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PART I

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

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NOTE: There were no items published after October 1, 1972, that are eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

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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.

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Title 3—The President

EXECUTIVE ORDER 11782

Establishing the Federal Financing Bank Advisory Council

By virtue of the authority vested in me as President of the United States of America, it is hereby ordered as follows:

SECTION 1. There is hereby established the Federal Financing Bank Advisory Council. The Council shall consist of:

(1) The Secretary of the Treasury (Chairman).

(2) The Secretary of Agriculture.

(3) The Secretary of Commerce.

(4) The Secretary of Health, Education, and Welfare.

(5) The Secretary of Housing and Urban Development.

(6) The Secretary of Transportation.

(7) The President of the Export-Import Bank of the United States.

(8) The Postmaster General.

SEC. 2. The Council shall provide advice and assistance to the Board of Directors of the Federal Financing Bank established by the Federal Financing Bank Act of 1973 (Public Law 93–224; 87 Stat. 937) concerning the administration of that act. It shall also serve as a coordinating forum to insure a broader understanding of, and support for, the Bank.

SEC. 3. The Department of the Treasury shall, to the extent permitted by law, provide administrative support for the Council.

Richard Nixon

THE WHITE HOUSE,
May 6, 1974.

[FR Doc.74–10666 Filed 5–6–74;12:32 pm]

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 18—MILK AND CREAM

Sour Cream and Related Products; Order Establishing Identity Standards

A notice of proposed rule making to establish identity standards for sour cream, sour half-and-half, and related products was published in the FEDERAL REGISTER of August 2, 1973 (38 FR 20627). The proposal was based on a petition filed by the Milk Industry Foundation, 910 17th St. NW., Washington, D.C. 20006. Standards were proposed for sour cream, sour half-and-half, acidified sour cream, and acidified sour half-and-half, the latter two products being produced by direct addition of food-grade acid, rather than by culturing with lactic acid producing bacteria. The proposed standards do not require that sour cream, for example, must be made only from cream; but would permit the use of butter, butter oil, and anhydrous milkfat as fat sources; and of whey solids, sodium caseinate, soy protein, or other safe and suitable ingredients to partially or completely replace the nonfat milk solids portion of cream.

An alternative proposal on the initiative of the Commissioner of Food and Drugs was published with the Milk Industry Foundation proposal. The Commissioner proposed, in addition to the four standards proposed by the industry, standards for "sour cream dressing" and "sour half-and-half dressing." As proposed by the Commissioner, sour cream would be made by culturing cream, with the optional addition of certain functional additives in small amounts, while sour cream dressing could contain, in addition to the required minimum of 18 percent milkfat, any safe and suitable ingredient(s).

Seven comments were received during the 60-day comment period following publication of the proposals. The issues raised by the comments and the Commissioner's conclusions are as follows:

1. One comment recommended that, in conjunction with setting standards for sour cream, standards should also be set for sour cream analogs (products which contain fat other than milkfat or are nondairy products).

The Commissioner recognizes that it may be desirable to establish standards for such sour cream analogs at some future time. However, the establishment of such standards are beyond the scope of the notice given by publication in the FEDERAL REGISTER of August 2, 1973 (38 FR 20627), and should be the subject of a separate petition supported by reasonable grounds. Any petition that is received proposing such standards will be given careful consideration.

2. Both the Milk Industry Foundation proposal and the Commissioner's proposal provided for the optional addition of characterizing flavoring ingredients, but with no change in the minimum milkfat content required in the foods. It was suggested that a reduction of the minimum milkfat content be permitted with addition of bulky flavorings such as fruits or chocolate, so that the same basic sour cream can be used for unflavored and flavored products.

The Commissioner concludes that this suggestion is reasonable, and provision therefor is included in the order set forth below.

3. Two industry comments requested that the optional use of ingredients to enhance the flavor of sour cream be permitted. These comments pointed out that the culturing process is subject to biological variation, and therefore artificial flavoring and acidifiers are sometimes needed to supplement the natural flavor and acidity resulting from culturing. One of the comments also requested that provision be made for continuation of the practice of adding sodium citrate prior to culturing as a flavor precursor.

The Commissioner concludes that the flavor of sour cream should derive principally from the fermentation products produced by culturing, but agrees that consumers expect uniformity of flavor in successive purchases of any particular brand of sour cream, and that addition of artificial flavoring is sometimes needed to assure such uniformity. In the Commissioner's proposal, §§ 18.550(b) and 18.560(b) provide for safe and suitable natural and artificial food flavorings as optional ingredients. The order retains this provision and also permits the addition of sodium citrate prior to the culturing process as a substrate for the production of diacetyl and acetylmethylcarbinol, two of the principal flavor components of sour cream. The specified limitation on use of sodium citrate, 0.1 percent by weight of the food, is the maximum amount required to achieve the intended effect. The Commissioner finds that sour cream products, which have been cultured but also contain added acidifiers, should be regarded as acidified products. Therefore, the sour cream and sour half-and-half standards set forth below do not list acidifiers as optional ingredients.

4. Two State regulatory officials objected to the provision for optional use of safe and suitable ingredients to increase the shelf life of our sour cream. They stated that in most State and local jurisdictions sour cream is a Grade "A" dairy product as defined in "Grade 'A' Pasteurized Milk Ordinance—1965 Recommendations of the United States Public Health Service" and contend that this model ordinance in section 7 forbids the use of chemical preservatives, and further that the presence of such preservatives would make unreliable the test method for coliform organisms now used to determine compliance with Grade "A" quality requirements.

While the model ordinance in the second paragraph of section 7 does state that "No process or manipulation other than pasteurization * * *" may be used to deactivate microorganisms, this language does not prohibit the addition of ingredients to retard the growth of microorganisms which are present.

The Commissioner concludes that chemical preservatives, which are now permitted in cottage cheese, should also be permitted in sour cream and related products. Interference with the detection of one microbial grouping, the coliforms, is not of sufficient importance to outweigh the advantages of inhibiting mold growth in sour cream through use of antimycotics.

5. A food firm stated that for some years it had been marketing a pourable dressing having sour cream solids as an ingredient under the name "sour cream dressing," and sought assurance that its product would not be subject to the composition requirements of the proposed new standard.

The Commissioner concludes that establishment of a "sour cream dressing" standard as proposed would not preclude the marketing of a nonstandardized pourable dressing containing sour cream in an amount sufficient to characterize it, provided that the food is not labeled "sour cream dressing" but is given some other name that is appropriate. Having considered data in the petition, comments received on the proposals, and other relevant information, the Commissioner concludes that adoption of the proposed standards as set forth below will promote honesty and fair dealing in the interest of consumers.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered*, That Part 18 be amended by adding six new sections to read as follows:

§ 18.550 **Sour cream; identity.**

(a) *Description.* Sour cream results from the souring, by lactic acid producing bacteria, of pasteurized cream. Sour

cream contains not less than 18 percent milkfat; except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of the milkfat is not less than 18 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 14.4 percent milkfat. Sour cream has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(b) *Optional ingredients.* (1) Safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product.

(2) Sodium citrate in an amount not more than 0.1 percent may be added prior to culturing as a flavor precursor.

(3) Rennet.

(4) Safe and suitable nutritive sweeteners.

(5) Salt.

(6) Flavoring ingredients, with or without safe and suitable coloring, as follows:

(i) Fruit and fruit juice (including concentrated fruit and fruit juice).

(ii) Safe and suitable natural and artificial food flavoring.

(c) *Method of analysis.* Referenced methods in paragraphs (c) (1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed., 1970.[1]

(1) Milkfat content—"Fat—Official Final Action," section 16.129.

(2) Titratable acidity — "Acidity — Official Final Action," section 16.022.

(d) *Nomenclature.* The name of the food is "Sour cream" or alternatively "Cultured sour cream." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened."

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 1 of this chapter, except that bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream".

§ 18.555 Acidified sour cream; identity.

(a) *Description.* Acidified sour cream results from the souring of pasteurized cream with safe and suitable acidifiers, with or without addition of lactic acid producing bacteria. Acidified sour cream contains not less than 18 percent milkfat; except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 18 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 14.4 percent milkfat. Acidified sour cream has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(b) *Optional ingredients.* (1) Safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product.

(2) Rennet.

(3) Safe and suitable nutritive sweeteners.

(4) Salt.

(5) Flavoring ingredients, with or without safe and suitable coloring, as follows:

(i) Fruit and fruit juice, including concentrated fruit and fruit juice.

(ii) Safe and suitable natural and artificial food flavoring.

(c) *Method of analysis.* Referenced methods in paragraph (c) (1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed., 1970.[1]

(1) Milkfat content—"Fat—Official Final Action," section 16.129.

(2) Titratable acidity — "Acidity — Official Final Action," section 16.022.

(d) *Nomenclature.* The name of the food is "Acidified sour cream." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened."

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 1 of this chapter, except that bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream".

§ 18.560 Sour half-and-half; identity.

(a) *Description.* Sour half-and-half results from the souring, by lactic acid producing bacteria, of pasteurized half-and-half. Sour half-and-half contains not less than 10.5 percent but less than 18 percent milkfat; except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 10.5 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 8.4 percent milkfat. Sour half-and-half has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(b) *Optional ingredients.* (1) Safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product.

(2) Sodium citrate in an amount not more than 0.1 percent may be added prior to culturing as a flavor precursor.

(3) Rennet.

(4) Safe and suitable nutritive sweeteners.

(5) Salt.

(6) Flavoring ingredients, with or without safe and suitable coloring, as follows:

(i) Fruit and fruit juice, including concentrated fruit and fruit juice.

(ii) Safe and suitable natural and artificial food flavoring.

(c) *Method of analysis.* Referenced methods in paragraph (c) (1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed., 1970.[1]

(1) Milkfat content—"Fat—Official Final Action," section 16.022.

(2) Titratable acidity—"Acidity—Official Final Action," section 16.022.

(d) *Nomenclature.* The name of the food is "Sour half-and-half" or alternatively "Cultured sour half-and-half." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened."

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 1 of this chapter, except that bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream."

§ 18.565 Acidified sour half-and-half; identity.

(a) *Description.* Acidified sour half-and-half results from the souring of pasteurized half-and-half with safe and suitable acidifiers, and with or without addition of lactic acid producing bacteria. Acidified sour half-and-half contains not less than 10.5 percent but less than 18 percent milkfat; except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 10.5 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 8.4 percent milkfat. Acidified sour half-and-half has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(b) *Optional ingredients.* (1) Safe and suitable ingredients to improve texture, prevent syneresis, or extend the shelf life of the product.

(2) Rennet.

(3) Safe and suitable nutritive sweeteners.

(4) Salt.

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

[1] See footnote 1 on this page.

[1] See footnote 1 on this page.

(5) Flavoring ingredients, with or without safe and suitable coloring, as follows:

(i) Fruit and fruit juice, including concentrated fruit and fruit juice.

(ii) Safe and suitable natural and artificial food flavoring.

(c) *Method of analysis.* Referenced methods in paragraph (c)(1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed., 1970.[1]

(1) Milkfat content—"Fat—Official Final Action," section 16.129.

(2) Titratable acidity—"Acidity—Official Final Action," section 16.022.

(d) *Nomenclature.* The name of the food is "Acidified sour half-and-half." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened."

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 1 of this chapter, except that bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream".

§ 18.570 Sour cream dressing; identity.

(a) *Description.* Sour cream dressing is made in semblance of sour cream but does not comply with the standards of identity for either sour cream under § 18.550 or acidified sour cream under § 18.555. Sour cream dressing contains not less than 18 percent milkfat; except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 18 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 14.4 percent milkfat. Sour cream dressing has a titratable acidity of not less than 0.5 percent, calculated as lactic acid. The blend of all ingredients used shall be pasteurized, except that volatile flavoring substances, enzymes, bacterial cultures, and acidifying agents may be added following pasteurization.

(b) *Optional ingredients.* Safe and suitable ingredients may be used in a quantity not greater than is reasonably required to accomplish their intended effect.

(c) *Method of analysis.* Referenced methods in paragraph (c) (1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed., 1970.[1]

(1) Milkfat content—"Fat—Official Final Action," section 16.129.

(2) Titratable acidity—"Acidity—Official Final Action," section 16.022.

[1] See footnote 1 on page 15994 of this document.

(d) *Nomenclature.* The name of the food is "Sour cream dressing." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened."

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 1 of this chapter, except that:

(1) Bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream".

(2) Concentrated skim milk, nonfat dry milk, and reconstituted skim milk prepared by addition of water to concentrated skim milk or nonfat dry milk may be declared as "skim milk".

(3) Concentrated milk, dry whole milk, and reconstituted milk prepared by addition of water to concentrated milk or dry whole milk may be declared as "milk".

(4) Sweet cream buttermilk, concentrated sweet cream buttermilk, and dried sweet cream buttermilk, may be declared as "buttermilk".

(5) Cheese whey, concentrated cheese whey, and dried cheese whey may be declared as "whey".

§ 18.575 Sour half-and-half dressing; identity.

(a) *Description.* Sour half-and-half dressing is made in semblance of sour half-and-half, but does not comply with the standards of identity for either sour half-and-half under § 18.560 or acidified sour half-and-half under § 18.565. Sour half-and-half dressing contains not less than 10.5 percent but less than 18 percent milkfat; except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 10.5 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 8.4 percent milkfat. Sour half-and-half dressing has a titratable acidity of not less than 0.5 percent, calculated as lactic acid. The blend of all ingredients used shall be pasteurized, except that volatile flavoring substances, enzymes, bacterial cultures, and acidifying agents may be added following pasteurization.

(b) *Optional ingredients.* Safe and suitable ingredients may be used in a quantity not greater than is reasonably required to accomplish their intended effect.

(c) *Method of analysis.* Referenced methods in paragraph (c)(1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed., 1970.[1]

[1] See footnote 1 on page 15994 of this document.

(1) Milkfat content—"Fat—Official Final Action," section 16.129.

(2) Titratable acidity—"Acidity—Official Final Action," section 16.022.

(d) *Nomenclature.* The name of the food is "Sour half-and-half dressing." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened."

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 1 of this chapter, except that:

(1) Bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream".

(2) Concentrated skim milk, nonfat dry milk, and reconstituted skim milk prepared by addition of water to concentrated skim milk or nonfat dry milk may be declared as "skim milk".

(3) Concentrated milk, dry whole milk, and reconstituted milk prepared by addition of water to concentrated milk or dry whole milk may be declared as "milk".

(4) Sweet cream buttermilk, concentrated sweet cream buttermilk, and dried sweet cream buttermilk may be declared as "buttermilk".

(5) Cheese whey, concentrated cheese whey, and dried cheese whey may be declared as "whey".

Any person who will be adversely affected by the foregoing order may at any time on or before June 6, 1974 file with the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. Unless stayed by the filing of proper objections, compliance with this order, which shall include any labeling changes required, may begin on July 8, 1974, and all products shipped in interstate commerce after December 31, 1974, shall comply with these regulations.

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

Dated: April 30, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-10428 Filed 5-6-74;8:45 am]

PART 121—FOOD ADDITIVES

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

ETHYLENE-VINYL ACETATE COPOLYMERS

The Commissioner of Food and Drugs having evaluated data in a petition (FAP 2B2766) filed by Neutron Products, Inc., Dickerson, MD 20753, and other relevant material, concludes that the food additive regulations should be amended, as set forth below, to provide for the safe use of gamma radiation from cobalt 60 to control the growth of microbiological organisms on composite film having ethylene-vinyl acetate copolymer as the surface to be used in contact with food.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2570 is amended by adding thereto a new paragraph (e) to read as follows:

§ 121.2570 Ethylene-vinyl acetate copolymers.

* * * * *

(e) Ethylene-vinyl acetate copolymer films intended for contact with food may be irradiated to control the growth of microorganisms under the following conditions:

(1) Gamma photons emitted from a cobalt-60 sealed source in the dose range of 0.5–5.0 megarads.

(2) The irradiated ethylene-vinyl acetate copolymer films, when extracted with reagent grade n-heptane (freshly redistilled before use) according to methods described under § 121.2526(d)(3), at 75° F. for 30 minutes shall yield total extractives not to exceed 4.5 percent by weight of the film.

Any person who will be adversely affected by the foregoing order may at any time on or before June 6, 1974 file with the Hearing Clerk, Food and Drug Administration, Rm. 6-86, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on May 7, 1974.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1).)

Dated: April 30, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-10427 Filed 5-6-74;8:45 am]

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Sodium Thiopental for Injection

The Commissioner of Food and Drugs has evaluated a new animal drug application (46-790V) filed by Fort Dodge Laboratories, Fort Dodge, IA 50501, proposing same and effective use of sodium thiopental for injection as an anesthetic for the treatment of cats and dogs. The application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135b is amended by adding the following new section.

§ 135b.99 Sodium thiopental for injection, veterinary.

(a) *Specifications.* The drug contains sodium thiopental sterile powder for dilution with sterile water for injection.

(b) *Sponsor.* See code No. 017 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) It is used as an anesthetic for intravenous administration to dogs and cats during short to moderately long surgical and other procedures. It is also used to induce anesthesia in dogs and cats which then have surgical anesthesia maintained by use of a volatile anesthetic.

(2) It is administered as follows:

(i) For brief anesthesia (6 to 10 minutes) a dosage of 6 to 9 milligrams per pound of body weight is suggested.

(ii) To obtain anesthesia of 15 to 25 minutes duration the suggested dosage is 10 to 12 milligrams per pound of body weight.

(iii) Use of a preanesthetic tranquilizer or morphine will decrease the dosage of sodium thiopental required, provide for smoother induction and smoother recovery, and sometimes prolong the recovery period. If morphine is used as a preanesthetic agent the dose of the barbiturate can be reduced as much as 40 to 50 percent. When a tranquilizer is administered the barbiturate dosage can be reduced 10 to 25 percent.

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

Effective date. This order shall be effective May 7, 1974.

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

Dated: April 30, 1974.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.74-10426 Filed 5-6-74; 8:45 am]

Title 7—Agriculture

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

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

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

Correction

In FR Doc. 74-5112 appearing at page 8903 in the issue of Thursday, March 7, 1974, in Table III of § 52.2646 the following change should be made: In the second part of the table, headed "Whole unpeeled—Fill weight values", a new heading, "Whole peeled—Fill Weight Values" should be added between the 8th and 9th lines.

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 1]

PART 795—PAYMENT LIMITATIONS

Miscellaneous Amendments

Correction

In FR Doc. 74-9846 appearing at page 15021 of the issue of Tuesday, April 30, 1974, in § 795.8(c), the word "January" in the fourth and seventh lines should read "March".

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

[Lemon Reg. 636, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation increases the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period April 28-May 4, 1974. The quantity that may be shipped is increased due to improved market conditions for California-Arizona lemons. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, 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 recommendations and information submitted by the Lemon 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 lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of lemons available for han-

dling during the current week results from changes that have taken place in the marketing situation since the issuance of Lemon Regulation 636 (39 FR 14713). The marketing picture now indicates that there is a greater demand for lemons than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of lemons to fill the current market demand thereby making a greater quantity of lemons 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 hereof 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 lemons grown in California and Arizona.

(b) *Order, as amended.* Paragraph (b)(1) of § 910.936 (Lemon Regulation 636 (39 FR 14713) is hereby amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period April 28, 1974 through May 4, 1974, is hereby fixed at 255,000 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.74-10405 Filed 5-6-74; 8:45 am]

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

[Docket No. AO 298-A19, etc.]

MILK IN RED RIVER VALLEY AND CERTAIN OTHER MARKETING AREAS

Order Amending Orders

7 CFR part	Marketing area	Docket No.
	GROUP II	
1104	Red River Valley	AO-298-A19.
1106	Oklahoma Metropolitan	AO-210-A31.
1120	Lubbock-Plainview, Tex.	AO-328-A13.
1126	North Texas	AO-231-A37.
1127	San Antonio, Tex.	AO-232-A23.
1128	Central West Tex.	AO-238-A26.
1129	Austin-Waco, Tex.	AO-256-A19.
1130	Corpus Christi, Tex.	AO-259-A23.
1131	Central Arizona	AO-271-A15.
1132	Texas Panhandle	AO-262-A22.
1138	Rio Grande Valley	AO-335-A18.

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 the 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 the order amending each of the specified orders, except Austin-Waco, 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 Austin-Waco order 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 marketing area.

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, as follows:

PART 1104—MILK IN RED RIVER VALLEY MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1104.1 General provisions.

DEFINITIONS

1104.2 Red River Valley marketing area.
1104.3 Route disposition.
1104.4 [Reserved]
1104.5 Distributing plant.
1104.6 Supply plant.
1104.7 Pool plant.
1104.8 Nonpool plant.
1104.9 Handler.
1104.10 Producer-handler.
1104.11 [Reserved]
1104.12 Producer.
1104.13 Producer milk.
1104.14 Other source milk.
1104.15 Fluid milk product.
1104.16 Fluid cream product.
1104.17 Filled milk.
1104.18 Cooperative association.

HANDLER REPORTS

1104.30 Reports of receipts and utilization.
1104.31 Payroll reports.
1104.32 Other reports.

CLASSIFICATION OF MILK

1104.40 Classes of utilization.
1104.41 Shrinkage.
1104.42 Classification of transfers and diversions.
1104.43 General classification rules.
1104.44 Classification of producer milk.
1104.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1104.50 Class prices.
1104.51 [Reserved]
1104.52 Plant location adjustments for handlers.
1104.53 Announcement of class prices.
1104.54 Equivalent price.

