pertaining to the allocation of residual fuel oil to non-utility users of residual fuel oil shall be addressed to the appropriate State or Regional FEO offices as specified within this Part.

(c) The general reporting and recordkeeping requirements contained in § 211.222 shall apply to non-utility customers of residual fuel oil.

(d) Suppliers of residual fuel oil to utilities shall comply with the reporting requirements of § 211.222. Utilities using residual fuel oil shall comply with the reporting requirements of the Federal Power Commission and the FEO.

(e) If undue hardship results from the provisions of this subpart, hardship applications may be submitted to the appropriate State Office.

8. Subpart L is revised to read as follows:

Subpart L—General Reporting and Recordkeeping Requirements

§ 211.221 Scope.

This subpart provides the general reporting and recordkeeping requirements applicable to this part. Reporting and recordkeeping requirements that are limited in application to specific products or situations are contained in the other appropriate subparts of this part.

§ 211.222 Monthly reports by refiners and importers.

(a) Every refiner for each of its refineries; importer for each importing terminal; and gas processing plant operator for each of its processing plants shall report monthly to the National FEO in accordance with forms and instructions issued by FEO such information as is required including the following information for each allocated product:

(1) The inventory at the beginning and end of the preceding month by allocated product.

(2) Deliveries received during the preceding month by allocated products; deliveries of domestic crude oil should be segmented into new and released domestic crude oil. All allocated products should be listed by source and by country of origin for imports.

(3) Inventory fluctuations which occurred during the preceding month and were caused by other than deliveries, receipts and transfers.

(4) Total deliveries and supply redistribution in each State during the preceding month by allocated product.

(5) The estimated total supply for distribution in each State during the following month by product as described in § 211.10(b)(1) before adjustment for State set-aside and allocation requirements not subject to the supplier's allocation fraction.

(6) The estimated State set-aside volume for distribution in each State during the following month by product.

(7) The estimated volume by category for allocation requirements not subject to the supplier's allocation fraction to be supplied during the following month.

(8) Any existing inventory or production, importation, or purchase of an allocated product used to increase that inventory consistent with the provisions of § 211.22 by product.

(9) The allocable supply (i.e., paragraph (a)(5) minus paragraphs (a)(6), (7), and (8)), for distribution in each State during the following month, by product.

(10) The estimated supply obligation as described in § 211.10(b)(2) for the following month for purchasers to be supplied within each State, by product.

(11) The estimated average or shortfall, i.e., paragraph (a)(5) minus paragraphs (a)(7) and (10).

(12) The estimated allocation fraction, i.e., paragraph (a)(9) divided by (a)(10).

(13) The estimated total supply of allocated product which will be available in each of the following three (3) months.

(b) Beginning with the month of March, 1974, and thereafter, prime suppliers shall report monthly to the National FEO, appropriate regional offices and appropriate State Offices subparagraphs (4) through (13) of paragraph (a) above by refiner (not refinery). This report will be the basis of the State set-aside program. Notwithstanding the provisions of § 205.4 concerning constructive receipt of documents submitted by registered or certified mail, the prime supplier's monthly report must be delivered to the National FEO in Washington, D.C., on or before the tenth (10th) day prior to the commencement of the month described as "the following month" in § 211.222(a)(5).

§ 211.223 Recordkeeping requirements.

Suppliers which sell to wholesale purchaser-consumers and end-users shall maintain records on FEO forms, subject to FEO audit, which demonstrate the basis for distribution of allocable supplies among their various purchasers. These records shall contain the following information for each allocated product and for each purchaser, on a monthly basis:

(a) Purchaser identification.

(b) Base period volume, adjusted base period volume, or current requirements, as appropriate.

(c) Allocation level.

(d) Allocation requirements (item (c) multiplied by item (b)).

(e) Purchaser's share of supplier's allocable supply (item d) multiplied by the supplier's allocation fraction if the fraction applies).

(f) Actual volume supplied.

§ 211.224 Weekly petroleum reporting system.

(a) This section establishes a weekly petroleum reporting system for each refiner or other firm which operates or controls a (1) refinery, (2) bulk terminal, (3) crude oil pipeline or (4) petroleum products pipeline, and for each importer which imports petroleum products by tanker, barge, or pipeline.

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

"Bulk terminal" means a facility which is primarily used for the marketing of gasoline, kerosene, and distillate and residual fuel oils and which (1) has total bulk storage capacity of 2,100,000 gallons or more, or (2) receives its petroleum products by tanker, barge or pipeline.

"Crude oil pipeline" means a common carrier pipeline, licensed by the Interstate Commerce Commission, which carries crude oil.

"Petroleum products pipeline" means a common carrier pipeline, licensed by the Interstate Commerce Commission, which carries petroleum products.

(c) *Initial report.* By February 15, 1974, every refiner or other firm, and every importer which receives petroleum products by tanker, barge or pipeline, shall prepare and file with FEO a report entitled "Petroleum Reporting Address Information," in accordance with forms and instructions issued by FEO.

(d) *Weekly report.* Every refiner or other firm, and every importer which receives petroleum products by tanker, barge or pipeline, shall prepare and file with FEO a weekly report in accordance with forms and instructions issued by FEO. The weekly petroleum reporting system shall become effective February 22, 1974. The first weekly report must be received by FEO by 5 p.m., March 4, 1974.

§ 211.225 Report of new end-user and wholesale purchaser-consumer importers.

Pursuant to § 211.12(g) of this part, end-user and wholesale purchaser-consumer importers of an allocated product are required to report both to the National FEO and the appropriate regional FEO at least fifteen (15) days prior to commencing use of any allocated product which they import:

(a) The amounts and sources of these imports;

(b) Their intended use;

(c) Their projected monthly consumption; and

(d) A complete record of the domestic suppliers and amounts supplied of the allocated product which the purchaser intends to import, from January 1, 1972, to the date of the filing of the report.

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