UNIFORM PRICE

1104.60 Handler's value of milk for computing uniform price.
1104.61 Computation of uniform price.
1104.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1104.70 Producer-settlement fund.
1104.71 Payments to the producer-settlement fund.
1104.72 Payments from the producer-settlement fund.
1104.73 Payments to producers and to cooperative associations.
1104.74 Butterfat differential.
1104.75 Plant location adjustments for producers and on nonpool milk.
1104.76 Payments by handler operating a partially regulated distributing plant.
1104.77 Adjustment of accounts.
1104.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1104.85 Assessment for order administration.
1104.86 Deduction for marketing services.

ADVERTISING AND PROMOTION PROGRAM

AUTHORITY: The provisions of this Part 1104 issued under Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

GENERAL PROVISIONS

§ 1104.1 General provisions.

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

DEFINITIONS

§ 1104.2 Red River Valley marketing area.

"Red River Valley marketing area", hereinafter called "the marketing area", means all territory within the following counties, including all municipal corporations; Federal reservations, facilities, and installations; and State institutions located therein:

OKLAHOMA COUNTIES

Bryan.
Caddo.
Carter.
Choctaw.
Comanche.
Cotton.
Grady.
Jackson.
Jefferson.
Johnston.
Kiowa.
Love.
Marshall.
Murray.
Pushmataha.
Stephens.
Tillman.

TEXAS COUNTIES

Archer.
Baylor.
Clay.
Hardeman.
Montague.
Wichita.
Wilbarger.

§ 1104.3 Route disposition.

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

§ 1104.4 [Reserved]

§ 1104.5 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Approved by a duly constituted health authority for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition of fluid milk products.

§ 1104.6 Supply plant.

"Supply plant" means a plant from which fluid milk products are transferred to a distributing plant(s) during the month.

§ 1104.7 Pool plant.

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

(a) A distributing plant from which during the month there is:

(1) Total route disposition of fluid milk products (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operator under the limitations of § 1104.13; and

(2) Route disposition of fluid milk products (except filled milk) in the marketing area in an amount not less than 15 percent of the total route disposition of the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 50 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1104.12 if such plant qualifies pursuant to this paragraph and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under this paragraph during each of the months of September through December shall continue so qualified in each of the following months of January through August until any month of such period in which less than 20 percent of the plant receipts and diverted milk specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January–August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts and diverted milk specified previously herein.

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

(1) A producer-handler plant;

(2) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of an other Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institution;

(3) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; or

(4) A supply plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part.

§ 1104.8 Nonpool plant.

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

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

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

(c) "Partially regulated distributing plant" means a nonpool plant, except an other order plant or a producer-handler plant, from which there is route disposition in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1104.7 and which is not an other order plant or a producer-handler plant.

§ 1104.9 Handler.

"Handler" means:

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

(b) A cooperative association with respect to the milk of producers diverted for the account of such association pursuant to § 1104.13;

(c) A cooperative association with respect to milk of its member producers picked up at the farm for delivery to the pool plant of another handler in a tank truck owned or operated by such association, or under the control of such association, by contract or otherwise, to the extent that such association supervises and controls the determination of farm weights and tests of the milk of each of such member producers;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1104.7(c).

§ 1104.10 Producer-handler.

"Producer-handler" means any person who produces milk and who operates a plant from which the route disposition in the marketing area does not exceed such person's own production and fluid milk products received from a pool plant

regulated under either this Part or Part 1106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

§ 1104.11 [Reserved]

§ 1104.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted health authority, which milk is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1104.13 by a handler for his account.

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1104.44(a)(8)(iii) and the corresponding step of § 1104.44(b); and

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

§ 1104.13 Producer milk.

"Producer milk" means skim milk and butterfat in milk from producers that is:

(a) Received by the operator of a pool plant at such pool plant from producers;

(b) Received by the operator of a pool plant at such pool plant from a handler described in § 1104.9(c);

(c) Diverted by the operator of a pool plant from such pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (f) of this section;

(d) Received from producers by a handler described in § 1104.9(c) in an amount in excess of the quantity delivered by such handler to pool plants pursuant to paragraph (b) of this section; or

(e) Diverted by a cooperative association for its account from the pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (f) of this section;

(f) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert for its account, subject to the conditions of paragraph (f)(3) of this section, a total quantity of milk not in excess of total milk of its member-producers received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association;

(2) The operator of a pool plant other than a cooperative association may divert for his account, subject to the conditions of paragraph (f)(3) of this section, milk of producers not members of a cooperative association diverting milk pursuant to paragraph (f)(1) of this section, in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant; and

(4) Milk qualified as producer milk that is diverted by a handler to a nonpool plant pursuant to this section shall be accounted for as received by the diverting handler at the location of the nonpool plant.

§ 1104.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in § 1104.40(b)(1) from any source other than producers, handlers described in § 1104.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1104.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1104.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1104.40(b)(1)) for which the handler fails to establish a disposition.

§ 1104.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1104.40 (b) or (c)(1) (i) through (v) if is contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1104.16 Fluid cream product.

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

§ 1104.17 Filled milk.

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

§ 1104.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines:

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

(b) Has and is exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1104.30 Reports of receipts and utilization.

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

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

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

(2) Receipts of milk from handlers described in § 1104.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1104.40(b)(1); and

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

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

(c) Each handler described in § 1104.9 (b) and (c) shall report:

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

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

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

§ 1104.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1104.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1104.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1104.32 Other reports.

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

(b) In addition to the reports required pursuant to §§ 1104.30 and 1104.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1104.40 Classes of utilization.

Except as provided in § 1104.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1104.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b) (1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b) (1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b) (1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1104.15; and

(6) In shrinkage assigned pursuant to § 1104.41 (a) to the receipts specified in § 1104.41 (a) (2) and in shrinkage specified in § 1104.41 (b) and (c).

§ 1104.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1104.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1104.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1104.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent. If farm weights and tests are not used as the basis for any such milk commingled in a tank truck with milk of producers who are not members of the cooperative association, the milk received from the cooperative association shall be the proportion of the total receipts at the plant that such milk was of the total receipts determined at the respective farms;

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

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

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

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

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to

which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1104.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1104.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1104.44(a) (12) and the corresponding step of § 1104.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1104.44(a) (7) or the corresponding step of § 1104.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1104.44(a) (11) or (12) or the corresponding steps of § 1104.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

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

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1104.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

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

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

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

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

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

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

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1104.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible

first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

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

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1104.43 General classification rules.

In determining the classification of producer milk pursuant to § 1104.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1104.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1104.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1104.40, 1104.41, and 1104.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1104.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1104.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1104.9(a) for each of his pool plants separately and of each handler described in § 1104.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1104.41(b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1104.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1104.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1104.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1104.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

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

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

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not

subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1104.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

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

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

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

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

(*b*) The total pounds of skim milk remilk of all handlers in each class as announced for the month pursuant to § 1104.45(a); or

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

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

(iii) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1104.42(a); and

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

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

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

§ 1104.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1104.44(a) (12) and the corresponding step of § 1104.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1104.44 on the basis of such report, and, 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 and the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports the milk so received from members of such association shall be prorated to each class in accordance with the same percentage as the total receipts of producer milk bear to such utilization of milk by such handler.

CLASS PRICES

§ 1104.50 Class prices.

Subject to the provisions of § 1104.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the price for Class I milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area at Oklahoma City, plus 22 cents.

(b) *Class II price.* The Class II price shall be the price for Class II milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

(c) *Class III price.* The Class III price shall be the price for Class III milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

§ 1104.51 [Reserved]

§ 1104.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the State of Texas and more than 40 miles from Wichita Falls, Tex., and classified as Class I milk or assigned a Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1104.50(a) shall be reduced at the rate set forth in the following schedule. The distance shall be based on the shortest highway distance, as determined by the market administrator, that the plant is from the City Hall in Wichita Falls, Tex.

Distance (miles)	*Rate per hundredweight (cents)*
40.1–70	12
70.1–100	15
For each additional 10 miles or fraction thereof in excess of 100 miles an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant in an amount not in excess of that by which such Class I disposition exceeds 95 percent of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

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

§ 1104.53 Announcement of class prices.

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

§ 1104.54 Equivalent price.

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

UNIFORM PRICE

§ 1104.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1104.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1104.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1104.44(a)(14) and the corresponding step of § 1104.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1104.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1104.44(a)(9) and the corresponding step of § 1104.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1104.44(a)(7) (i) through (iv) and the corresponding step of § 1104.44(b) excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1104.44(a)(7) (v) and (vi) and the corresponding step of § 1104.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1104.44(a)(11) and the corresponding step of § 1104.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1104.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received as follows:

(a) Combine into one total the values computed pursuant to §1104.60 for all handlers who filed the reports prescribed by §1104.30 for the month and who made the payments pursuant to §§1104.71 and 1104.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to §1104.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1104.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The results shall be the "uniform price" for milk received from producers.

§ 1104.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1104.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all

payments made by handlers pursuant to §§ 1104.71, 1104.76, and 1104.77 subject to the provisions of § 1104.78, and from which he shall make all payments to handlers pursuant to §§ 1104.72 and 1104.77: *Provided,* That any payments due to any handler may be offset by any payments due from such handler.

§ 1104.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each person shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1104.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1104.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1104.60(f).

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

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

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

§ 1104.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1104.71(a)(2) exceeds the amount computed pursuant to § 1104.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the necessary funds are available.

§ 1104.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month, to each producer who did not discontinue shipping milk to such handler during the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month;

(2) On or before the 15th day of the following month, an amount equal to not less than the applicable uniform price, as adjusted pursuant to §§ 1104.74 and 1104.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to paragraph (a)(1) of this section, (ii) less deductions for marketing services made pursuant to § 1104.86, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment pursuant to § 1104.72, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 27th and 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member-producer (*a*) the total pounds of milk received during the preceding month, (*b*) the total pounds of butterfat contained in such milk, (*c*) the number of days of production included in such receipts, and (*d*) the amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month written information which shows for each such member-producer the total pounds of milk received during the first 15 days of the current month.

The foregoing payment and submission of information shall be made with respect to the milk, of each producer who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a handler described in § 1104.9(c), shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(i) Partial payment for milk received during the first 15 days of the month at the rate specified in paragraph (a) of this section; and

(ii) In making final settlement, the value of such milk at the uniform price, as adjusted pursuant to §§ 1104.74 and 1104.75, less the amount of partial payment made for such milk.

§ 1104.74 Butterfat differential.

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

§ 1104.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1104.73 for producer milk received at a pool plant, the uniform price computed pursuant to § 1104.61 shall be reduced according to the location of the pool plant at the rate set forth in § 1104.52(a);

(b) For the purpose of computations pursuant to §§1104.71 and 1104.72, the uniform price plus 5 cents shall be adjusted at the rate set forth in § 1104.52 (a) applicable at the location of the nonpool plant from which the milk was

received (but not to be less than the Class III price); and

(c) In making payments to producers pursuant to § 1104.73 for producer milk diverted from a pool plant to a nonpool plant, the uniform price computed pursuant to § 1104.61 shall be reduced according to the location of the nonpool plant at which the milk is received at the rate set forth in § 1104.52(a).

§ 1104.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1104.30(b) and 1104.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

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

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

(1) Determine the value that would have been computed pursuant to § 1104.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1104.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1104.60 for such handler shall include, in lieu of the value of other source milk specified in § 1104.60(f) less the value of such other source milk specified in § 1104.71(a)(2)(ii), a value of milk determined pursuant to § 1104.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1104.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1104.30(b) and 1104.31(b) similar reports for each nonpool supply plant;

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

(*c*) The value of milk determined pursuant to § 1104.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1104.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1104.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

§ 1104.77 Adjustment of accounts.

(a) Whenever audit by the market administrator or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such errors occurred.

§ 1104.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1104.71, 1104.77, 1104.85, or 1104.86 shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and compounded on the first day of each month thereafter until such obligation is paid.

Administrative Assessment and Marketing Service Deduction

§ 1104.85 Assessment for order administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1104.13(b) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1104.44(a)(7) and (11) and the corresponding steps of § 1104.44(b), except such other source milk that is excluded from the computations pursuant to § 1104.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1104.76(a)(2).

§ 1104.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk

(other than milk of his own production) pursuant to § 1104.73 shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1104.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1104.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1104.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1104.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1104.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1104.113(b), has a majority of the participating 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.

§ 1104.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1104.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1104.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers particpiating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1104.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1104.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1104.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1104.110 and 1104.117.

§ 1104.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1104.110 and 1104.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secreetary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1104.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1104.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1104.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1104.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1104.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1104.121 Duties of the market administrator.

Except as specified in § 1104.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1104.113(c).

(b) Set aside the amounts subtracted under § 1104.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1104.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1104.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1104.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1104.110 through 1104.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1104.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1104.70.

PART 1106—MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

Subpart—Order Regulating Handling

AUTHORITY: The provisions of this Part 1106 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1106.1 General provisions.

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

DEFINITIONS

§ 1106.2 Oklahoma Metropolitan marketing area.

"Oklahoma Metropolitan marketing area", hereinafter called the "Marketing Area", means all the territory within Tulsa County, the city of Sapulpa, and the township of Sapulpa in Creek County; that part of Black Dog Township in 20 North. Ranges 10, 11, and 12 East in Osage County; the cities of Muskogee, McAlester, Ponca City, and Tahlequah; Oklahoma County, except Deer Creek, Deep Fork, and Luther Townships; Moore, Taylor, Case, Liberty, Norman, and Noble Townships in Cleveland County; Bales, Davis, Dent, Brinton, Rock Creek, Forest, and Earlsboro Townships in Pottawatomie County; the city and township of Guthrie in Logan County; the city and township of Stillwater and Union Township, including the city of Cushing in Payne County; and the city of Enid and Vance Air Force Base in Garfield County; all in the State of Oklahoma.

§ 1106.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery in bulk to a milk or filled milk plant.

§ 1106.4 [Reserved]

§ 1106.5 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Approved by a duly constituted health authority for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition of fluid milk products.

§ 1106.6 Supply plant.

"Supply plant" means a plant from which fluid milk products are transferred to a distributing plant(s) during the month.

§ 1106.7 Pool plant.

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

(a) A distributing plant from which during the month there is:

(1) Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operator under the limitations of § 1106.13; and

(2) Route disposition (except filled milk) in the marketing area in an amount not less than 15 percent of the total route disposition of the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 50 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1106.12 if such plant qualifies pursuant to this paragraph and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under this paragraph during each of the months of September through December shall continue so qualified in each of the following months of January through August until any month of such period in which less than 20 percent of the plant receipts and diverted milk specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January–August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts and diverted milk specified previously herein.

(c) A plant(s) operated by a cooperative association and located not more than 50 miles from the City Hall of Tulsa or Oklahoma City, Okla., at which milk is received from dairy farmers producing milk approved by a duly constituted health authority for fluid consumption if the total of fluid milk products described in paragraph (c) (1) and (2) of this section received at plants described pursuant to paragraph (a) of this section is not less than 50 percent of total milk of member producers during the month:

(1) Fluid milk products (except filed milk) transferred from such cooperative association plant(s); and

(2) Milk of member producers received from such producers.

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

(1) A producer-handler plant or governmental agency plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; or

(4) A supply plant qualified pursuant to paragraph (b) of this section which meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part.

§ 1106.8 Nonpool plant.

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

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

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

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

(d) "Unregulated supply plant" means a nonpool plant, except an other order plant, a governmental agency plant, or a producer-handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1106.7

(e) "Governmental agency plant" means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1106.9 Handler.

"Handler" means:

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

Provided, That in the case of recognized divisions of a corporation which are operated as separate business units, each such division shall be deemed to be a handler;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to § 1106.13 for the account of such cooperative association;

(c) A cooperative association with respect to the milk of its member producers delivered to the pool plant of another handler in a tank truck owned or operated by such cooperative association for the account of such cooperative association. Such milk shall be considered to have been received by such cooperative association at the location of the plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1106.7(d).

§ 1106.10 Producer-handler.

"Producer-handler" means any person who produces milk and operates a plant which meets the standards in § 1106.5(a) from which there is route disposition in the marketing area, but who receives no milk from producers or other dairy farmers, and whose disposition of Class I milk does not exceed his own production and fluid milk products received from pool plants.

§ 1106.11 [Reserved]

§ 1106.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted health authority, which is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1106.13 by a handler for his account.

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1106.44(a)(8)(iii) and the corresponding step of § 1106.44(b); and

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

§ 1106.13 Producer milk.

"Producer milk" means skim milk and butterfat in milk from producers that is:

(a) Received by the operator of a pool plant at such pool plant from producers.

(b) Diverted by the operator of a pool plant from such pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section.

(c) Received from producers by a handler described in § 1106.9(c).

(d) Diverted by a cooperative association for its account from the pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section.

(e) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert for its account, subject to the conditions of paragraph (e)(3) of this section, a total quantity of milk not in excess of total milk of its member-producers received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association;

(2) The operator of a pool plant other than a cooperative association may divert for his account, subject to the conditions of paragraph (e)(3) of this section, milk of producers not members of a cooperative association diverting milk pursuant to paragraph (e)(1) of this section, in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant; and

(4) Milk qualified as producer milk that is diverted by a handler to a nonpool plant pursuant to this section shall be accounted for as received by the diverting handler at the location of the nonpool plant.

§ 1106.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in § 1106.40(b)(1) from any source other than producers, handlers described in §1106.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1106.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1106.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1106.40(b)(1)) for which the handler fails to establish a disposition.

§ 1106.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1106.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1106.16 Fluid cream product.

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

§ 1106.17 Filled milk.

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

§ 1106.18 Cooperative association.

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

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

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales or marketing milk or its products for its members.

§ 1106.19 Accounting period.

"Accounting period" shall mean a calendar month unless the handler during any calendar month makes a request in writing to the market administrator requesting two accounting periods during the month. No accounting period shall be of less than 5 days duration and the request for two accounting periods must be made at least 48 hours prior to the end of the first accounting period in the month.

HANDLER REPORTS

§ 1106.30 Reports of receipts and utilization.

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

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

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

(2) Receipts of milk from handlers described in § 1106.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the accounting period of fluid milk products and products specified in § 1106.40(b)(1); and

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

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

(c) Each handler described in § 1106.9(b) and (c) shall report:

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

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

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

§ 1106.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1106.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1106.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1106.32 Other reports.

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

(b) In addition to the reports required pursuant to §§ 1106.30 and 1106.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1106.40 Classes of utilization.

Except as provided in § 1106.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1106.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1106.15; and

(6) In shrinkage assigned pursuant to § 1106.41(a) to the receipts specified in § 1106.41(a)(2) and in shrinkage specified in § 1106.41 (b) and (c).

§ 1106.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1106.30, the market administrator shall determine the following:

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

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

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form

of a bulk fluid milk product or a bulk fluid cream product;

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1106.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1106.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1106.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1106.44(a)(7) or the corresponding step of § 1106.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1106.44(a) (11) or (12) or the corresponding steps of § 1106.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

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

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1106.40.

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

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

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

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

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

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

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

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1106.30 for the month within which such transaction occurred; and

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

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated

thereunder shall be assigned to the extent possible in the following sequence:

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1106.43 General classification rules.

In determining the classification of producer milk pursuant to § 1106.44, the following rules shall apply:

(a) Each accounting period the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1106.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1106.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1106.40, 1106.41, and 1106.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1106.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1106.44 Classification of producer milk.

For each accounting period the market administrator shall determine the classification of producer milk of each handler described in § 1106.9(a) for each of his pool plants separately and of each handler described in § 1106.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1106.41(b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1106.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1106.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

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

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

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

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

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

(ii) The pounds of skim milk in receipts of fluid milk products from an

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

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

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1106.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1106.40(b)(1) in inventory at the beginning of the accounting period that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

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

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being 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 § 1106.45(a); or

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

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such 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)(i) 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 § 1106.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk,

subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

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

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

§ 1106.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current avavilable data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1106.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk caused to be delivered by such cooperative association either directly or from producers who are members of such cooperative association, to each handler to whom the cooperative association sells milk. For the purposes of this report, the milk caused to be so delivered by a cooperative association shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

CLASS PRICES

§ 1106.50 Class prices.

Subject to the provisions of § 1106.52, the class prices for the month per hundred weight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.98.

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

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

§ 1106.51 Basic formula price.

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

§ 1106.52 Plant location adjustments for handlers.

(a) At a plant in the State of Oklahoma, north of Beckham, Washita, Caddo, Canadian, Oklahoma, Pottawatomie, and Seminole Counties or east of Seminole, Pontotoc, Johnston, and Marshall Counties, and 50 miles or more from the city hall in Oklahoma City, the price specified in § 1106.50(a) for milk received from producers shall be reduced 10 cents plus 1.5 cents for each 10 miles or fraction thereof that such plant is more than 150 miles from Oklahoma City.

(b) At a plant outside the States of Oklahoma and Texas, the price specified in § 1106.50(a) for milk received from producers shall be the price applicable at Tulsa or Ponca City, Okla., pursuant to paragraph (a) of this section reduced by 1.5 cents for each 10 miles or fraction thereof that such plant is from the nearer of the city halls in Tulsa or Ponca City.

(c) The distances applied pursuant to paragraphs (a) and (b) of this section shall be the shortest hard-surfaced highway distances as determined by the market administrator.

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

(e) For purposes of calculating location adjustments, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in an amount not in excess of that by which 105 percent of Class I disposition at the transferee plant exceeds the sum of receipts at such plant from producers and handlers described in § 1106.9(c), and the pounds assigned to Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

§ 1106.53 Announcement of class prices.

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

§ 1106.54 Equivalent price.

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

UNIFORM PRICE

§ 1106.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1106.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1106.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1106.44(a)(14) and the corresponding step of § 1106.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1106.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1106.44(a)(9) and the corresponding step of § 1106.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(7) (i) through (iv) and the corresponding step of § 1106.44(b) excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(7) (v) and (vi) and the corresponding step of § 1106.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(11) and the corresponding step of § 1106.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1106.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1106.61 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1106.60 for all handlers who made the reports prescribed in § 1106.30 and who made the payments pursuant to §§ 1106.71 and 1106.73 for the preceding month.

(b) Add the aggregate of the values of all allowable location adjustments to producers pursuant to § 1106.75.

(c) Add not less than one-half of the cash balance on hand in the producer-settlement fund less the total amount of the contingent obligations to handlers pursuant to § 1106.72.

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents.

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1106.60(f).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1106.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1106.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1106.71, 1106.76, and 1106.77 and from which he shall make all payments to handlers pursuant to §§ 1106.72 and 1106.77.

§ 1106.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1106.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1106.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1106.60(f).

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

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

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

§ 1106.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler including a cooperative association which is a handler the amount, if any, by which the amount computed pursuant to § 1106.71(a)(2) exceeds the amount computed pursuant to § 1106.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1106.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer to whom payment is not made pursuant to paragraph (d) of this section, at not less than the applicable uniform price(s) for such month computed pursuant to § 1106.61, as adjusted pursuant to §§ 1106.74 and 1106.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided*, That if by such date such handler has not received full payment pursuant to § 1106.72, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payment from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator;

(b) On or before the last day of each month, to each producer for whom payment is not made pursuant to paragraph (d) of this section for milk received from him during the first 15 days of the month at not less than the Class III price for the preceding month;

(c) To a cooperative association with respect to milk for which the cooperative association is a handler on or before the 10th day of each month for milk which is caused to be delivered to such handler during the preceding month at not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1106.74, that are applicable at the location of the receiving handler's pool plant; and

(d)(1) Upon receipt of written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 13th and 27th days of each month in lieu of payments pursuant to paragraphs (a) and (b), respectively of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member producer:

(a) The total pounds of milk received during the preceding month;

(b) The total pounds of butterfat contained in such milk;

(c) The number of days on which milk was received; and

(d) The amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month, written information which shows for each member producer the total pounds of milk received during the first 15 days of the current month. The foregoing payment and submission of information shall be made with respect to milk of each producer, who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following the receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1106.74 Butterfat differential.

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

§ 1106.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1106.73 for producer milk received at a pool plant, the uniform price computed pursuant to § 1106.61 shall be reduced according to the location of the pool plant at the rates set forth in § 1106.52;

(b) For the purpose of computations pursuant to §§ 1106.71 and 1106.72, the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1106.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price); and

(c) In making payments to producers pursuant to § 1106.73 for producer milk diverted from a pool plant to a nonpool plant, the uniform price computed pursuant to § 1106.61 shall be reduced according to the location of the nonpool plant at which the milk is received at the rates set forth in § 1106.52.

§ 1106.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1106.30(b) and 1106.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

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

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

(1) Determine the value that would have been computed pursuant to § 1106.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1106.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1106.60 for such handler shall include, in lieu of the value of other source milk specified in § 1106.60(f) less the value of such other source milk specified in § 1106.71(a)(2)(ii), a value of milk determined pursuant to § 1106.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1106.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1106.30(b) and 1106.31(b) similar reports for each such nonpool supply plant;

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

(c) The value of milk determined pursuant to § 1106.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1106.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential

specified in § 1106.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

§ 1106.77 Adjustments of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1106.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk described in paragraphs (a), (b), and (c) of this section. For each handler using two accounting periods in a month, the rate of payment shall be twice the rate for monthly accounting periods, or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting period:

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

(b) Other source milk allocated to Class I pursuant to § 1106.44(a) (7) and (11) and the corresponding steps of § 1106.44(b), except such other source milk that is excluded from the computations pursuant to § 1106.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1106.76(a)(2).

§ 1106.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1106.73 shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such money shall be used by the market administrator to sample, test, and check the weights of milk received from producers and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of the month pay such deduction to the cooperative association rendering such services, identified by a statement showing for each such producer the information required to be reported to the market administrator pursuant to § 1106.31(a). In lieu of such statement a handler may authorize the market administrator to furnish such cooperative association the information with respect to such producers reported pursuant to § 1106.31(a).

ADVERTISING AND PROMOTION PROGRAM

§ 1106.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1106.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1106.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1106.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1106.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1106.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1106.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1106.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1106.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1106.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1106.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1106.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1106.110 and 1106.117.

§ 1106.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1106.110 and 1106.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1106.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1106.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1106.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1106.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1106.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1106.121 Duties of the market administrator.

Except as specified in § 1106.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1106.113(c).

(b) Set aside the amounts subtracted under § 1106.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1106.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1106.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1106.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1106.110 through 1106.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1106.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1106.70.

PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEXAS, MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.

1120.1 General provisions.

AUTHORITY: The provisions of this Part 1120 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1120.1 General provisions.

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

DEFINITIONS

§ 1120.2 Lubbock-Plainview, Tex., marketing area.

"Lubbock-Plainview, Tex., marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the counties of:

Bailey.	Hale.
Castro.	Hockley.
Cochran.	Lamb.
Cottle.	Lubbock.
Crosby.	Lynn.
Dickens.	Motley.
Floyd.	Terry.
Gaines.	Yoakum.
Garza.	

all within the State of Texas, including all territory within such boundaries occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments.

§ 1120.3 Route disposition.

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

§ 1120.4 Plant.

"Plant" means the land, buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received from dairy farmers or processed or packaged: *Provided,* That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk products in transit on routes shall not be a plant under this definition.

§ 1120.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition of any Grade A fluid milk product during the month in the marketing area.

§ 1120.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable for distribution under a Grade A label is moved during the month to a distributing plant.

§ 1120.7 Pool plant.

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

(a) A distributing plant from which there is total route disposition, except filled milk, in an amount equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a handler described in § 1120.9(c) during the month unless the volume so disposed of in the marketing area is less than 15 percent of such receipts or less than 1,500 pounds on a daily average: *Provided,* That if a portion of such plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be a part of such pool plant pursuant to this paragraph.

(b) A supply plant from which a volume of fluid milk products, except filled milk, equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a handler described in § 1120.9(c) is transferred during the month to a distributing plant from which during the month there is total route disposition, except filled milk, in an amount equal to not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants and the volume to disposed of in the marketing area is at least 15 percent of such receipts or a daily average of 1,500 pounds, whichever is less: *Provided,* That if a portion of such supply plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be part of such pool plant pursuant to this paragraph: *And provided further,* That any plant which was a pool plant pursuant to this paragraph in each of the months of September through November shall be a pool plant for the following months of March through June, unless written application is filed with the market administrator on or before the first day of any such months for designation as a nonpool plant for the remaining months through June.

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

(1) A producer-handler plant or a State institution plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in

which a greater proportion of its route disposition, except filled milk, is made in such other marketing area, unless notwithstanding the provisions of this subparagraph it is regulated under such other order; or

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is fully regulated under such other Federal order.

§ 1120.8 Nonpool plant.

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

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

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

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

(d) "Unregulated supply plant" means any nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant, a state institution plant, nor a producer-handler plant.

(e) "State institution plant" means a State owned and operated institution or establishment which processes or packages fluid milk products distributed solely on its premises or those of other State institutions or establishments. Such plant shall be exempt from all provisions of this part.

§ 1120.9 Handler.

"Handler" means:

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

(b) A cooperative association with respect to the milk of any producer which it causes to be diverted for its account pursuant to § 1120.12;

(c) A cooperative association with respect to the milk of any producer which it causes to be delivered directly from the farm to the pool plant of another handler in a tank truck owned and operated by, under contract to, or under the control of such association, unless the association notifies the market administrator and the operator of the pool plant in writing prior to the time of delivery that the transferee-handler is to be the responsible handler on such milk;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1120.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1120.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and whose only source of supply for Class I milk is his own farm production and transfers from pool plants: *Provided,* That such person furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprises of and at the personal risks of such person.

§ 1120.11 [Reserved]

§ 1120.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is:

(1) Received at a pool plant either directly or by a handler described in § 1120.9(c); or

(2) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of either the operator of the pool plant or a cooperative association:

(i) Any day during the months of March through June; and

(ii) Not more than 15 days production during any month of July through February: *Provided,* That milk so diverted shall be deemed to have been received at the location of the pool plant from which diverted.

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1120.44(a)(8)(iii) and the corresponding step of § 1120.44(b); and

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

§ 1120.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in:

(a) Milk received at a pool plant directly from producers;

(b) Milk from producers diverted in accordance with the conditions set forth in § 1120.12; or

(c) Milk received by a handler described in § 1120.9(c): *Provided,* That such milk shall be deemed to have been received by such cooperative association at a pool plant at the location of the pool plant to which it was delivered.

§ 1120.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in § 1120.40(b)(1) from any source other than producers, handlers described in § 1120.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1120.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1120.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1120.40(b)(1)) for which the handler fails to establish a disposition.

§ 1120.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1120.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1120.16 Fluid cream product.

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

§ 1120.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk

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

§ 1120.18 Cooperative association.

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

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

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

§ 1120.19 Accounting periods.

A handler may account for receipts, utilization, and classification of skim milk and butterfat at any of his pool plants for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

HANDLER REPORTS

§ 1120.30 Reports of receipts and utilization.

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

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

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

(2) Receipts of milk from handlers described in § 1120.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1120.40(b)(1); and

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

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

(c) Each handler described in § 1120.9 (b) and (c) shall report:

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

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

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

§ 1120.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1120.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1120.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1120.32 Other reports.

(a) Each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) On or before the first day other source milk is received in the form of any fluid milk product at any of his pool plants his intention to receive such product, and on or before the last day such product is received his intention to discontinue receipt of such product; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1120.30 and 1120.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1120.40 Classes of utilization.

Except as provided in § 1120.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1120.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk

product definition pursuant to § 1120.15; and

(6) In shrinkage assigned pursuant to § 1120.41(a) to the receipts specified in § 1120.41(a)(2) and in shrinkage specified in § 1120.41 (b) and (c).

§ 1120.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1120.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1120.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1120.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1120.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1120.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1120.44(a)(12) and the corresponding step of § 1120.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1120.44(a)(7) or the corresponding step of § 1120.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1120.44(a) (11) or (12) or the corresponding steps of § 1120.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

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

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1120.40.

(c) *Transfers to producer-handlers and to State institution plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or a State institution plant shall be classified:

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

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

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

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

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

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

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1120.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1120.43 General classification rules.

In determining the classification of producer milk pursuant to § 1120.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1120.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1120.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1120.40, 1120.41, and 1120.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1120.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1120.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1120.9(a) for each of his pool plants separately and of each handler described in § 1120.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1120.41(b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1120.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds in skim milk in Class II the pounds of skim milk in products specified in § 1120.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1120.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1120.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1120.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1120.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1120.45(a); or

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

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

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the

pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1120.9(c) according to the classification of such products pursuant to § 1120.42(a); and

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

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

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

§ 1120.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1120.44(a)(12) and the corresponding step of § 1120.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1120.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 10th day after the end of each month report to each cooperative association, upon request by such association, the percentage of producer milk caused to be delivered by such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

CLASS PRICES

§ 1120.50 Class prices.

Subject to the provisions of § 1120.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.42.

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

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

§ 1120.51 Basic formula price.

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

§ 1120.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located either outside of the State of Texas, or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall, Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is assigned to Class I pursuant to paragraph (b) of this section or otherwise classified as Class I milk, the price specified in § 1120.50(a) shall be reduced at the rate set forth in the following table according to the location of the plant where such milk is received:

	Rate per hundredweight (cents)
Miles from Lubbock City Hall:	
100 miles but less than 110 miles	10
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1120.9(c) and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

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

§ 1120.53 Announcement of class prices.

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

§ 1120.54 Equivalent price.

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

UNIFORM PRICE

§ 1120.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1120.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1120.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1120.44(a)(14) and the corresponding step of § 1120.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1120.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1120.44(a)(9) and the corresponding step of § 1120.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(7) (i) through (iv)

and the corresponding step of § 1120.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(7) (v) and (vi) and the corresponding step of § 1120.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(11) and the corresponding step of § 1120.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1120.61 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1120.60 for all pool handlers who made the reports prescribed in § 1120.30 for the month and who have made the payments required pursuant to § 1120.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1120.75;

(c) Add an amount equal to not less than one-half the unobligated balance on hand in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1120.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "uniform price" for producer milk.

§ 1120.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 10th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1120.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-setlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1120.71, 1120.76, and 1120.77, subject to the provision of § 1120.78, and from which he shall make all payments pursuant to §§ 1120.72 and 1120.77: *Provided*, That payments due to any handler shall be offset by any payment due from such handler.

§ 1120.71 Payments to the producer-settlement fund.

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

(1) The total value of milk of the handler for such month as determined pursuant to § 1120.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1120.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1120.60(f).

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

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

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

§ 1120.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1120.71(a)(2) exceeds the amount computed pursuant to § 1120.-71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments due pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1120.73 Payments to producers and to cooperative associations.

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

(1) On or before the last day of each month, to each producer from whom milk is currently being received, for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month;

(2) On or before the 15th day after the end of each month for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1120.61 as adjusted pursuant to § 1120.74; and less

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

(ii) Location adjustments pursuant to § 1120.75;

(iii) Deduction for marketing services pursuant to § 1120.86: and

(iv) Proper deductions authorized by such producer;

Provided, That if by the date specified, such handler has not received full payment for such month pursuant to § 1120.72, he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator, and payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) Each handler shall pay to a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk on or before the 26th day of the month and the 13th day of the month following, respectively, the amounts otherwise payable pursuant to paragraph (a) of this section, for milk received from producers whom such association certifies are its members: *Provided*, That such cooperative association submits to the handler and to the market administrator before the first day of the month for which it is to receive such payment, a written request for such payment for milk received from such certified members who are producers together with a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of such association. Such request shall be honored with respect to milk received until the first day of the month in which it receives from such association, in writing, notice either of termination of membership, or of withdrawal of the original request. Exceptions, if any, to the accuracy of certification of membership by the cooperative association, by a producer who is claimed to be a member or by a handler shall be made in writing to the mar-

ket administrator and shall be subject to his determination;

(c) Each handler shall make payment to a cooperative association for each hundredweight of milk received from such association as a handler pursuant to § 1120.9(c) as follows:

(1) On or before the 26th day of each month for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 13th day after the end of each month an amount equal to not less than the class prices, as adjusted by the butterfat differential specified in § 1120.74, that are applicable at the location of the receiving handler's pool plant, less the amounts paid pursuant to paragraph (c)(1) of this section; and

(d) In making payments to producers pursuant to paragraph (a)(2) of this section and to a cooperative association pursuant to paragraph (b) of this section each handler shall furnish each producer from whom he has received milk, or each such cooperative association with respect to each producer member, whichever is applicable, with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The applicable month;

(2) The identity of the handler, the Federal milk order under which the producer's milk was priced, and the producer;

(3) The daily and total pounds and the average butterfat content of milk received from such producer;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this part;

(5) The rate which is used in making the payment;

(6) The amount or the rate per hundredweight, and the nature of each deduction made by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1120.74 Butterfat differential.

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

§ 1120.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price determined pursuant to § 1120.61 to be paid for milk which is received from producers at pool plants located either outside the State of Texas or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall of Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the table contained in § 1120.52 according to the location of the pool plant at which such milk was received from producers; and

(b) For purposes of computations pursuant to §§ 1120.71 and 1120.72 the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1120.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1120.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1120.30(b) and 1120.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

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

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

(1) Determine the value that would have been computed pursuant to § 1120.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1120.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1120.60 for such handler shall include, in lieu of the value of other source milk specified in § 1120.60(f) less the value of such other source milk specified in § 1120.71(a)(2)(ii), a value of milk determined pursuant to § 1120.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1120.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1120.30(b) and 1120.31(b) similar reports for each such nonpool supply plant;

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

(*c*) The value of milk determined pursuant to § 1120.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1120.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1120.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

§ 1120.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or account discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provision under which such error occurred.

§ 1120.78 Charges on overdue accounts.

There shall be added to any balance due to the market administrator pursuant to §§ 1120.71, 1120.76, 1120.77, 1120.85, and 1120.86 an amount equal to one-half of 1 percent of such balance for each month or portion thereof that payment of such balance is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1120.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1120.9(c), shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk specified in paragraphs (a), (b), and (c) of this section: *Provided*, That if a handler elects pursuant to § 1120.19 to use two accounting periods in any month the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1120.9(c);

(b) Other source milk allocated to Class I pursuant to § 1120.44(a) (7) and (11) and the corresponding steps of § 1120.44(b), except such other source milk that is excluded from the computations pursuant to § 1120.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1120.76(a)(2).

§ 1120.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1120.73(a)(2) shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator no later than the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to verify the weights, samples and tests of milk received by handlers from such producers during the month. Such services shall be performed by the market administrator or by an agent engaged by or responsible to him.

(b) In the case of a producer for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make in lieu of the deductions specified in said paragraph (a) of this section, such deductions from payments to be made directly to such producers pursuant to § 1120.73(a)(2) as are authorized by such producers and on or before the 15th day after the end of each month pay such deductions to the cooperative association rendering such services.

ADVERTISING AND PROMOTION PROGRAM

§ 1120.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1120.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1120.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1120.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1120.113 (b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1120.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1120.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1120.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative, who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1120.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and

who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1120.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1120.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of agency authority pursuant to § 1120.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1120.110 and 1120.117.

§ 1120.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1120.110 and 1120.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1120.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1120.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1120.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1120.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointy with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1120.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1120.121 Duties of the market administrator.

Except as specified in § 1120.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1120.113(c).

(b) Set aside the amounts subtracted under § 1120.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1120.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such re-

fund pursuant to § 1120.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1120.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1120.110 through 1120.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1120.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1120.70.

PART 1126—MILK IN NORTH TEXAS MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1126 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1126.1 General provisions.

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

DEFINITIONS

§ 1126.2 North Texas marketing area.

"North Texas marketing area", hereinafter called the marketing area, means all territory, including all municipal corporations, Federal military reservations, facilities, and State institutions, within the following counties, all in the State of Texas:

Anderson.
Bosque.
Camp.
Cherokee.
Cooke.
Collin.
Dallas.
Delta.
Denton.
Ellis.
Erath.
Fannin.
Franklin.
Freestone.
Grayson.
Gregg.
Harrison.
Henderson.
Hill.
Hood.
Hopkins.
Hunt.
Johnson.
Kaufman.
Lamar.
Limestone.
Marion.
Morris.
Navarro.
Panola.
Parker.
Rains.
Red River.
Rockwall.
Rusk.
Sabine.
San Augustine.
Shelby.
Smith.
Somervell.
Tarrant.
Titus.
Upshur.
Van Zandt.
Wood.

§ 1126.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of a fluid milk product classified as Class I milk other than a delivery in bulk form to a milk processing plant.

§ 1126.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1126.5 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted State or municipal health authority, or acceptable to an agency of the State or Federal Government for the disposition of Grade A fluid milk products in the marketing area, at which milk products are received, processed and/or packaged, and from which there is route disposition of fluid milk products in the marketing area.

§ 1126.6 Supply plant.

"Supply plant" means any plant approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which milk is moved to a pool distributing plant as follows:

(a) During the month 50 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19;

(b) During the last month of any four or less consecutive months during which period an average of 50 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19 and 15 percent or more of such receipts are thus moved and assigned during the month; or

(c) During each of the months of January through August, if (1) such plant was a supply plant pursuant to paragraph (a) or (b) of this section during each of the immediately preceding months of September through December: *Provided*, That, to remain a supply plant during August, 15 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19, and (2) the operator of such plant has filed a written request on or before January 31 with the market administrator requesting that such plant

be designated as a supply plant through August of such year.

§ 1126.7 Pool plant.

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

(a) A distributing plant from which during the month there is:

(1) Route disposition, except filled milk, in the marketing area equal to 10 percent or more of the receipts of Grade A milk at such plant; and

(2) Total route disposition, except filled milk equal to 50 percent or more of the receipts of Grade A milk at such plant, except that if two or more distributing plants operated by the same handler each meet the performance requirement of paragraph (a)(1) of this section and total route disposition, except filled milk, of such plants is 50 percent or more of receipts of Grade A milk at such plants, each such plant shall be deemed to have met the requirement of this subparagraph.

(b) Any supply plant.

(c) Any plant operated by a cooperative association which has been approved by any duly constituted state or municipal health authority and at which milk is received from dairy farmers holding permits or authorization from such health authority, and at least 50 percent or more of the producer milk of members of such cooperative association is physically received during the month at pool plants of other handlers described in paragraph (a) of this section or is transferred to such pool plants from the plant of the cooperative association.

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

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

§ 1126.8 Nonpool plant.

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

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

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

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

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

§ 1126.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to producer milk diverted pursuant to § 1126.13 for the account of such cooperative association;

(c) Any cooperative association with respect to:

(1) Producer milk which it causes to be delivered during any period of less than a full month from its members directly to the pool plant of another handler if (i) during the same month such cooperative association is a handler pursuant to paragraph (a) or (b) of this section with respect to any milk of such producer, and (ii) such association notifies the handler and the market administrator in writing of its intent to become a handler with respect to such milk prior to delivery. For the purpose of location adjustments such milk shall be considered to have been received by the cooperative association at the location of the pool plant to which it is delivered; and

(2) The milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing that it wishes to be the handler for such milk. The cooperative association shall be considered the handler for such milk, effective the first day of the month following receipt of such notice, and milk so delivered shall be considered for purposes of location adjustments to have been received by such cooperative association at the location of the pool plant to which it is delivered; and

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

§ 1126.10 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from producers;

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

(d) Receives from pool plants an amount of milk equal to not more than 5 percent of his own production.

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for consumption as Grade A milk by any duly constituted State or municipal health authority, which milk is:

(1) Received at a pool plant, including milk of a dairy farmer delivered to the pool plant by a handler described in § 1126.9(c); or

(2) Diverted by a handler for his account pursuant to § 1126.13.

(b) "Producer" shall not include:

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

(2) Any person during periods of temporary degrading by any duly constituted State or municipal health authority if such health authority notifies the operator of the pool plant or the market administrator in writing of the effective date or dates of such action and subsequent reapproval;

(3) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1126.44(a)(8)(iii) and the corresponding step of § 1126.44(b); and

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

§ 1126.13 Producer milk.

"Producer milk" of a handler operating a pool plant means only that skim milk and butterfat contained in milk described in paragraphs (a) and (b) of this section, and producer milk of a handler described in § 1126.9 (b) and (c) means milk described in paragraphs (c) and (d) of this section:

(a) Milk received from producers at a pool plant except that received from a handler described in § 1126.9(c);

(b) Milk of a producer diverted by the operator of a pool plant for his account to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section;

(c) Milk of a producer diverted by a cooperative association from the pool plant of another handler (or the pool plant of the cooperative) to a nonpool plant that is not a producer-handler plant for the account of such cooperative association, subject to the conditions of paragraph (e) of this section;

(d) Milk received from a producer by a handler described in § 1126.9(c);

(e) With respect to milk diverted to nonpool plants, milk diverted in excess of the limit specified herein shall not be producer milk and the diverting handler shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If the diverting handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such handler:

(1) A cooperative association may divert for its account a total quantity of producer milk equal to not more than one-third of the total producer milk of its members physically received at all pool plants during the month;

(2) A handler, other than a cooperative association, operating a pool plant(s) may divert for his account milk of producers other than members of a cooperative association diverting milk pursuant to paragraph (e)(1) of this section, in a total quantity equal to not more than one-third of the milk physically received at such handler's pool plant(s) during the month from producers who are not members of such a cooperative association;

(3) Diverted milk shall be deemed to have been received by the diverting handler at the location of the plant to which it was diverted; and

(4) Milk shall be eligible for diversion as producer milk only if the person producing such milk has been delivering milk as producer milk to a pool plant on a regular basis prior to the diversion.

§ 1126.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in § 1126.40(b)(1) from any source other than producers, handlers described in § 1126.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1126.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1126.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1126.40(b)(1)) for which the handler fails to establish a disposition.

§ 1126.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1126.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1126.16 Fluid cream product.

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

§ 1126.17 Filled milk.

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

§ 1126.18 Cooperative association.

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

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

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

§ 1126.19 Reserve supply credit.

The hundredweight of reserve supply credit that may be assigned to milk moved from a supply plant to a distributing plant shall be calculated as follows: From the total hundredweight of milk classified as Class I milk, except filled milk, at the distributing plant during the month, deduct Class I sales, except filled milk, to other pool plants(s) and from this result deduct an amount equal to 85 percent of the total hundredweight of milk received from producers during the month at such plant. Any plus figure resulting from this calculation shall be assigned pro rata to milk moved to such plant from supply plants unless the operator of the distributing plant notifies the market administrator in writing of a different assignment on or before the seventh day after the end of the month.

Handler Reports

§ 1126.30 Monthly reports of receipts and utilization.

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

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

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

(2) Receipts of milk from handlers described in § 1126.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1126.40(b)(1); and

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

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

(c) Each handler described in § 1126.9(b) and (c) shall report:

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

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

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

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1126.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the

detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1126.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) The market administrator shall furnish a cooperative association for its members the data furnished pursuant to paragraph (a) of this section.

§ 1126.32 Other reports.

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

(b) Each handler, with respect to fluid milk products and products specified in § 1126.40(b)(1) disposed of for animal feed, shall report to the market administrator such information and at such time as the market administrator may prescribe.

(c) In addition to the reports required pursuant to §§ 1126.30 and 1126.31 and paragraphs (a) and (b) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1126.40 Classes of utilization.

Except as provided in § 1126.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1126.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1126.15, plus the fluid equivalent of loss of nonfat milk solids occurring in the process of modification in any case where determination of the quantity of added nonfat milk solids disposed of in such products is based upon laboratory analysis by the market administrator, such loss allowable pursuant to this subparagraph not to exceed 2 percent of the fluid equivalent of the quantity of added nonfat milk solids so determined to be added; and

(6) In shrinkage assigned pursuant to § 1126.41(a) to the receipts specified in § 1126.41(a)(2) and in shrinkage specified in § 1126.41(b) and (c).

§ 1126.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1126.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1126.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective

amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1126.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1126.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1126.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1126.44(a)(12) and the corresponding step of § 1126.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1126.44(a)(7) or the corresponding step of § 1126.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1126.44(a)(11) or (12) or the coresponding steps of § 1126.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

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

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1126.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

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

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

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

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

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

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

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1126.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other

order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

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

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1126.43 General classification rules.

In determining the classification of producer milk pursuant to § 1126.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1126.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1126.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1126.40, 1126.41, and 1126.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1126.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1126.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1126.9(a) for each of his pool plants separately and of each handler described in § 1126.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1126.41(b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1126.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1126.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1126.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1126.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1126.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

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

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or

Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1126.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received·

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1126.45(a); or

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

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

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1126.9(c) according to the classification of such products pursuant to § 1126.42(a); and

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

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

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

§ 1126.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1126.44 (a)(12) and the corresponding step of § 1126.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1126.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 12th day after the end of each month, report to each co-

operative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

CLASS PRICES

§ 1126.50 Class prices.

Subject to the provisions of § 1126.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.32.

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

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

§ 1126.51 Basic formula price.

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

§ 1126.52 Plant location adjustments for handlers.

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

(1) "Zone I" means all territory within the following Texas counties in the marketing area:

Bosque.	Hood.
Cooke.	Hopkins.
Collin.	Hunt.
Dallas.	Johnson.
Delta.	Kaufman.
Denton.	Lamar.
Ellis.	Limestone.
Erath.	Navarro.
Fannin.	Parker.
Freestone.	Rockwall.
Grayson.	Somervell.
Hill.	Tarrant.

(2) "Zone II" means all territory in the marketing area outside Zone I and all territory in Bowie and Cass Counties, Tex., and the city of Texarkana, Ark.

(b) For producer milk received at a pool plant which is classified as Class I milk, subject to paragraph (c) of this section, the price specified in § 1126.50 (a) shall be adjusted for the location of such plant as follows:

(1) At a plant located in Zone II, such price shall be increased by any amount by which the applicable Class I price at such location pursuant to Part 1121 regulating the handling of milk in the South Texas marketing area exceeds the price specified in § 1126.50(a); and

(2) At a plant located outside Zones I and II and 110 miles or more from the city hall in Dallas, Tex., such price shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is located from the Dallas city hall by shortest hard-surface highway distance as determined by the market administrator.

(c) For purposes of calculating such location adjustments transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of 95 percent of receipts at such plant from producers and handlers described in § 1126.9(c), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such an assignment to be made first to transferor-plants having the same Class I price, next to transferor-plants having a higher Class I price and then in sequence to plants having a lower Class I price, beginning with the plant at which the highest Class I price would apply.

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

§ 1126.53 Announcement of class prices.

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

§ 1126.54 Equivalent price.

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

UNIFORM PRICE

§ 1126.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1126.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1126.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1126.44(a)(14) and the corresponding step of § 1126.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1126.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1126.44 (a)(9) and the corresponding step of § 1126.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(7) (i) through (iv) and the corresponding step of § 1126.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(7) (v) and (vi) and the corresponding step of § 1126.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(11) and the corresponding step of § 1126.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1126.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content at pool plants at which no location adjustment applies as follows:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers who made the reports prescribed in § 1126.30 and who made the payments pursuant to § 1126.71 for the preceding month;

(b) Add not less than one-fourth of the cash balance on hand in the producer-settlement fund, less the total amount of the contingent obligations to handlers pursuant to § 1126.72;

(c) Add the aggregate of the values of minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1126.75;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 1126.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1126.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1126.71, 1126.76, and 1126.77 subject to the provisions of § 1126.78 and from which he shall make all payments to handlers pursuant to §§ 1126.72 and 1126.77.

§ 1126.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1126.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1126.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1126.60(f).

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

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

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

§ 1126.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1126.71(a)(2) exceeds the amount computed pursuant to § 1126.71(a)(1): *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available: *And provided further,* That any amount due a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator for such handler pursuant to §§ 1126.71, 1126.77, 1126.78, 1126.85, and 1126.86.

§ 1126.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price for such month computed pursuant to § 1126.61, as adjusted pursuant to §§ 1126.74 and 1126.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided,* That if by such date such handler has not received full payment for such month pursuant to § 1126.72 he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month, to each producer (1) for whom payment is not made pursuant to paragraph (c) of this section and (2) who has not discontinued delivery of milk to such handler, a partial payment for milk received from such producer during the first 15 days of such month computed at not less than the Class III price for 3.5 percent milk of the preceding month, without deduction for hauling.

(c) On or before the 13th and 23d days of each month, in lieu of payments pursuant to paragraphs (a) and (b) of this section, respectively, to a cooperative association which so requests, with respect to producers for whose milk such cooperative association is authorized to collect payments, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payment shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1126.31.

(d) On or before the 13th day after the end of the month each handler shall pay to each cooperative association which is also a handler for milk received from it not less than the value of such milk as classified pursuant to § 1126.42 (a) at the respective class prices, as adjusted by the butterfat differential specified in § 1126.74, that are applicable at the location of the receiving handler's pool plant.

§ 1126.74 Butterfat differential.

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

§ 1126.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1126.73 (a) or (c) the uniform price computed pursuant to § 1126.61 to be paid for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rate set forth in § 1126.52.

(b) For purposes of computation pursuant to §§ 1126.71 and 1126.72 the uniform price shall be adjusted at the rates set forth in § 1126.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1126.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1126.30(b) and 1126.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under

any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

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

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

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

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

(1) Determine the value that would have been computed pursuant to § 1126.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1126.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1126.60 for such handler shall include, in lieu of the value of other source milk specified in § 1126.60(f) less the value of such other source milk (specified in § 1126.71(a)(2)(ii), a value of milk determined pursuant to § 1126.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1126.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1126.30(b) and 1126.31(b) similar reports for each such nonpool supply plant;

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

(*c*) The value of milk determined pursuant to § 1126.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1126.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1126.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

§ 1126.77 Adjustment of accounts.

Whenever verification by the market administrator of any handler's reports, books, records, accounts or payments discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1126.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1126.71, 1126.73, 1126.76, 1126.77, 1126.85, or 1126.86 shall be increased three-fourths of 1 percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due: *Provided*, That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section; and

(b) For the purpose of this section any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1126.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts from producers (including such handler's own production) except receipts by a handler described in § 1126.9(c);

(b) Receipts from a handler described in § 1126.9(c);

(c) Other source milk allocated to Class I pursuant to § 1126.44(a)(7) and (11) and the corresponding steps of § 1126.44(b), except such other source milk that is excluded from the computations pursuant to § 1126.60 (d) and (f); and

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1126.76(a)(2).

§ 1126.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1126.73, shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers

and on or before the 15th day after the end of each month pay such deduction to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1126.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1126.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1126.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1126.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1126.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1126.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1126.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1126.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1126.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1126.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1126.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1126.110,

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1126.110 and 1126.117.

§ 1126.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1126.110 and 1126.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1126.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of 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.

§ 1126.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1126.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or

for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1126.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1126.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an 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.

§ 1126.121 Duties of the market administrator.

Except as specified in § 1126.116, the market administrator in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1126.113(c).

(b) Set aside the amounts subtracted under § 1126.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1126.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1126.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1126.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1126.110 through 1126.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1126.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1126.70.

PART 1127—MILK IN SAN ANTONIO, TEXAS, MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

DEFINITIONS

HANDLER REPORTS

CLASSIFICATION OF MILK

CLASS PRICES

UNIFORM PRICE

PAYMENTS FOR MILK

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

ADVERTISING AND PROMOTION PROGRAM

AUTHORITY: The provisions of this Part 1127 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1127.1 General provisions.

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

DEFINITIONS

§ 1127.2 San Antonio, Tex., marketing area.

"San Antonio, Tex., marketing area", hereinafter called the "marketing area", means all the territory including all municipal corporations and all Federal military reservations, facilities and installations located within the boundaries of Bexar County, Tex.

§ 1127.3 Route disposition.

"Route disposition" means any delivery of any fluid milk product classified as Class I milk (including any delivery by a vendor or disposition at a plant store) to wholesale or retail outlets, except deliveries in bulk form to other pool plants.

§ 1127.4 [Reserved]

§ 1127.5 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Which is approved by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority for the processing of Grade A milk or which is acceptable to an agency of the Federal Government for distribution of milk to its installations in the marketing area;

(b) In which milk or skim milk is processed or packaged; and

(c) From which there is route disposition during the month in the marketing area or from which Class I milk is supplied to installations located in the marketing area of an agency of the Federal Government.

§ 1127.6 Supply plant.

"Supply plant" means all the buildings, premises, and facilities of a plant equipped to either receive or cool milk which is approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area, and from which an amount equal to not less than 50 percent of its receipts from dairy farmers, who would be producers if the plant qualified as a pool plant, are shipped to a distributing plant during the month: *Provided*, That any plant which qualifies as a supply plant for each of the months of July through February shall be considered to be a supply plant for the following months of March through June of such year, except that if the operator of such plant files a written request with the market administrator, supply plant status shall be terminated as of the first of the following month.

§ 1127.7 Pool plant.

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

(a) A distributing plant which has route disposition, except filled milk, in the marketing area equal to 15 percent or more of its receipts of milk during the month from pool plants and from dairy farmers conforming to the requirements set forth in § 1127.12.

(b) A supply plant.

(c) Any plant approved by an appropriate health authority having jurisdiction in the marketing area to supply milk for distribution as Grade A milk in the marketing area which is operated by a cooperative association, and 50 percent or more of the producer milk of members is received during the month in the pool plants of other handlers, or is transferred to such plants from the plant of the cooperative association.

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

(1) A producer-handler plant;

(2) A plant meeting the requirements for pooling pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all of the provisions of this part in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area unless notwithstanding the provisions of this subparagraph it is fully regulated under such other order; and

(3) A plant meeting the requirements for pooling pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area, but which plant is fully regulated under such other Federal order.

§ 1127.8 Nonpool plant.

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

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

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

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

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

§ 1127.9 Handler.

"Handler" means:

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

(b) A cooperative association with respect to the milk of a member producer diverted for its account pursuant to § 1127.12 for each day's milk production that such producer's milk is diverted during the month. Milk so diverted shall be deemed to have been received by the association at a pool plant at the location of the pool plant at which the milk was received prior to diversion;

(c) A cooperative asscciation with respect to the producer milk of its members which is delivered directly from the farm to the pool plant of a handler in a tank truck owned and operated by or under contract to such cooperative association unless the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing, prior to the first day of the month, that it does not desire to be the handler for such milk. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the association at a pool plant at the location of the pool plant to which it is delivered; and

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition in the marketing area.

§ 1127.10 [Reserved]

§ 1127.11 [Reserved]

§ 1127.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk (1) under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk, issued by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority, or (2) which is acceptable to

an agency of the Federal Government for fluid consumption in its institutions or bases located in the marketing area; which is received directly from the farm at a pool plant or diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of a cooperative association: *Provided*, That if the days of production of such person for which milk is diverted exceed one-third of the days of production that milk is delivered to a pool plant during the month, such milk shall cease to be producer milk for the entire period of such diversion.

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1127.44 (a)(8)(iii) and the corresponding step of § 1127.44(b);

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

(4) A dairy farmer during the months of March through June, if milk from the same dairy farmer (or farm) was received at a nonpool plant operated by the same handler, as other than producer milk, on more than half the days of delivery during the preceding months of July through February.

§ 1127.13 Producer milk.

"Producer milk" means any skim milk or butterfat contained in milk of a producer received at a pool plant or diverted by a cooperative association in accordance with § 1127.9(b).

§ 1127.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in § 1127.40 (b)(1) from any source other than producers, handlers described in § 1127.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1127.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1127.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1127.40(b)(1)) for which the handler fails to establish a disposition.

§ 1127.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1127.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1127.16 Fluid cream product.

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

§ 1127.17 Filled milk.

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

§ 1127.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association (a) to have its entire activities under the control of its members, (b) to have full authority in the sale of milk of its members, and (c) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

HANDLER REPORTS

§ 1127.30 Reports of receipts and utilization.

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

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

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

(2) Receipts of milk from handlers described in § 1127.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1127.40(b)(1); and

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

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

(c) Each handler described in § 1127.9 (b) and (c) shall report:

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

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

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

§ 1127.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1127.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1127.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1127.32 Other reports.

In addition to the reports required pursuant to §§ 1127.30 and 1127.31, each

handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1127.40 Classes of utilization.

Except as provided in § 1127.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1127.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1127.15; and

(6) In shrinkage assigned pursuant to § 1127.41(a) to the receipts specified in § 1127.41(a)(2) and in shrinkage specified in § 1127.41 (b) and (c).

§ 1127.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1127.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk;

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1127.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) [Reserved]

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1127.9 (b) or (c), but not in excess of 0 5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1127.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1127.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1127.44(a)(12) and the corresponding step of § 1127.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1127.44(a)(7) or the corresponding step of § 1127.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3 If the transferor-handler received during the month other source milk to be allocated pursuant to § 1127.44(a) (11) or (12) or the corresponding steps of § 1127.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall

apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1127.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under any other Federal order shall be classified:

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

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

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

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

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

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

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1127.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1127.43 General classification rules.

In determining the classification of producer milk pursuant to § 1127.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1127.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1127.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1127.40, 1127.41, and 1127.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1127.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1127.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler de-

scribed in § 1127.9(a) for each of his pool plants separately and of each handler described in § 1127.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1127.41 (b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1127.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1127.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1127.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1127.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

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

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

(iv) Receipts of fluid milk products from a producer-handler as defined under any other Federal milk order;

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

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

(vii) Receipts of fluid milk products from persons described in § 1127.12 (b) (4);

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

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

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

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

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1127.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1127.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

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

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the

handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1127.45(a); or

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

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

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should be computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from an other pool plant or a handler described in § 1127.9(c) according to the classification of such products pursuant to § 1127.42(a); and

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

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

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

§ 1127.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1127.44(a)(12) and the corresponding step of § 1127.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1127.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report;

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

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be assigned to each class in the proportion that the total producer milk in each class is to the total receipts of producer milk by such handler.

Class Prices

§ 1127.50 Class prices.

Subject to the provisions of § 1127.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.74.

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

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

§ 1127.51 Basic formula price.

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

§ 1127.52 Plant location adjustments for handlers.

(a) For milk which is received from producers at a pool plant located more

than 50 miles from the city hall in San Antonio, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator and which is classified as Class I milk, the price specified in § 1127.50(a) shall be reduced 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the city hall in San Antonio, Tex.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1127.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

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

§ 1127.53 Announcement of class prices.

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

§ 1127.54 Equivalent price.

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

UNIFORM PRICE

§ 1127.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1127.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1127.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1127.44(a)(14) and the corresponding step of § 1127.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1127.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1127.44 (a)(9) and the corresponding step of § 1127.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1127.44(a)(7) (i) through (iv) and (vii) and the corresponding step of § 1127.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1127.44(a)(7) (v) and (vi) and the corresponding step of § 1127.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1127.44(a)(11) and the corresponding step of § 1127.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1127.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1127.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1127.60 for all handlers who have made the reports prescribed by § 1127.30 for the month and who have made the payment required pursuant to § 1127.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1127.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1127.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1127.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1127.70 Producer-settlement fund.

The market administrator shall establish a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1127.71, 1127.76, and 1127.77 and from which he shall make all payments pursuant to §§ 1127.72 and 1127.77.

§ 1127.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1127.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1127.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1127.60(f).

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

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

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route dis-

position in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1127.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the amount computed pursuant to § 1127.71(a)(2) exceeds the amount computed pursuant to § 1127.71(a)(1).

§ 1127.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay to a cooperative association on or before the 13th day of the month, for milk received from it during the preceding month for which such association is a handler described in § 1127.9(c), the value of such milk at not less than the class prices as adjusted by the butterfat differential specified in § 1127.74, that are applicable at the location of the receiving handler's pool plant: *Provided, however,* That for each hundredweight of milk so received during the first 15 days of any month, such handler shall, upon written request of the cooperative association make a partial payment to such association by the 26th day of the month at not less than the Class III price of the preceding month, in which case the obligation of the handler otherwise payable on or before the 13th day of the following month shall be reduced by the amount of such partial payment.

(b) Except as provided in paragraph (b)(3) of this section each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of such month at not less than the price per hundredweight for Class III milk for the preceding month.

(2) On or before the 15th day after the end of the month during which the milk was received at not less than the uniform price per hundredweight computed for such month pursuant to § 1127.61 subject to the following adjustments: (i) The butterfat differential pursuant to § 1127.74, (ii) the location adjustment pursuant to § 1127.75, (iii) the payment made pursuant to paragraph (b)(1) of this section, (iv) deductions for marketing services pursuant to § 1127.86, and (v) proper deductions authorized by such producer: *Provided,* That if by such date such handler has not received full payment pursuant to § 1127.72 he may reduce his total payment to all producers pro rata by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this subparagraph not later than the date for making such payments next following receipt of the balance due from the market administrator.

(3)(i) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall on or before the 20th day of each month furnish the cooperative association information showing the daily and total pounds of milk received from each of the association's member producers for the first 15 days of such month and, on or before the 10th day after the end of each month, such information for the 16th through the end of such month, and shall pay to such association on or before the 26th and 13th day of each month, in lieu of payments pursuant to paragraph (a) (1) and (2) respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(ii) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(4) In making the payments to producers pursuant to paragraph (b) (2) and (3) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show:

(i) The month for which payment is made and the identity of the handler and of the producer;

(ii) The total pounds and average butterfat test of milk received from such producer;

(iii) The minimum rate or rates at which payment to such producer is required;

(iv) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(v) The amount or rate per hundredweight of each deduction claimed by the handler; together with a description of the respective deductions; and

(vi) The net amount of payment to such producer.

§ 1127.74 Butterfat differential.

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

§ 1127.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1127.73 for that milk which is received from producers at a pool plant located more than 50 miles from the city hall in San Antonio, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, the handler may deduct an amount equal to not more than 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the city hall in San Antonio, Tex.

(b) For the purposes of computations pursuant to §§ 1127.71 and 1127.72 the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1127.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1127.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1127.30(b) and 1127.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and

priced as Class I milk and is not used as an offset for any other payment obligation under any order;

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

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

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

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

(1) Determine the value that would have been computed pursuant to § 1127.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1127.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1127.60 for such handler shall include, in lieu of the value of other source milk specified in § 1127.60(f) less the value of such other source milk specified in § 1127.71(a)(2)(ii), a value of milk determined pursuant to § 1127.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1127.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1127.30 (b) and 1127.31(b) similar reports for each such nonpool supply plant;

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

(c) The value of milk determined pursuant to § 1127.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1127.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1127.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

§ 1127.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's books, reports, records, or accounts discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1127.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Skim milk and butterfat received from producers (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1127.44(a) (7) and (11) and the corresponding steps of § 1127.44(b), except other source milk that is excluded from the computations pursuant to § 1127.60 (d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1127.76(a)(2).

§ 1127.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section each handler, in making payments to producers (other than himself) shall make a deduction of 6 cents per hundredweight of milk or such lesser deduction as the Secretary from time to time may prescribe. Such deductions shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for verification of weights and tests of milk received from such producers and in providing market information to such producers.

(b) In the case of each producer who is a member of, or who has given written authorization for the rendering of marketing services and the taking of a deduction therefor to a cooperative association, which the Secretary has determined is performing the services described in paragraph (a) of this section, such handler, in lieu of the deduction specified under paragraph (a) of this section, shall deduct from the payments to such producer the amount per hundredweight specified by such association which is not in excess of the rate authorized by such producer and shall pay such deduction to the cooperative association entitled to receive it on or before the 15th day after the end of the month during which such milk was received.

Advertising and Promotion Program

§ 1127.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1127.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding

brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1127.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1127.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1127.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1127.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1127.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1127.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1127.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1127.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1127.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1127.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1127.110 and 1127.117.

§ 1127.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1127.110 and 1127.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1127.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1127.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1127.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producers participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1127.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either

of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1127.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1127.121 Duties of the market administrator.

Except as specified in § 1127.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1127.113(c).

(b) Set aside the amounts subtracted under § 1127.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1127.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1127.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1127.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1127.110 through 1127.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1127.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1127.70.

PART 1128—MILK IN CENTRAL WEST TEXAS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

AUTHORITY: The provisions of this Part 1128 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1128.1 General provisions.

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

DEFINITIONS

§ 1128.2 Central West Texas marketing area.

"Central West Texas marketing area," hereafter called the "marketing area," means all territory within the boundaries of the Abilene Air Force Base and within the corporate limits of the following cities and towns, all in the State of Texas:

Abilene.
Albany.
Anson.
Aspermont.
Ballinger.
Big Spring.
Breckenridge.
Brownwood.
Cisco.
Coleman.
Colorado City.
Comanche.
Eastland.
Hamlin.
Haskell.
Knox City.
Lamesa.
Merkel.
Midland.
Mineral Wells.
Munday.
Odessa.
Ranger.
Rochester.
Rotan.
Rule.
San Angelo.
Snyder.
Stamford.
Sweetwater.
Tye.
Winters.

§ 1128.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or at a plant store) of a fluid milk product classified as Class I milk other than in bulk to a milk or filled milk processing plant.

§ 1128.4 [Reserved]

§ 1128.5 [Reserved]

§ 1128.6 [Reserved]

§ 1128.7 Pool plant.

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

(a) A milk plant approved by and under the routine inspection of the health authority of any municipality in the marketing area:

(1) From which there is route disposition of Grade A fluid milk products, other than filled milk, in consumer packages in the marketing area; or

(2) At which milk is received from producers as defined in § 1128.12(a)(1) and which serves as a receiving station at which producer milk is received, weighed, and commingled and from which milk or skim milk (i) is moved during the month to a pool plant(s) specified in paragraph (a)(1) or (b) of this section, or (ii) was moved to any such plant(s) in an amount equal to 60 percent or more of the total receipts of producer milk during the months of October through January immediately preceding any month of April, May, or June during which no milk was moved to such plant(s).

(b) A milk plant approved by and under the routine inspection of a health authority other than that of a municipality in the marketing area from which there is route disposition of Grade A fluid milk products, other than filled milk, in consumer packages in the marketing area in an amount equal to 10 percent or more of the total disposition of Class I milk, except filled milk, from such plant during the month.

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

(1) A producer-handler plant;

(2) A plant meeting the requirements of paragraph (a)(1) or (b) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which there is a greater proportion of route disposition in such other marketing area unless notwithstanding the provisions of this subparagraph it is regulated under such other order;

(3) A plant meeting the requirements of paragraph (a)(1) or (b) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is fully regulated under such other Federal order; and

(4) A plant meeting the requirements of paragraph (a)(2) of this section which (i) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part or (ii) retains automatic pooling status for the month under another Federal order by virtue of its performance in previous months.

§ 1128.8 Nonpool plant.

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

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

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

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

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

§ 1128.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted pursuant to § 1128.12 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of producers which it causes to be delivered directly from the farm for its own account, in tank truck(s) owned or operated by such association, to the pool plant of another handler described in § 1128.7 (a)(1) or (b): *Provided,* That such milk shall be deemed to have been received by the cooperative association at a pool plant at the location of the plant to which it is delivered; or

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition during the month in the marketing area.

§ 1128.10 Producer-handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a milk plant approved by and under the routine inspection of the appropriate health authority from which there is route disposition of Grade A fluid milk products in consumer-type packages in the marketing area; and

(b) Whose disposition of fluid milk products does not exceed his own farm production and receipts of fluid milk products from pool plants.

§ 1128.11 [Reserved]

§ 1128.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person described in paragraph (a)(1) or (2) of this section and shall include any such person whose milk is received by a handler described in § 1128.9 (c) or whose milk is regularly received at a pool plant but is caused to be diverted by a handler to a nonpool plant that is not a producer-handler plant, and milk so diverted shall be deemed to have been received by the handler at the location of the pool plant at which it was received immediately prior to its being so diverted:

(1) Who produces milk under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk issued by the health authority of any municipality in the marketing area, which milk is received at a pool plant described in § 1128.7(a); or

(2) Who produces milk under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk issued by a health authority whose certification is accepted by the appropriate health authority of a municipality in the marketing area, which milk is received at a pool plant described in § 1128.7(b).

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1128.44(a)(8)(iii) and the corresponding step of § 1128.44(b); and

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

§ 1128.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in:

(a) Milk received at a pool plant directly from producers;

(b) Milk of producers that is diverted pursuant to § 1128.12; or

(c) Milk received by a handler described in § 1128.9(c).

§ 1128.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in § 1128.40 (b)(1) from any source other than producers, handlers described in § 1128.9 (c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1128.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1128.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1128.40(b)(1)) for which the handler fails to establish a disposition.

§ 1128.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1128.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1128.16 Fluid cream product.

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

§ 1128.17 Filled milk.

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

§ 1128.18 Cooperative association.

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

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

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

HANDLER REPORTS

§ 1128.30 Reports of receipts and utilization.

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

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

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

(2) Receipts of milk from handlers described in § 1128.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1128.40(b)(1); and

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

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

(c) Each handler described in § 1128.9 (b) and (c) shall report:

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

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

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

§ 1128.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1128.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1128.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) The market administrator shall furnish to a cooperative association upon request the data with respect to milk of its members furnished pursuant to paragraph (a) of this section.

§ 1128.32 Other reports.

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

(b) In addition to the reports required pursuant §§ 1128.30 and 1128.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1128.40 Classes of utilization.

Except as provided in § 1128.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1128.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1128.15; and

(6) In shrinkage assigned pursuant to § 1128.41(a) to the receipts specified in § 1128.41(a)(2) and in shrinkage specified in § 1128.41(b) and (c).

§ 1128.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1128.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1128.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1128.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1128.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1128.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1128.44(a)(12) and the corresponding step of § 1128.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1128.44(a)(7) or the corresponding step of § 1128.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1128.44(a)(11) or (12) or the corresponding steps of § 1128.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in

fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1128.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

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

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

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

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

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

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

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1128.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1128.43 General classification rules.

In determining the classification of producer milk pursuant to § 1128.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1128.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1128.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1128.40, 1128.41, and 1128.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1128.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1128.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1128.9(a) for each of his pool plants separately and of each handler described in § 1128.9 (b) and (c) by allocating the handler's receipts of

skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1128.41 (b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1128.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1128.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1128.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1128.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class 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 § 1128.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1128.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the

pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk 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 § 1128.45(a); or

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

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

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1128.9(c) according to the classification of such products pursuant to § 1128.42(a); and

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

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

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

§ 1128.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1128.44(a)(12) and the corresponding step of § 1128.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1128.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 12th day after the end of each month, report to each cooperative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

CLASS PRICES

§ 1128.50 Class prices.

Subject to the provisions of § 1128.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.57.

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

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

§ 1128.51 Basic formula price.

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

§ 1128.52 Plant location adjustments for handlers.

For producer milk classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price set forth in § 1128.50(a) shall be subject to the following adjustments:

(a) For milk received from producers at a pool plant located (1) east of the 103d principal meridian, (2) more than 180 highway miles from the U.S. Post

Office in Midland, Tex., and also (3) at the following highway distances from the U.S. Post Office in Abilene, Tex., such price shall be reduced as follows:

	Cents
More than 70 miles but less than 105 miles	20
105 miles or more	25

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1128.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

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

§ 1128.53 Announcement of class prices.

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

§ 1128.54 Equivalent price.

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

UNIFORM PRICE

§ 1128.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1128.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1128.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1128.44(a)(14) and the corresponding step of § 1128.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1128.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1128.44(a)(9) and the corresponding step of § 1128.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1128.44(a)(7) (i) through (iv) and the corresponding step of § 1128.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1128.44(a)(7) (v) and (vi) and the corresponding step of § 1128.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1128.44(a)(11) and the corresponding step of § 1128.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1128.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for all milk of 3.5 percent butterfat content received at a pool plant as follows:

(a) Combine into one total the values computed pursuant to § 1128.60 for all handlers who have made the reports prescribed in § 1128.30 and who have made the payments due pursuant to § 1128.71 for the preceding month;

(b) Add the aggregate of the values of all minus location adjustments pursuant to § 1128.75;

(c) Add not less than one-half of the unobligated cash balance on hand in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1128.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 1128.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENT FOR MILK

§ 1128.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1128.71, 1128.76, and 1128.77, and from which he shall make all payments to handlers pursuant to §§ 1128.72 and 1128.77.

§ 1128.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1128.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1128.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1128.60(f).

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

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

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1128.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the amount computed pursuant to § 1128.71(a)(2) exceeds the amount computed pursuant to § 1128.71(a)(1): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1128.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price for such month computed pursuant to § 1128.61, as adjusted pursuant to §§ 1128.74 and 1128.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided*, That if by such date such handler has not received full payment pursuant to § 1128.72, he may reduce his total payments to all producers uniformly by not less than the amount of reduction in payments from the market administrator: he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month, to each producer for whom payment is not made pursuant to paragraph (c) of this section for milk received during the first 15 days of such month at not less than the Class III price of the preceding month.

(c) On or before the 13th and 23d days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, with respect to producers for whose milk such cooperative association is authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producer. Such payment shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1128.31.

§ 1128.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1128.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1128.73, the uniform price for all milk computed pursuant to § 1128.61 for milk received from producers at a pool plant shall be adjusted at the rates set forth in § 1128.52(a), applicable at the location of such plant.

(b) For purposes of computations pursuant to §§ 1128.71 and 1128.72 the uniform price for all milk shall be adjusted at the rates set forth in § 1128.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1128.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1128.30(b) and 1128.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1128.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1128.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1128.60 for such handler shall include, in lieu of the value of other source milk specified in § 1128.60(f) less the value of such other source milk specified in § 1128.71(a)(2)(ii), a value of milk determined pursuant to § 1128.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1128.7(a)(2) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1128.30(b) and 1128.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant

which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1128.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1128.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1128.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) o this section applies.

§ 1128.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due;

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amounts so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1128.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1128.9(c), shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1128.9(c);

(b) Other source milk allocated to Class I pursuant to § 1128.44(a) (7) and (11) and the corresponding steps of § 1128.44(b), except such other source milk that is excluded from the computations pursuant to § 1128.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1128.76(a)(2).

§ 1128.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1128.73(a), shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative asociation is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of each month pay such deduction to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

Advertising and Promotion Program

§ 1128.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1128.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1128.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1128.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1128.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1128.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1128.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1128.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1128.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually

thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected 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.

§ 1128.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1128.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuit to § 1128.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1128.110 and 1128.117.

§ 1128.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1128.110 and 1128.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1128.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1128.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1128.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1128.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1128.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1128.121 Duties of the market administrator.

Except as specified in § 1128.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1128.113(c).

(b) Set aside the amounts subtracted under § 1128.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1128.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1128.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1128.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1128.110 through 1128.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1128.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1128.70.

PART 1129—MILK IN AUSTIN-WACO, TEX., MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

AUTHORITY: The provisions of this Part 1129 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1129.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1129.2 Austin-Waco marketing area.

"Austin-Waco Marketing Area," hereinafter called the marketing area, means all territory, including all municipal corporations and all Federal military reservations, facilities and installations, located within or partially within the boundaries of Travis, Hays, Lampasas, Burnet, Caldwell, Bastrop, Williamson, Bell, Falls, McLennan, Coryell, Comal and Guadalupe Counties, all in the State of Texas.

§ 1129.3 Route disposition.

"Route disposition" means the delivery (including delivery by a vendor or sale at a plant store) of fluid milk products classified as Class I milk other than as follows:

(a) Delivery in bulk to a plant, or

(b) Delivery in consumer packages from a milk processing plant to a distributing plant in an amount not in excess of the amount of producer milk received by such processing plant during the month from the operator of such distributing plant and classified as Class I milk: *Provided*, That for the purposes of this paragraph milk so transferred to such processing plant shall be considered to be producer milk to the extent that total receipts during the month of producer milk by the operator of such distributing plant exceed his gross Class I sales less: (1) Receipts of Class I milk from other fluid milk plants; (2) milk transferred as Class I milk to such milk processing plant; and (3) milk received in consumer packages from such milk processing plant.

§ 1129.4 [Reserved]

§ 1129.5 Distributing plant.

"Distributing plant" means any milk processing or packaging plant from which there is route disposition, except filled milk, in the marketing area during the month equal to more than an average of 500 pounds per day or 5 percent, whichever is less, of the Grade "A" milk and skim milk received from dairy farmers or other plants.

§ 1129.6 Supply plant.

"Supply plant" means any plant from which fluid milk or fluid skim milk is received at a distributing plant:

(a) For any of the months of February through July, on 4 or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month; and

(b) For any of the months of August through January:

(1) On 10 or more days during the month, or in an amount equal to a daily average of not less than 8,300 pounds for such month; or

(2) On 4 or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month, and such plant was a supply plant pursuant to paragraph (a) of this section during any month of the immediately preceding period of February through July.

§ 1129.7 Fluid milk plant.

Except as provided in paragraph (c) of this section, "fluid milk plant" means:

(a) A distributing plant or a supply plant.

(b) Any plant approved by the appropriate health authority to supply milk for distribution as Grade A milk in the marketing area if such plant is operated by a cooperative association, and 75 percent or more of the milk of the members of such association, including receipts pursuant to § 1129.9 (b) and (c), is received at the fluid milk plants of other handlers.

(c) The term "fluid milk plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An approved distributing plant which also meets the pooling requirements of another Federal order and from which the Secretary determines there is a greater quantity of route disposition, except filled milk, during the month in

such other Federal order marketing area than in the Austin-Waco marketing area;

(3) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in the Austin-Waco marketing area than in such other Federal order marketing area, but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) An approved supply plant which (i) meets the pooling requirements of another Federal order and from which greater qualifying shipments, except filled milk, are made during the month to plants regulated under such other order than are made to plants regulated under this part, or (ii) retains automatic pooling status under another Federal order.

§ 1129.7a Approved plant.

"Approved plant" means: (a) A fluid milk plant, or (b) any milk plant from which there is route disposition in the marketing area.

§ 1129.8 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonfluid milk plant from which fluid milk products are moved to a fluid milk plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1129.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more approved plants;

(b) Any cooperative association with respect to the milk of any producer which it diverts pursuant to § 1129.12; and

(c) Any cooperative association with respect to the milk of any producer which it causes to be delivered directly from the farm in bulk tank pickup truck(s) owned and/or controlled by such association, to the fluid milk plant of another handler. Such milk shall be deemed to have been received by the cooperative association at the location of the fluid milk plant to which it is delivered.

§ 1129.10 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which milk is received from the dairy farm(s) of such person but from no other dairy farm: *Provided*, That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care, and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such producer in his capacity as a handler.

§ 1129.11 [Reserved]

§ 1129.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is:

(1) Received at a fluid milk plant; or

(2) Diverted for his account by the operator of a fluid milk plant or cooperative association from such plant to a nonfluid milk plant that is not a producer-handler plant during the period January through July and on not more than one-third of the days of delivery during the month for the period August through December: *Provided*, That milk so diverted shall be deemed to have been received by the diverting handler at the plant from which it was diverted.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a fluid milk plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III pursuant to § 1129.44(a)(8)(iii) and the corresponding step of § 1129.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1129.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk produced by a producer and received at a fluid milk plant directly from producers or diverted pursuant to § 1129.12.

§ 1129.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1129.40(b)(1) from any source other than producers, handlers described in § 1129.9(c) or fluid milk plants;

(b) Receipts in packaged form from other plants of products specified in § 1129.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1129.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1129.40(b)(1)) for which the handler fails to establish a disposition.

§ 1129.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1129.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1129.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1129.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1129.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 10, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1129.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his fluid milk plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the fluid milk plant to other plants;

(2) Receipts of milk from handlers described in § 1129.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other fluid milk plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1129.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler described in § 1129.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to his receipts and utilization of milk, filled milk and milk products in such manner as the market administrator may prescribe.

§ 1129.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1129.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) The market administrator, upon request, shall furnish to a cooperative association for its members the data reported pursuant to paragraph (a) (1), (2), and (3) of this section.

§ 1129.32 Other reports.

(a) Each handler, who causes milk to be diverted for his account directly from producers' farms to an unapproved plant, shall prior to such diversion, report to the market administrator and to the cooperative association, of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1129.30 and 1129.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1129.40 Classes of utilization.

Except as provided in § 1129.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1129.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1129.15; and

(6) In shrinkage assigned pursuant to § 1129.41(a) to the receipts specified in § 1129.41(a)(2) and in shrinkage specified in § 1129.41 (b) and (c).

§ 1129.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1129.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each fluid milk plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant

operator to another plant and milk received from a handler described in § 1129.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1129.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other fluid milk plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1129.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1129.42 Classification of transfers and diversions.

(a) *Transfers to fluid milk plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another fluid milk plant or by a handler described in § 1129.9(c) to another handler's fluid milk plant shall be classified as Class I milk unless both handlers request the same classification in another class. The percentage of the total quantities of skim milk and butterfat, respectively, in products thus transferred and assigned to Class I milk shall not be greater than the percentage of skim milk and butterfat in producer milk classified as Class I milk in the plant of the transferee-handler. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computation pursuant to § 1129.44(a)(12) and the corresponding step of § 1129.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1129.44(a)(7) or the corresponding step of § 1129.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1129.44(a)(11) or (12) or the corresponding steps of § 1129.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the fluid milk plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b) (3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1129.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a fluid milk plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonfluid milk plants.* Skim milk or butterfat transferred or diverted in the following forms from a fluid milk plant to a nonfluid milk plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonfluid milk plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1129.30 for the month within which such transaction occurred; and

(*b*) The nonfluid milk plant operator maintains books and records showing utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonfluid milk plant and transfers of packaged fluid milk products from such nonfluid milk plant to plants

fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonfluid milk plant from fluid milk plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonfluid milk plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonfluid milk plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonfluid milk plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonfluid milk plant from fluid milk plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonfluid milk plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonfluid milk plant shall be assigned to the extent possible in the following sequence:

(a) To such nonfluid milk plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant; and

(b) To such nonfluid milk plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonfluid milk plant;

(vii) Receipts of bulk fluid cream products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonfluid milk plant; and

(viii) In determining the nonfluid milk plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonfluid milk plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1129.43 General classification rules.

In determining the classification of producer milk pursuant to § 1129.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1129.30 and shall compute separately for each fluid milk plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1129.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1129.40, 1129.41, and 1129.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1129.9 (b) or (c) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association.

§ 1129.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1129.9(a) for each of his fluid milk plants separately and of each handler described in § 1129.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1129.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1129.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1129.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the fluid milk plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1129.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1129.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order; and

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to

paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all fluid milk plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between fluid milk plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all fluid milk plants of the handler of producer milk, milk from a handler described in § 1129.9(c), fluid milk products from fluid milk plants of other handlers, and bulk fluid milk products from other order plants; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1129.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler (excluding any duplication of utilization in each class resulting from transfers between fluid milk plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subject to the provisions of paragraph (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler (excluding any duplication of utilization in each class resulting from transfers between fluid milk plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section and that were not offset by transfers or diversions of bulk fluid milk products to the same other order plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess 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 or a handler described in § 1129.9(c) according to the classification of such products pursuant to § 1129.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1129.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid

milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1129.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report..

(b) Furnish to each handler operating a fluid milk plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 12th day after the end of each month, report to each cooperative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

CLASS PRICES

§ 1129.50 Class prices.

Subject to the provisions of § 1129.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.70.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1129.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1129.52 Plant location adjustments for handlers.

For milk received from producers at a fluid milk plant located outside of Zone I (Zone I comprises all the territory south of the northern boundaries of Guadalupe, Comal, Kendall, Kerr, Edwards, and Val Verde Counties, all in the State of Texas, and all territory south of a boundary formed by U.S. Highway 90 east of the marketing area to the Colorado River and thence south along the Colorado River) which is classified as Class I milk, the price specified in § 1129.50(a) shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the county court house of the county in which such plant is located is from the county court house in New Braunfels, Tex.

§ 1129.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1129.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1129.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1129.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1129.44(a)(14) and the corresponding step of § 1129.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1129.74, that are applicable at the location of the fluid milk plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the fluid milk plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1129.44(a)(9) and the corresponding step of § 1129.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1129.44(a)(9) and the corresponding step of § 1129.44(b) for the current month, or

(ii) The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after the computations pursuant to § 1129.44(a)(11) and the corresponding step of § 1129.44 (b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section; and

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of receipts and utilization of skim milk and butterfat for previous months.

§ 1129.61 Computation of uniform price for each handler.

For each month, the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers by each handler as follows:

(a) Add to the amount computed pursuant to § 1129.60 the total of the location adjustments to be made pursuant to § 1129.75;

(b) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month;

(c) Subtract an amount computed by multiplying the total hundredweight of producer milk in each class by 5 cents; and

(d) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The result, less any fraction of a cent, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content, at fluid milk plants in Zone I.

§ 1129.62 Announcement of uniform price for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for each handler for such month.

PAYMENTS FOR MILK

§ 1129.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (d) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 28th day of each month, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month.

(b) On or before the 15th day after the end of each month for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1129.61 as adjusted pursuant to §§ 1129.74 and 1129.75; plus or minus adjustments for errors made in previous payments to such producers; and less (1) payment made pursuant to paragraph (a) of this section; (2) deductions for marketing services pursuant to § 1129.86 and (3) proper deductions authorized by such producer.

(c) On or before the 13th and 26th days of each month in lieu of the payments pursuant to paragraphs (a) and (b) of this section, respectively, each handler shall pay to a cooperative association for milk which it caused to be delivered to such handler from producers and for which such cooperative association is not a handler pursuant to § 1129.9 (c), if such cooperative association is authorized to collect such payments for its member-producers and has so requested the handler, an amount equal to the sum of the individual payments otherwise payable to such producers.

(d) On or before the 13th and 26th days of each month, each handler shall pay to a cooperative association for milk which was caused to be delivered to such handler by such cooperative association, and for which it is a handler pursuant to § 1129.9(c), an amount not less than the value of such milk computed by multiplying the pounds of such milk classified in each class pursuant to § 1129.44 by the class prices, as adjusted by the butterfat differential specified in § 1129.74, that are applicable at the location of the receiving handler's fluid milk plant.

(e) In making the payments to producers pursuant to paragraphs (b) and (c) or (d) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

§ 1129.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1129.75 Plant location adjustments for producers.

In making payment to producers pursuant to § 1129.73, the uniform price to be paid for producer milk received at a fluid milk plant located outside of Zone I shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the county courthouse of the county in which such plant is located is from the county courthouse in New Braunfels, Tex.

§ 1129.76 [Reserved]

§ 1129.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or verification of weights and butterfat tests of milk or milk products discloses errors resulting in money due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1129.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1129.9(c), shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1129.9(c);

(b) Other source milk allocated to Class I pursuant to § 1129.44(a) (7) and (11) and the corresponding steps of § 1129.44(b); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds Class I milk received during the month at such plant from fluid milk plants and other order plants.

§ 1129.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1129.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 13th day after the end of each month and pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1129.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1129.121(b) (1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1129.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1129.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1129.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1129.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1129.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a

replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1129.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative, who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1129.111 and paragraph(a) of this section.

(c) Selection of agency members to represent participating nonmember 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.

§ 1129.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1129.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1129.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1129.110 and 1129.117.

§ 1129.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business.

(b) Develop programs and projects pursuant to §§ 1129.110 and 1129.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1129.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1129.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1129.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1129.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1129.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1129.121 Duties of the market administrator.

Except as specified in § 1129.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1129.113(c).

(b) Set aside the amounts subtracted under § 1129.61(c) and received pursuant to § 1129.123 into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1129.61(c).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1129.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1129.61(c) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b) (2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1129.110 through 1129.123).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1129.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall be distributed in an equitable manner to producers by the market administrator.

§ 1129.123 Payment of advertising and promotion funds.

On or before the 15th day after the end of each month during which producer milk was received, each handler shall turn over to the market administrator the advertising and promotion funds deducted pursuant to § 1129.61(c).

PART 1130—MILK IN CORPUS CHRISTI, TEX., MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1130 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1130.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1130.2 Corpus Christi, Tex., marketing area.

"Corpus Christi, Tex., marketing area", called the "marketing area" in this part, means all the territory within the following counties, all in the State of Texas:

Brooks.
Cameron.
Duval.
Hidalgo.
Jim Wells.
Kleberg.
Live Oak.
Nueces.
San Patricio.

§ 1130.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery to a milk or filled milk plant.

§ 1130.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities without storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1130.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition of Grade A fluid milk products during the month in the marketing area.

§ 1130.6 Supply plant.

"Supply plant" means any plant approved by an appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which milk is moved to a distributing plant.

§ 1130.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any distributing plant from which during the month:

(1) The route disposition of fluid milk products, except filled milk, within the marketing area is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total route disposition of fluid milk products, except filled milk, is 50 percent or more of the receipts of Grade A milk at such plant.

(b) A supply plant:

(1) During any month in which 50 percent or more of the receipts of Grade A milk from dairy farmers and handlers described in § 1130.9(c) at such plant is moved as fluid milk products, except filled milk, to pool distributing plants; or

(2) During each of the months of January through August, if such plant was a pool plant pursuant to paragraph (b)(1) of this section during each of the immediately preceding months of September through December, unless the operator of such plant has filed with the market administrator before the first day of any month written request that such plant not be a pool plant for each month through August during which it does not otherwise qualify as a pool plant.

(c) Any plant located in the marketing area and operated by a cooperative association approved by any duly constituted State or municipal health authority, and at which milk is received from dairy farmers holding permits or authorizations from such health authority, if 50 percent or more of the producer milk of members of such cooperative association is physically received during the month at pool plants of other handlers described in paragraph (a) of this section or is transferred to such pool plants from a plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is nevertheless, fully regulated under such other Federal order; and

(4) A plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months January through August, if such plant retains automatic pooling status under this part.

§ 1130.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another Federal order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

§ 1130.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1130.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producer members which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person in his capacity as the operator of an other order plant with route disposition in the marketing area.

§ 1130.10 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from other dairy farmers;

(c) Disposes of no other source milk as Class I milk except that represented by nonfat solids used in the fortification of fluid milk products;

(d) Receives during the month from pool plants fluid milk products in a total quantity of not more than 10,000 pounds, or 5 percent of his Class I disposition, whichever is less; and

(e) Furnishes satisfactory proof to the market administrator that the maintenance, care, and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

§ 1130.11 [Reserved]

§ 1130.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for consumption as Grade A milk by any duly constituted State or municipal health authority, which is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1130.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1130.44(a)(8)(iii) and the corresponding step of § 1130.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1130.13 Producer milk.

"Producer milk" means skim milk and butterfat for each handler's account in milk from producers as follows:

(a) With respect to operations of a pool plant:

(1) Received directly from such producers;

(2) Received from a handler described in § 1130.9(c); or

(3) Diverted by the operator of such pool plant to a nonpool plant that is not a producer-handler plant for his account, subject to the conditions of paragraph (c) of this section.

(b) With respect to additional receipts by a cooperative association handler:

(1) Diverted by such cooperative association from the pool plant of another handler to a nonpool plant that is not a producer-handler plant for the account of such cooperative association, subject to the conditions of paragraph (c) of this section; or

(2) Received by such cooperative association from producers' farms as a handler described in § 1130.9(c) in excess of the quantity delivered to pool plants pursuant to paragraph (a)(2) of this section.

(c) With respect to diversions to nonpool plants:

(1) A cooperative association may divert for its account a total quantity of milk not in excess of one-third of the total producer milk of its members received at all pool plants during the month. Diversions in excess of such quantity shall not be producer milk and the diverting cooperative shall specify the dairy farmers whose diverted milk is

ineligible as producer milk. If the cooperative association fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such cooperative association;

(2) A handler operating a pool plant may divert for his account milk of producers other than members of a cooperative association diverting milk pursuant to paragraph (c)(1) of this section, in a total quantity not in excess of one-third of the milk at such pool plant during the month from producers who are not members of such a cooperative association. Milk diverted in excess of such quantity shall not be producer milk and the diverting handler shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such handler;

(3) For the purposes of location adjustments pursuant to §§ 1130.52 and 1130.75, diverted milk shall be priced at the location of the nonpool plant to which diverted; and

(4) For purposes of determining qualification of pool plants pursuant to § 1130.7 (a) and (b), milk diverted pursuant to paragraph (a)(3) of this section shall be considered receipts of Grade A milk at the plant from which diverted.

§ 1130.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1130.40 (b)(1) from any source other than producers, handlers described in § 1130.9 (c) or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1130.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1130.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1130.40(b)(1)) for which the handler fails to establish a disposition.

§ 1130.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less that 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1130.40(b) or (c)(1)(i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1130.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) or cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1130.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1130.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

Handler Reports

§ 1130.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1130.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1130.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1130.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1130.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1130.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1130.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1130.32 Other reports.

(a) Each handler who causes milk to be delivered for his account directly from producers' farms to a nonpool plant shall, prior to such diversion, report to the market administrator his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required in §§ 1130.30 and 1130.31 and paragraph (a) of this section, each handler shall

report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1130.40 Classes of utilization.

Except as provided in § 1130.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1130.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specificd in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1130.15; and

(6) In shrinkage assigned pursuant to § 1130.41(a) to the receipts specified in § 1130.41(a)(2) and in shrinkage specified in § 1130.41 (b) and (c).

§ 1130.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1130.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts sepcified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1130.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1130.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1130.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1130.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1130.44(a)(12) and the corresponding step of § 1130.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1130.44(a)(7) or the corresponding step of § 1130.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1130.44(a)(11) or (12) or the corresponding steps of § 1130.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case

if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b) (3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1130.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d) (2) (i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d) (2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1130.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1130.43 General classification rules.

In determining the classification of producer milk pursuant to § 1130.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1130.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1130.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1130.40, 1130.41, and 1130.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1130.9 (b) or

(c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1130.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1130.9(a) for each of his pool plants separately and of each handler described in § 1130.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1130.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1130.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1130.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1130.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1130.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (*a*) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1130.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7) (v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall

be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) and (8) (iii) of this section:

(i) Subject to the provisions of paragraph (a) (12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1130.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a) (12) (i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1130.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

§ 1130.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1130.44(a) (12) and the corresponding step of § 1130.44 (b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1130.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month report to each cooperative association, upon request by such association, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

Class Prices

§ 1130.50 Class prices.

Subject to the provisions of § 1130.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.07.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1130.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1130.52 Plant location adjustments for handlers.

(a) For milk which is received from producers or a cooperative association

at a pool plant located more than 80 miles, but not more than 150 miles from the city hall in Mercedes, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1130.50(a) shall be reduced 9 cents per hundredweight and for milk which is received from producers or a cooperative association at a pool plant located more than 150 miles from the city hall in Mercedes, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1130.50(a) shall be reduced 1-cent per hundredweight for each 10 miles distance or fraction thereof that such plant is from the city hall in Mercedes, Tex.

(b) For purposes of calculating such location adjustment, transfers between pool plants shall be assigned Class I location credit as follows:

(1) If in packaged form without limit; and

(2) If in bulk form, to the extent that Class I disposition at the transferee-plant exceeds the sum of (i) 95 percent of receipts at such plant from producers and handlers described in § 1130.9(c), (ii) the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, and (iii) assignments pursuant to paragraph (b)(1) of this section, such assignment to be made first to transferor plants having the same location adjustment, then in sequence to plants having a greater location adjustment, beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1130.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1130.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1130.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1130.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1130.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1130.44(a)(14) and the corresponding step of § 1130.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1130.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(9) and the corresponding step of § 1130.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1130.44(a)(9) and the corresponding step of § 1130.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1130.44(a)(12) and the corresponding step of § 1130.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(7) (i) through (iv) and the corresponding step of § 1130.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(7) (v) and (vi) and the corresponding step of § 1130.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(11) and the corresponding step of § 1130.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1130.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1130.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight applicable for milk of 3.5 percent butterfat content at pool plants at which no location adjustment applies as follows:

(a) Combine into one total the values computed pursuant to § 1130.60 for all handlers who have made the reports prescribed in § 1130.30 for the month and who have made the payments required pursuant to § 1130.71 for the preceding month;

(b) Add not less than one-fourth of the unobligated cash balance on hand in the producer-settlement fund;

(c) Add the aggregate of the values of the minus location adjustments pursuant to § 1130.75;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1130.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 1130.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1130.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1130.71, 1130.76, and 1130.77, subject to the provisions of § 1130.78, and from which he shall make all payments to handlers pursuant to §§ 1130.72 and 1130.77.

§ 1130.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the

amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1130.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1130.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1130.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the 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.

§ 1130.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1130.71(a)(2) exceeds the amount computed pursuant to § 1130.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. Any amount due a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator from such handler, pursuant to §§ 1130.71, 1130.77, 1130.78, 1130.85, or 1130.86.

§ 1130.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the 25th day of each month, to each producer who has not discontinued delivery of milk to such handler, a partial payment for milk received from such producer during the first 15 days of such month at not less than the Class III milk price for the preceding month;

(2) On or before the 15th day after the end of each month, for milk received during such month, an amount not less than the uniform price computed pursuant to § 1130.61, subject to adjustments pursuant to §§ 1130.74 and 1130.75, plus or minus adjustments for errors made in previous payments to such producers, and less:

(i) Payments made pursuant to paragraph (a)(1) of this section;

(ii) Deductions for marketing services pursuant to § 1130.86; and

(iii) Proper deductions authorized by such producer;

(3) If by the date for payment pursuant to paragraph (a)(2) of this section, a handler has not received full payment for such month pursuant to § 1130.72, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payments from the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b)(1) Upon receipt of a written request from a cooperative association, which the market administrator determines is authorized by its members to collect payment for their milk, and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 23d and 14th days of each month in lieu of payments pursuant to paragraph (a) (1) and (2), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(c) In making the payments pursuant to paragraphs (a)(2) and (b) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producers.

(d) As follows, to each cooperative association for milk for which it is the handler pursuant to § 1130.9(c):

(1) On or before the 23d day of the month, a partial payment for milk received during the first 15 days of such month, at not less than the amount specified in paragraph (b) of this section; and

(2) On or before the 14th day of the following month, in final settlement, the value of such milk received during the month, at the uniform price, as adjusted pursuant to §§ 1130.74 and 1130.75, less the amount of payment made pursuant to paragraph (d)(1) of this section.

(e) On or before the 14th day after the end of the month, for milk received from the pool plant of a cooperative association, to such cooperative association not less than the value of such milk at the applicable price(s) for the class(es) at which transferred pursuant to § 1130.42(a), as adjusted by the butterfat differential specified in § 1130.74, that are applicable at the location of the transferee-handler's pool plant.

§ 1130.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1130.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to § 1130.73, the uniform price computed pursuant to § 1130.61 to be paid for such milk received at a pool plant at which a location adjustment pursuant to § 1130.52 applies may be reduced by the amount of such location adjustments.

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1130.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1130.30(b) and 1130.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1130.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1130.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1130.60 for such handler shall include, in lieu of the value of other source milk specified in § 1130.60(f) less the value of such other source milk specified in § 1130.71(a)(2)(ii), a value of milk determined pursuant to § 1130.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1130.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1130.30(b) and 1130.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1130.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1130.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1130.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1130.77 Adjustment of accounts.

Whenever verification by the market administrator of any handler's reports, books, records, accounts, or payments discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler, of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1130.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1130.71, 1130.77(a), 1130.85, or 1130.86 shall be increased one-half of 1 percent on the first day of the calendar month next following the due date of such obligation and, on the first day of each calendar month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1130.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1130.13(a)(2) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1130.44(a)(7) and (11) and the corresponding steps of § 1130.44(b), except such other source milk that is excluded from the computations pursuant to § 1130.60 (d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1130.76(a)(2).

§ 1130.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk

(other than milk of his own production) pursuant to § 1130.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator, on or before the 13th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of milk from producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1130.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1130.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1130.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1130.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1130.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1130.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1130.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1130.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1130.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently 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.

§ 1130.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1130.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1130.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1130.110 and 1130.117.

§ 1130.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1130.110 and 1130.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1130.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval of all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1130.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1130.121(b)(1) shall be utilized for administrative expenses of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1130.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1130.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1130.121 Duties of the market administrator.

Except as specified in § 1130.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1130.113(c).

(b) Set aside the amounts subtracted under § 1130.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1130.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1130.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1130.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1130.110 through 1130.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1130.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1130.70.

PART 1131—MILK IN CENTRAL ARIZONA MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Definitions

Handler Reports

Classification of Milk

Class Prices

Uniform Price

Payments for Milk

Administrative Assessment and Marketing Service Deduction

AUTHORITY: The provisions of this Part 1131 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1131.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1131.2 Central Arizona marketing area.

"Central Arizona marketing area", hereinafter called the "marketing area", means all territory within the counties of Cochise, Graham, Greenlee, Maricopa, Pima, and Pinal, and that part of Yuma County south of 33 degrees latitude (North from the Equator), all in the State of Arizona.

§ 1131.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or a plant store) of a fluid milk product classified as Class I milk other than a delivery to a plant described in § 1131.7(a).

§ 1131.4 [Reserved]

§ 1131.5 [Reserved]

§ 1131.6 [Reserved]

§ 1131.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant approved by a duly constituted state or municipal health authority for the receipt or processing of Grade A milk or which supplies processed milk to an agency of the U.S. Government located within the marketing area, from which during the month:

(1) There is route disposition, except filled milk, equal to at least 50 percent of the total receipts at the plant (i) of milk qualified by inspection to become producer milk pursuant to § 1131.13(a), and (ii) from other milk plants and handlers described in § 1131.9(c) in the form of fluid milk products, except filled milk, qualified for fluid consumption; and

(2) There is route disposition, except filled milk, in the marketing area in a volume not less than 25 percent of such receipts and also greater than an average of 600 pounds per day.

(b) Any plant which ships fluid milk products, except filled milk, approved by any health authority having jurisdiction in the marketing area as eligible for distribution under a Grade A label in a volume not less than 50 percent of its receipts of milk (from dairy farmers who would be producers if this plant qualifies as a pool plant) in the current month during the period of July through October or 20 percent in the current month during the period of November through June to a plant specified in paragraph (a) of this section: *Provided*, That if a plant qualifies in each of the months of July through October in the manner prescribed in this section such plant shall upon written application to the market administrator on or before October 31 following such compliance be designated as a pool plant until the end of the following June.

(c) A milk plant located within the marketing area at which milk may be received from the farms of dairy farmers holding permits or authorization issued by health authorities having jurisdiction in the marketing area and which is operated by a cooperative association qualified under § 1131.18 which has 75 percent or more of its member producers' milk received at the pool plants of other handlers. Milk received by such cooperative, in a truck owned or under contract to the cooperative, from a pool plant and transferred in such truck to another pool plant for the account of the cooperative shall be considered a receipt at the cooperative's plant and a transfer from such plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Central Arizona marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period November through June, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of an other order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

§ 1131.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant and which is not an other order plant nor a producer-handler plant.

§ 1131.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to milk of any producer which such cooperative association causes to be diverted pursuant to § 1131.13 for the account of such association;

(c) A cooperative association with respect to the milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing prior to the first day of the month in which the milk is delivered, that it elects to be the handler for such milk;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant described in § 1131.7(d).

§ 1131.10 Producer-handler.

"Producer-handler" means:

(a) Any person who is both a dairy farmer and the operator of a plant from which fluid milk products are disposed of as route disposition in the marketing area and who:

(1) Receives at his plant, or acquires for route disposition fluid milk products only from:

(i) His own farm production; and

(ii) Fluid milk products obtained by transfer from pool plants or other order plants in an amount not to exceed 5 percent of his total fluid milk product disposition for the month or 5,000 pounds, whichever is less;

(2) Does not reprocess or convert milk products into a fluid milk product except to increase the nonfat milk solids content above that of the fluid milk product received;

(3) Furnishes proof satisfactory to the market administrator that:

(i) The maintenance, care, and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled (other than that received from regulated plants) is the personal enterprise of and at the personal risk of such person in his capacity as a producer; and

(ii) The operation of such plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

(b) The governmental agency that operates a milk plant, except that a plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant that is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for 1 month and thereafter resumes the status of a nonpool plant, it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk pursuant to the requirements specified in paragraph (a) (1) or (2) of this section, and whose milk is received directly from the farm at a pool plant or is diverted as producer milk pursuant to § 1131.13.

(1) Produces milk, on a dairy farm subject to the regular inspection by a duly constituted State or municipal health authority, under a dairy farm permit or rating issued by such authority for the production of milk to be disposed of for fluid consumption.

(2) Produces milk which is acceptable to an agency of the Federal Government for fluid consumption in its institutions or bases.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1131.44(a)(8)(iii) and the corresponding step of § 1131.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1131.13 Producer milk.

"Producer milk" of each handler means all skim milk and butterfat produced by producers:

(a) With respect to receipts at a pool plant:

(1) Received directly from such producers; and

(2) Diverted from such pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of the pool plant, subject to the limitations and conditions of paragraph (c) of this section;

(b) With respect to additional receipts of a cooperative association:

(1) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the limitations and conditions of paragraph (c) of this section; and

(2) For which the cooperative association is the handler pursuant to § 1131.9(c); and

(c) With respect to diversions to nonpool plants pursuant to paragraphs (a)(2) and (b)(1) of this section:

(1) Such diversions may be without limit during the months of December through April, but shall not be for more than 8 days' production of any producer during any other month, otherwise only milk of such producer received at a pool plant shall be producer milk; and

(2) For purposes of location adjustments pursuant to §§ 1131.52 and 1131.75, milk so diverted shall be priced at the location of the plant to which diverted.

§ 1131.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1131.40(b)(1) from any source other than producers, handlers described in § 1131.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1131.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1131.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1131.40(b)(1)) for which the handler fails to establish a disposition.

§ 1131.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1131.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1131.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1131.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1131.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk for its members.

HANDLER REPORTS

§ 1131.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1131.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1131.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1131.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1131.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1131.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1131.32 Other reports.

(a) Each handler, except a producer-handler or a handler making payment pursuant to § 1131.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month, the payments made to a cooperative association pursuant to § 1131.73(d);

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to § 1131.13 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1131.30 and 1131.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1131.40 Classes of utilization.

Except as provided in § 1131.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1131.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1131.15; and

(6) In shrinkage assigned pursuant to § 1131.41(a) to the receipts specified in § 1131.41(a)(2) and in shrinkage specified in § 1131.41(b) and (c).

§ 1131.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1131.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1131.9(c), except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to

which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6), of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1131.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1131.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1131.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1131.44(a)(7) or the corresponding step of § 1131.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1131.44 (a) (11) or (12) or the corresponding steps of § 1131.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant; and

(4) Unless a different utilization is claimed by both handlers, skim milk and butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant described in § 1131.7(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class for such month at the pool plant(s) of the receiving handler after the computations pursuant to § 1131.44(a)(13)(i) and the corresponding step of § 1131.44(b).

(b) *Transfers or diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3), of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1131.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1131.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any 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.

§ 1131.43 General classification rules.

In determining the classification of producer milk pursuant to § 1131.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1131.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1131.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1131.40, 1131.41, and 1131.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1131.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1131.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1131.9(a) for each of his pool plants separately and of each handler described in § 1131.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1131.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1131.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1131.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month.

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1131.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1131.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1131.9(c), fluid milk products from pool plants of other handlers,

and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1131.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk poducts from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1131.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) and (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) and (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant or a handler described in § 1131.9(c) according to the classification of such products pursuant to § 1131.42(a); and

(ii) A cooperative association in its capacity as a handler pursuant to § 1131.9 (c) or as the operator of a pool plant described in § 1131.7(c) according to the classification of such products pursuant to § 1131.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1131.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1131.44(a)(12) and

the corresponding step of § 1131.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1131.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1131.50 Class prices.

Subject to the provisions of § 1131.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.52.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1131.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1131.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside Pima County and more than 30 miles by shortest highway distance as measured by the market administrator, from the nearer of the Courthouses in Maricopa and Graham Counties, Ariz., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1131.50(a) shall be reduced by 10 cents if such plant is located not more than 130 miles from the nearer courthouse and by an additional cent for each 10 miles or fraction thereof that such distance exceeds 130 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1131.9(c), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) For other source milk to which a location adjustment is applicable and for milk received from producers at a plant located in Pima County, Ariz., and which is classified as Class I milk, the price computed under § 1131.50(a) shall be increased 12 cents.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (c) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1131.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1131.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1131.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1131.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1131.44(a)(14) and the corresponding step of § 1131.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1131.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(9) and the corresponding step of § 1131.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1131.44(a)(9) and the corresponding step of § 1131.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section:

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(7) (i) through (iv) and the corresponding step of § 1131.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(7) (v) and (vi) and the corresponding step of § 1131.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(11) and the corresponding step of § 1131.44 (b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not

used as an offset for any other payment obligation under any order.

§ 1131.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1131.60 for all handlers who filed the reports prescribed by § 1131.30 for the month and who made the payments pursuant to §§ 1131.71 and 1131.73 for the preceding month:

(b) Add an amount equal to the total value of the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1131.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1131.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1131.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1131.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1131.71 and 1131.76 and out of which he shall make all payments pursuant to § 1131.72: *Provided,* That payments due to any handler shall be offset by any payments due from such handler.

§ 1131.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1131.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1131.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1131.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(a)(2) exceeds the amount computed pursuant to § 1131.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the 27th day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount not less than 1.3 times the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price as adjusted pursuant to §§ 1131.74 and 1131.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to paragraph (a)(1) of this section, (ii) less deductions made for marketing services pursuant to § 1131.86, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1131.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the second day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the seventh day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) the amount or rate and nature of any authorized deductions to be made from payments, and (iii) the amount and nature of payments due pursuant to § 1131.77; and

(d) Each handler who receives milk from a cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received from such cooperative association during the first 15 days of the month at not less than 1.3 times the Class III price for the preceding month; and

(2) In final settlement, the value of such milk as classified pursuant to § 1131.44 at the class prices, as adjusted by the butterfat differential specified in § 1131.74, that are applicable at the location of the receiving handler's pool plant, less payment made pursuant to paragraph (d)(1) of this section.

§ 1131.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1131.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant, at the rates set forth in § 1131.52; and

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price shall not be less than the Class III price.

§ 1131.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1131.30(b) and 1131.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1131.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1131.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1131.60 for such handler shall include, in lieu of the value of other source milk specified in § 1131.60(f) less the value of such other source milk specified in § 1131.71(a)(2)(ii), a value of milk determined pursuant to § 1131.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1131.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1131.30(b) and 1131.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1131.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1131.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1131.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1131.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in monies due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1131.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1131.71 or § 1131.77 relative to payments to the producer-settlement fund shall be increased one-half of 1 percent on the second day following the due date of such obligation and on the 15th day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1131.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the

end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1131.44(a) (7) and (11) and the corresponding steps of § 1131.44(b), except such other source milk that is excluded from the computations pursuant to § 1131.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1131.76(a)(2).

§ 1131.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1131.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1132 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1132.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1132.2 Texas Panhandle marketing area.

"Texas Panhandle marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, all in the State of Texas, and Beckham in the State of Oklahoma.

§ 1132.3 [Reserved]

§ 1132.4 [Reserved]

§ 1132.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 1132.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1132.7(a).

§ 1132.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk;

(1) Not less than 50 percent of the Grade A milk received at such plant from dairy farmers, from handlers described in § 1132.9(c), and from other plants, is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants); and

(2) Not less than 15 percent of such recepits, or an average of not less than 10,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from handlers described in § 1132.9(c) during such month: *Provided*, That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be

designated as a pool plant for the months of March through June of such year.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of to retail and wholesale outlets (excluding pool plants) in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless notwithstanding the provisions of this subparagraph it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) such Class I disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month to retail and wholesale outlets (excluding pool plants) in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order; and

(4) That portion of a plant that is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1132.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1132.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of producers which is diverted pursuant to § 1132.13 for the account of such association;

(c) Any cooperative association with respect to milk of its member producers picked up at the farm for delivery to the pool plant of another handler in a tank truck owned or operated by such association or under control of such association, by contract or otherwise, in such a way that the association supervises and controls the determination of farm weights and tests of the milk of each of such member producers;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1132.7(c).

§ 1132.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers and who disposes of no fluid milk products in excess of his own milk production and fluid milk products received from pool plants.

§ 1132.11 [Reserved]

§ 1132.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is (1) received at a pool plant, or (2) diverted pursuant to § 1132.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1132.44(a)(8)(iii) and the corresponding step of § 1132.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1132.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk from a producer that is handled by a pool plant operator or a handler described in § 1132.9 (b) and (c) as follows:

(a) Producer milk of a handler operating a pool plant is skim milk and butterfat in milk:

(1) Diverted by the operator of such pool plant for his account to a nonpool plant that is not a producer-handler plant, subject to the limits prescribed in paragraph (d) of this section; and

(2) Received at such pool plant directly from producers and from a handler described in § 1132.9(c). If the handler to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the entire truckload shall be considered a receipt of producer milk at the first plant of delivery.

(b) Producer milk of a handler described in § 1132.9(b) is skim milk and butterfat in milk received by such handler from producers' farms and diverted by such handler for its account to a nonpool plant that is not a producer-handler plant, subject to the limits prescribed in paragraph (d) of this section.

(c) Producer milk of a handler described in § 1132.9(c) is skim milk and butterfat in milk received by such handler from producers' farms in excess of the quantity delivered to pool plants. Such milk shall be priced to such handler at the location of the pool plant to which most of the milk in the tank truck was delivered during the month.

(d) Diverted milk is producer milk in any month only to the extent it meets conditions set forth in this paragraph:

(1) It is claimed as producer milk by the diverting handler in his report filed pursuant to § 1132.30;

(2) It is milk received from a dairy farmer who had producer status immediately prior to such diversion;

(3) It is not in excess of 15 days' production of each producer during any of the months July through February; and

(4) Such diverted producer milk shall be priced at the location of the pool plant where the producer's milk was last physically received.

§ 1132.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1132.40(b)(1) from any source other than producers, handler described in § 1132.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1132.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1132.40 (b)(1), and products produced at the plant during the same month) from any

source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1132.40(b)(1)) for which the handler fails to establish a disposition.

§ 1132.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1132.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1132.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1132.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified, by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1132.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

Handler Reports

§ 1132.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1132.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1132.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition of fluid milk products in the marketing area.

(c) Each handler described in § 1132.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1132.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1132.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1132.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1132.32 Other reports.

(a) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1132.30 and 1132.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1132.40 Classes of utilization.

Except as provided in § 1132.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1132.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1132.15; and

(6) In shrinkage assigned pursuant to § 1132.41(a) to the receipts specified in § 1132.41(a)(2) and in shrinkage specified in § 1132.41 (b) and (c).

§ 1132.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1132.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1132.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1132.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1132.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1132.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1132.44(a)(12) and the corresponding step of § 1132.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1132.44(a)(7) or the corresponding step of § 1132.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1132.44 (a) (11) or (12) or the corresponding steps of § 1132.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other

order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1132.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i)(*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1132.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1132.43 General classification rules.

In determining the classification of producer milk pursuant to § 1132.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1132.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1132.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1132.40, 1132.41, and 1132.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1132.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1132.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1132.9(a) for each of his pool plants separately and of each handler described in § 1132.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1132.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtacted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1132.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1132.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1132.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1132.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined.

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1132.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro

rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1132.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1132.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1132.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classifications:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1132.44(a)(12) and the corresponding step of § 1132.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1132.44 on the basis of such report and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

Class Prices

§ 1132.50 Class prices.

Subject to the provisions of § 1132.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.25.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1132.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1132.52 Plant location adjustments for handlers.

(a) For that milk which is received from producers at a pool plant located 100 miles or more from the city hall, Amarillo, Tex., by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to a distributing plant which is a pool plant in the form of a fluid milk product and assigned to Class I pursuant to paragraph (b) of this section, or otherwise classified as Class I milk, the price specified in § 1132.50(a) shall be reduced at the rate set forth in the following schedule according to the location of the plant where such milk is received:

	Rate per hundredweight (cents)
Distance from the Amarillo City Hall (miles):	
100 but less than 110	15.0
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1132.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1132.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1132.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1132.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1132.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1132.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1132.44(a)(14) and the corresponding step of § 1132.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1132.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1132.44(a)(9) and the corresponding step of § 1132.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(7) (i) through (iv) and the corresponding step of § 1132.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(7) (v) and (vi) and the corresponding step of § 1132.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(11) and the corresponding step of § 1132.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1132.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price for all milk of 3.5 percent butterfat content f.o.b. pool plants located within 100 miles of the City Hall of Amarillo, Tex., as follows:

(a) Combine into one total the values computed pursuant to § 1132.60 for all handlers who made the reports prescribed in § 1132.30 for such month, except those in default of payments required pursuant to § 1132.71 for the preceding month;

(b) Add an amount equal to the sum of the location adjustments to be made pursuant to § 1132.75;

(c) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1132.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be the "uniform price" for producer milk.

§ 1132.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1132.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1132.71, 1132.76, and 1132.77, and from which he shall make all payments pursuant to §§ 1132.72 and 1132.77: *Provided,* That payments due to any handler shall be offset by payments due from such handler.

§ 1132.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1132.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1132.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1132.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which is allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1132.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1132.71(a)(2) exceeds the amount computed pursuant to § 1132.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1132.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month, for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month.

(b) On or before the 15th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1132.61, subject to the butterfat differential computed pursuant to § 1132.74, and plus or minus adjustments for errors made in previous payments to such producer; and less (1) payment made pursuant to paragraph (a) of this section, (2) location adjustments pursuant to § 1132.75, (3) deductions for marketing services pursuant to § 1132.86, and (4) proper deductions authorized by such producer: *Provided*, That if such handler has not received full payment for such month pursuant to § 1132.72 he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator. The handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 26th and 13th days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a cooperative association which collects payments for its members pursuant to paragraph (c)(1) of this section shall, on or before the 20th of each month, furnish such association information showing the daily and total pounds milk received from each of the association's member producers for the first 15 days of such month and, on or before the fifth day after the end of each month, such information for the 16th through the end of such month.

(4) For producer milk received from a handler described in § 1132.9(c), each handler shall make payments as follows:

(i) On or before the 26th day of the month, a partial payment for milk received during the first 15 days of such month at not less than the amount specified in paragraph (a) of this section; and

(ii) On or before the 13th day of the following month, in final settlement, the value of such milk received during the month, at the applicable uniform price as adjusted pursuant to §§ 1132.74 and 1132.75, less the amount of payment made pursuant to paragraph (c)(4)(i) of this section.

(d) In making the payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1132.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1132.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment pursuant to § 1132.73 the uniform price pursuant to § 1132.61 to be paid for milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Amarillo City Hall (miles):	*Rate per hundredweight (cents)*
100 but less than 110	15.0
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of computations pursuant to §§ 1132.71 and 1132.72, the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1132.52 applicable at the location of the nonpool plant from which the milk was received (but the resulting price shall not be less than the Class III price).

§ 1132.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1132.30(b) and 1132.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price

and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1132.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class purusant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1132.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1132.60 for such handler shall include, in lieu of the value of other source milk specified in § 1132.60(f), less the value of such other source milk specified in § 1132.71(a)(2)(ii), a value of milk determined pursuant to § 1132.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1132.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1132.30 (b) and 1132.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1132.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1132.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1132.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1132.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1132.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1132.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1132.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1132.78 Charges on overdue accounts.

There shall be added to any balance due the market administrator pursuant to §§ 1132.71, 1132.76, 1132.77, 1132.85, and 1132.86 an amount equal to one-half of 1 percent of such balance for each month or any portion thereof that payment of the balance is overdue.

Administrative Assessment and Marketing Service Deduction

§ 1132.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1132.44(a) (7) and (11) and the corresponding steps of § 1132.44(b), except such other source milk that is excluded from the computations pursuant to § 1132.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1032.76(a)(2).

§ 1132.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1132.73(b) shall deduct 6 cents per hundredweight or such lesser amounts as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Producers' cooperative associations: In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

Advertising and Promotion Program

§ 1132.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative

associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1132.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1132.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1132.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1132.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall, nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1132.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1132.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1132.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative, who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1132.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1132.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1132.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1132.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1132.110 and 1132.117.

§ 1132.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1132.110 and 1132.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1132.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1132.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1132.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the

domestic marketing and consumption of milk and its products.

§ 1132.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1132.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter 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.

§ 1132.121 Duties of the market administrator.

Except as specified in § 1132.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1132.113(c).

(b) Set aside the amounts subtracted under § 1132.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1132.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1132.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1132.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1132.110 through 1132.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1132.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1132.70.

PART 1138—MILK IN RIO GRANDE VALLEY MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1138 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1138.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1138.2 Rio Grande Valley marketing area.

"Rio Grande Valley marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the counties of Bernalillo,

Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Lea, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia, all in the State of New Mexico; El Paso in the State of Texas; and Archuleta, Montezuma, and La Plata, in the State of Colorado.

§ 1138.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk products classified as Class I milk, other than a delivery to a pool plant or nonpool plant.

§ 1138.4 [Reserved]

§ 1138.5 [Reserved]

§ 1138.6 [Reserved]

§ 1138.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant hereinafter referred to as a "distributing pool plant" in which fluid milk products are pasteurized or packaged and from which there is route disposition in the marketing area equal to not less than 15 percent of the total Class I sales of such plant, except filled milk, or 10,000 pounds daily (average), whichever is less: *Provided,* That the total quantity of Class I milk, except filled milk, disposed from such plant during the month is not less than 50 percent of such plant's receipts of Grade A milk, which receipts shall include all milk diverted from such pool plant to a nonpool plant by the handler operating such pool plant.

(b) Any plant hereinafter referred to as a "supply pool plant" from which during the month not less than 50 percent of its dairy farm supply of Grade A milk is moved to plants from each of which there is route disposition, except filled milk, equal to not less than 50 percent of its receipts of Grade A milk during the month and route disposition, except filled milk, in the marketing area equal to at least 15 percent of such receipts or a daily average of 10,000 pounds, whichever is less.

(c) Any plant, hereinafter referred to as a "cooperative standby pool plant," which is operated by a cooperative association, and is located within the marketing area, if 50 percent or more of the milk delivered during the month by producers who are members of such association is delivered directly or is transferred by the association to pool plants of other handlers.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Rio Grande Valley marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period March through July, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

§ 1138.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant qualified pursuant to § 1138.7 and which is not an other order plant nor a producer-handler plant.

§ 1138.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of any member producer which such cooperative association causes to be diverted pursuant to § 1138.12 for the account of such cooperative association;

(c) A cooperative association with respect to the milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association, if the cooperative association notified the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it elects to be a handler for such milk. For purposes of location adjustments to producers such milk is considered to have been received from producers by the cooperative association at the location of the pool plant to which it is delivered;

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition in the marketing area; and

(e) Any person in his capacity as the operator of a nonpool plant from which Grade A milk as shipped to a pool plant pursuant to § 1138.7(a).

§ 1138.10 Producer-handler.

(a) "Producer-handler" means any person who processes and packages milk from his own farm production, who has route disposition within the marketing area consisting of any portion of such milk, and who receives no fluid milk products from other dairy farmers or from any source other than a pool plant and receipts from pool plants shall not be in excess of 11,000 pounds per month or, any person who processes and packages certified milk from his own farm production and disposes of such milk to another plant and who receives no milk from any source except his certified herd: *Provided,* That any person who desires to qualify as a producer-handler shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding receipts from pool plants) is the personal enterprise of and at the personal risk of such person and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of the same person.

(b) In the case of a producer-handler of certified milk, the certified dairy herd and the milk plant in which the certified milk is handled shall be considered one business unit and shall not include milk which is delivered to other handlers' plants from a noncertified herd maintained on the same farm.

(c) A governmental agency which operates a milk, or filled milk plant shall be considered a producer-handler: *Provided,* That the plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant which is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for one month and thereafter resumes the status of a nonpool plant it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

§ 1138.11 [Reserved]

§ 1138.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is:

(1) Received at a pool plant; or

(2) Diverted for the account of the diverting handler from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(i) A cooperative association may divert for its account the milk of any member producer, whose milk is received at a distributing pool plant for at least 3

days during the month, without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 25 percent in the months of March, April, May, June, July, and December and 15 percent in other months of its member producer milk received at all pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers provided each association has filed such a request in writing with the market administrator;

(ii) A handler in his capacity as the operator of a distributing pool plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a)(2)(i) of this section, whose milk is received at his pool plant for at least 3 days during the month, without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 25 percent in the months of March, April, May, June, July, and December and 15 percent in other months of the milk received at such pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)(2)(i) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk;

(iii) For purposes of the requirements of § 1138.7, milk diverted for the account of the operator of a pool plant shall be included in the receipts of the pool plant from which diverted; and

(iv) For the purposes of location adjustments pursuant to §§ 1138.52 and 1138.75, milk diverted to a nonpool plant shall be considered to have been received at the location of the pool plant from which diverted when the farm on which the milk is produced is located within the marketing area and at the location of the nonpool plant where received when the farm on which the milk is produced is located outside the marketing area.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1138.44(a)(8)(iii) and the corresponding step of § 1138.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1138.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer and received at a pool plant directly from producers or diverted pursuant to § 1138.12. Milk received at a pool plant from a handler described in § 1138.9(c) shall be considered under this part as producer milk of the pool plant operator. Milk received from producers by a handler described in § 1138.9(c) but not delivered to a pool plant shall be considered under this part as producer milk of such handler.

§ 1138.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1138.40(b)(1) from any source other than producers, handlers described in § 1138.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1138.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1138.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1138.40(b)(1) for which the handler fails to establish a disposition.

§ 1138.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1138.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1138.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1138.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1138.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members; and

(c) Has its entire activities under the control of its members.

§ 1138.19 Accounting periods.

A handler may account for receipts, utilization and classification of skim milk and butterfat at his pool plant(s) for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not less than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

Handler Reports

§ 1138.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1138.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1138.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1138.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1138.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1138.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1138.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1138.32 Other reports.

In addition to the reports required pursuant to §§ 1138.30 and 1138.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1138.40 Classes of utilization.

Except as provided in § 1138.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1138.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section.

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1138.15; and

(6) In shrinkage assigned pursuant to § 1138.41(a) to the receipts specified in § 1138.41(a)(2) and in shrinkage specified in § 1138.41 (b) and (c).

§ 1138.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1138.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1138.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1138.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from

other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1138.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1138.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1138.44(a)(12) and the corresponding step of § 1138.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1138.44(a)(7) or the corresponding step of § 1138.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1138.44(a) (11) or (12) or the corresponding steps of § 1138.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any recepits at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1138.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1138.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1138.43 General classification rules.

In determining the classification of producer milk pursuant to § 1138.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1138.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1138.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1138.40, 1138.41, and 1138.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1138.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1138.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1138.9(a) for each of his pool plants separately and of each handler described in § 1138.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1138.41(b);

(2) Subtract in the following order from the total pounds of skim milk in Class I:

(i) The pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(ii) The pounds of skim milk in receipts of packaged certified fluid milk products from a producer-handler if disposed of in the same form as received;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1138.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1138.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1138.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1138.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order that were not subtracted pursuant to paragraph (a)(2)(ii) of this section;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler

of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1138.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class 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 § 1138.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a) (12) (i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available:

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1138.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

§ 1138.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1138.44(a) (12) and the corresponding step of § 1138.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in

producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1138.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 13th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1138.50 Class prices.

Subject to the provisions of § 1138.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.35.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1138.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1138.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant in Zone 1 (comprising the counties of Bernalillo, Dona Ana, Grant, Guadalupe, Harding, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, and Valencia, all in the State of New Mexico, and El Paso, Tex.), which is classified as Class I milk, the Class I price shall be the price computed pursuant to § 1138.50(a).

(b) For milk received from producers at a pool plant in Zone II (comprising the counties of Archuleta, La Plata, and Montezuma, Colorado, and San Juan, N. Mex.), and in Zone III (comprising the counties of Eddy, Chaves, Curry, De Baca, Lea, Quay, and Roosevelt, N. Mex.), which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (d) of this section, the Class I price shall be the price computed pursuant to § 1138.50 (a) minus 15 cents.

(c) For milk received from producers at a pool plant located outside the marketing area and more than 100 miles by the shortest highway distance, as determined by the market administrator, from the nearest of the county courthouses in Bernalillo or Santa Fe Counties, N. Mex., or El Paso, Tex., and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (d) of this section, the price computed pursuant to § 1138.50(a) shall be reduced by 15 cents and by an additional cent for each 10 miles or fraction thereof, that such distance calculated from the Bernalillo, Santa Fe, or El Paso County Courthouse, whichever is nearer, exceeds 110 miles.

(d) For purposes of calculating such adjustment, bulk transfers of fluid milk products between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(e) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (b) and (c) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1138.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1138.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1138.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1138.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1138.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1138.44(a)(14) and the corresponding step of § 1138.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1138.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1138.44(a)(9) and the corresponding step of § 1138.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (i) through (iv) and the corresponding step of § 1138.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (v) and (vi) and the corresponding step of § 1138.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(11) and the corresponding step of § 1138.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent

amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1138.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1138.60 for all handlers who filed the reports prescribed by § 1138.30 for the month and who made the payments pursuant to §§ 1138.71 and 1138.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions for location adjustments computed pursuant to § 1138.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1138.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1138.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1138.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1138.71, 1138.76 and 1138.77 and from which he shall make all payments pursuant to §§ 1138.72 and 1138.77: *Provided*, That any payments due any handler shall be offset by any payments due from such handler.

§ 1138.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1138.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1138.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1138.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1138.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1138.71(a)(2) exceeds the amount computed pursuant to § 1138.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available

§ 1138.73 Payments to producers and to cooperative associations.

Except as provided in paragraphs (c) and (e) of this section, each handler, except a cooperative association, shall make payment to each producer from whom milk is received as specified in paragraphs (a) and (b) of this section:

(a) On or before the last day of the month, to each producer who had not discontinued shipping milk to such handler before the 28th day of the month, a partial payment equal to the uniform price for the preceding month multiplied by the hundredweight of milk delivered during the first 15 days of the current month less authorized deductions.

(b) On or before the 16th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1138.61, as adjusted pursuant to §§ 1138.74 and 1138.75, plus or minus adjustments for errors made in previous payments to such producers and less (1) payments made pursuant to paragraph (a) of this section, (2) deductions for marketing services pursuant to § 1138.86 and (3) proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 1138.72 he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the second day prior to the date of payment to producers in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this order;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

(e) Each handler who receives milk from a handler described in § 1138.9(c), shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment in the amount specified in paragraph (a) of this section; and

(2) In making final settlement, the value of such milk at the applicable uniform price as adjusted pursuant to §§ 1138.74 and 1138.75, less the amount of partial payment made on such milk.

(f) Each handler who receives milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (c) of this section shall report on or before the eighth day after the end of the month to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) The days of delivery, the total pounds of milk, and the average butterfat test of milk received from such producer during the month;

(2) The amount or rate and nature of any deductions; and

(3) The amount of any payments due such producer pursuant to § 1138.77.

§ 1138.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1138.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at pool plants located in Zones II and III or at pool plants located outside the marketing area and more than 100 miles, as determined by the market administrator, from the nearest of the county courthouses in El Paso County, Tex., or Bernalillo, or Santa Fe Counties, N. Mex., there shall be deducted an adjustment for each such plant for all milk at the rates specified pursuant to § 1138.52.

(b) For purposes of computations pursuant to §§ 1138.71 and 1138.72, the uniform price shall be adjusted at the rates set forth in § 1138.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1138.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1138.30(b) and 1138.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1138.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1138.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1138.60 for such handler shall include, in lieu of the value of other source milk specified in § 1138.60(f) less the value of such other source milk specified in § 1138.71(a)(2)(ii), a value of milk determined pursuant to § 1138.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1138.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1138.30(b) and 1138.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1138.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1138.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated:

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1138.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of an other order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1138.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in moneys due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1138.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk described in paragraphs (a), (b), and (c) of this section. If a handler elects pursuant to § 1138.19 to use two accounting periods in any month, the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period:

(a) Producer milk including such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1138.44(a)(7) and (11) and the corresponding steps of § 1138.44(b), except such other source milk that is excluded from the computations pursuant to § 1138.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1138.76(a)(2).

§ 1138.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself for milk pursuant to § 1138.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 16th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of milk for producers who are not receiving such services from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 16th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deduction and the quantity of milk on which the deduction was computed from each producer.

Advertising and Promotion Program

§ 1138.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1138.121 (b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1138.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1138.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1138.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1138.113(b), has a majority of the participating producers, representation from such coopeative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1138.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1138.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1138.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator

shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1138.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1138.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1138.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1138.110 and 1138.117.

§ 1138.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1138.110 and 1138.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1138.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1138.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1138.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1138.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1138.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1138.121 Duties of the market administrator.

Except as specified in § 1138.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1138.113(c).

(b) Set aside the amounts subtracted under § 1138.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1138.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1138.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were

made pursuant to § 1138.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1138.110 through 1138.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1138.122 **Liquidation.**

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1138.70.

(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.74–10173 Filed 5–6–74;8:45 am]

CHAPTER XI—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MISCELLANEOUS COMMODITIES), DEPARTMENT OF AGRICULTURE

[Amdt. 3]

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

Refunds of Assessments; Filing of Applications

This amendment would clarify the time period during which producers may file applications for refunds of assessments.

Notice was published in the April 15, 1974, FEDERAL REGISTER (39 FR 13554) regarding a proposal to amend § 1207.514 *Refunds*, of the Rules and Regulations which was recommended unanimously by the Administrative Committee of the National Potato Promotion Board on February 2, 1974. The Potato Board was established pursuant to the Potato Research and Promotion Plan (7 CFR Part 1207; 37 FR 5008). The plan is effective under the Potato Research and Promotion Act (7 U.S.C. 2611–2627).

The notice afforded interested persons an opportunity to file written data, views or arguments not later than April 26, 1974. None was filed.

Section 1207.514 *Refunds* requires any producer desiring a refund to request it within 90 days from the date the assessment was collected from him or withheld from his account, which also was the date a determination of assessable potatoes was made in the normal handling process and the assessment became payable. However the rule does not specify a similar time period for those producers who also handle their own potatoes. For purposes of equity, such producer-handlers should be afforded the same time period to obtain refunds as producers whose potatoes are handled by other persons. Therefore, it is required that applications for refunds be submitted to the Board within 90 days from the date a determination of assessable potatoes is made in the normal handling process.

After consideration of all relevant matters, including the proposal set forth in the notice which was unanimously recommended by the Administrative Committee of the National Potato Promotion Board, it is hereby found that this amendment of 7 CFR Part 1207.500–.546 Subpart—Rules and Regulations (37 FR 17379) will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that potatoes are (1) now being handled which should be covered by the amended rule; (2) such a change was unanimously recommended by the Administrative Committee of the National Potato Promotion Board on February 2, 1974; and (3) information regarding this proposed rule change was published in the FEDERAL REGISTER on April 15, 1974, and provided all interested parties with ample notice.

The amendment is as follows:

Revise the introductory paragraph and first sentence of § 1207.514(b) as follows:

§ 1207.514 **Refunds.**

A refund of assessments may be obtained by a producer only by following the procedure prescribed in this section.

* * * * *

(b) Any producer requesting a refund shall mail an application on the prescribed form to the Board within 90 days from the date the assessment become payable pursuant to § 1207.513.

* * * * *

(7 U.S.C. 2611–2627; 84 Stat. 2041).

Dated: May 1, 1974 to become effective May 6, 1974.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.74–10404 Filed 5–6–74;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—LOANS PRIMARILY FOR PRODUCTION PURPOSES

[FHA Instruction 441.4]

PART 1832—EMERGENCY LOANS

Subpart B—Emergency Loan Processing

MISCELLANEOUS AMENDMENTS

Section 1832.32 (t) and (u)(1) of Chapter XVIII of Title 7 of the Code of Federal Regulations (37 FR 7293) is amended to remove reference to Form FHA 441–23, "Certification of Losses Caused by Major Disaster," which is now obsolete and to correct form titles to conform with present forms. In accordance with 5 U.S.C. 553, this amendment is being published without notice of proposed rulemaking inasmuch as it involves only agency procedure.

As amended, § 1832.32 (t) and (u)(1) read as follows:

§ 1832.32 **Loan forms and routines.**

* * * * *

(t) *Applicant's statement of loss or damage.* Form FHA 441–22, "Certification of Disaster Losses," will be used to certify losses. The amount of any compensation for losses received from insurance or otherwise will be shown on this form.

(u) *Taking security instruments.* (1) *Forms to be used.* Form FHA 440A25, "Financing Statement," or Form FHA 440–25, "Financing Statement," or Form FHA 440–4, "Security Agreement (Chattels and Crops)," will be used to obtain security interest in personal property in UCC States unless State requirements provide for the use of other forms. State requirements also will provide information as to whether Form FHA 440A25 or Form FHA 440–25 will be used. The financing statement and security agreement together will constitute a security instrument. Although only the financing statement is required to be filed or recorded, it is necessary also to take a security agreement in order to have a complete security instrument. (See also § 1832.11(a)(2) and (5), for method of obtaining a security interest in crops grown under contract when title to the crop is held by the contractor, or livestock that will be fed feed purchased or produced with loan funds when a first lien cannot be obtained.) Form FHA 440–4 LA, "Chattel Mortgage and Crop Pledge (Louisiana)," or Form FHA 440–4A LA, "Crop Pledge (Louisiana)," as appropriate, will be used in the State of Louisiana.

* * * * *

Effective date. This amendment is effective May 7, 1974.

(7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Sec. of Agri., 38 FR 14944, 14948, 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 38 FR 14944, 14952, 7 CFR 2.70)

Dated April 23, 1974.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.74–10402 Filed 5–6–74;8:45 am]

SUBCHAPTER D—GUARANTEED LOANS

[FHA Instruction 449.1]

PART 1842—BUSINESS AND INDUSTRIAL LOANS

Miscellaneous Amendments

Section 1842.17 7 CFR Part 1842 (38 FR 29047) is amended to revise the requirement for a Conditional Commitment for Guarantee, and to clarify what information is required of the borrower. Since the changes are minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary.

As amended § 1842.17 reads as follows:

§ 1842.17 Department of Labor (DL) determination.

A Contract of Guarantee shall not be issued if the Secretary of Labor certifies within 60 days after the matter has been submitted to him by the Secretary of Agriculture that the provisions of § 1842.14 (c) and (d) have not been complied with. Information for obtaining this certification will be submitted in writing to FmHA. The information will be submitted to the DL by FmHA. When requested by FmHA, the applicant will submit that information preparing and returning to FmHA:

(a) Form FmHA 449–22, "Certificate of Non-Relocation."

(b) Form FmHA 449–23, "Market and Capacity Information Report." Form FmHA 449–14, "Conditional Commitment for Guarantee," may be issued prior to receipt of the required DL certification, provided one of the conditions and requirements of the Conditional Commitment for Guarantee will be that the FmHA Contract of Guarantee will be issued only after receipt of a favorable DL certification.

(7 U.S.C. 1989; Delegation of authority by the Secretary of Agriculture, 38 FR 14944, 14948, 7 CFR 2.23; Delegation of authority by the Assistant Secretary for Rural Development, 38 FR 14944, 14952, 7 CFR 2.70.)

Effective date. This amendment is effective May 7, 1974.

Date: April 23, 1974.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.74–10403 Filed 5–6–74;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 74–WE–8–AD; Amdt. 39–1833]

PART 39—AIRWORTHINESS DIRECTIVES

McDonnell Douglas Model DC–10 Series

On April 2, 1974, § 39.13 of Part 39 of the Federal Aviation Regulations was amended by adding a new airworthiness directive AD 74–07–04 (Amendment 39–1804; 37 FR 13697), that required all United States operators of McDonnell Douglas DC–10 series airplanes, fuselage numbers 1 through 92, to inspect and replace forward passenger door emergency air bottle actuating crank stop brackets.

After issuing Amendment 39–1804, due to additional information received from the manufacturer, the agency determined that (1) the first 16 DC–10 aircraft manufactured have different part numbers on the affected parts than the rest of the aircraft manufactured; and (2) a service bulletin specifying an acceptable terminating action now exists.

Therefore, the AD is being amended to provide for the correct aircraft part numbers on the initial aircraft manufactured and to specify an acceptable terminating action in the form of the manufacturer's service bulletin.

Since this amendment provides a clarification, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is further amended by amending Airworthiness Directive AD 74–07–04 as follows:

(1) Insert words "or P/N ABA8048–49/50" after words "P/N ABA8048–41/42" wherever they appear.

(2) Delete paragraph (c) in its entirety and add a new paragraph (c), to read as follows:

(c) Within 1500 hours additional time in service after effective date of this AD, as amended, unless already accomplished, replace forward passenger door emergency air bottle actuating crank stop brackets per McDonnell Douglas Service Bulletin 52–95, dated March 18, 1974, or later FAA-approved revisions or equivalent modifications approved by the Chief, Aircraft Engineering Division, FAA Western Region. The inspections per (a) and (b) may be discontinued upon accomplishment of this modification.

This amendment becomes effective May 6, 1974.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Los Angeles, California on April 24, 1974.

ROBERT O. BLANCHARD,
Acting Director,
FAA Western Region.

[FR Doc.74–10407 Filed 5–6–74;8:45 am]

[Airspace Docket No. 74–EA–7]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Transition Area and Control Zone, Designation and Alteration

On page 7803 of the FEDERAL REGISTER for February 28, 1974, the Federal Aviation Administration published a proposed rule which would alter the Harrisburg, Pa., Control Zone (39 FR 388) and Transition Area (39 FR 506) and designate a Middletown, Pa., Control Zone.

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

In view of the foregoing, the proposed regulations are hereby adopted, effective 0901 G.m.t. June 20, 1974.

(Sec. 307(a), Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Jamaica, N.Y., on April 19, 1974.

JAMES BISPO,
Deputy Director, Eastern Region.

1. Amend § 71.171 of Part 71, of the Federal Aviation Regulations by deleting the description of the Harrisburg, Pa. control zone and by substituting the following in lieu thereof:

Within a 6.5-mile radius of the center, 40°12'59" N., 76°51'03" W., of Capital City Airport, Harrisburg, Pa.; within 2 miles each side of the extended centerline of Capital City Airport Runway 26, extending from the west end of Runway 26 to 6.5 miles west of the west end of Runway 26; within 2 miles each side of the Harrisburg, Pa. VORTAC 100° radial, extending from the 6.5-mile radius zone to 2.5 miles east of the VORTAC; excluding the portion that coincides with the Middletown, Pa. control zone east of direct lines described as follows: a line bearing 028° from a point 40°12'23" N., 76°48'38" W., extending from said point to the point of intersection with the Harrisburg, Pa. 6.5-mile radius zone and a line bearing 191° from a point 40°12'23" N., 76°48'38" W., extending from said point to the point of intersection with the Harrisburg, Pa. 6.5-mile radius zone.

2. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to designate a Middletown, Pa. control zone as follows:

MIDDLETOWN, PA.

Within a 6-mile radius of the center, 40°11'34" N., 76°45'48" W., of Harrisburg International Airport-Olmsted Field, Middletown, Pa.; within a 7-mile radius of the center of the airport, extending clockwise from a 228° bearing to a 293° bearing from the airport; within a 6.5-mile radius of the center of the airport, extending clockwise from a 005° bearing to a 033° bearing from the airport; within a 7-mile radius of the center of the airport, extending clockwise from a 033° bearing to a 098° bearing from the airport; within 2 miles each side of the extended centerline of Harrisburg International Airport-Olmsted Field Runway 13, extending from the southeast end of Runway 13 to 6 miles southeast of the southeast end of Runway 13; excluding the portion that coincides with the Harrisburg, Pa. control zone west of direct lines described as follows: a line bearing 028° from a point 40°12'23" N., 76°48'38" W., extending from said point to the point of intersection with the Harrisburg, Pa. 6.5-mile radius zone and a line bearing 191° from a point 40°12'23" N., 76°48'38" W., extending from said point to the point of intersection with the Harrisburg, Pa. 6.5-mile radius zone.

3. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by deleting the description of the Harrisburg, Pa. transition area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 19.5-mile radius of the center, 40°12'59" N., 76°51'03" W., of Capital City Airport, Harrisburg, Pa., extending clockwise from a 009° bearing to a 035° bearing from the airport; within a 13-mile radius of the center of the airport, extending clockwise from a 035° bearing to a 099° bearing from the airport; within a 11.5-mile radius of the center of the airport, extending clockwise from a 099° bearing to a 161° bearing from the airport; within a 13-mile radius of the center of the airport, extending clockwise from a 161° bearing to a

233° bearing from the airport; within a 11.5-mile radius of the center of the airport, extending clockwise from a 233° bearing to a 290° bearing from the airport; within a 16.5-mile radius of the center of the airport, extending clockwise from a 290° bearing to a 009° bearing from the airport; within 5.5 miles each side of the Harrisburg, Pa., VORTAC 274° radial, extending from the VORTAC to 11.5 miles west of the VORTAC; within 9.5 miles north and 4.5 miles south of the Capital City Airport ILS localizer west course, extending from the OM to 18.5 miles west of the OM; within a 12.5-mile radius of the center, 40°11'34" N., 76°45'48" W. of Harrisburg International Airport-Olmsted Field, Middletown, Pa., extending clockwise from a 025° bearing to a 078° bearing from the airport; within a 13.5-radius of the center of the airport, extending clockwise from a 078° bearing to a 147° bearing from the airport; within a 12.5-mile radius of the center of the airport, extending clockwise from a 147° bearing to a 228° bearing from the airport; within a 14.5-mile radius of the center of the airport, extending clockwise from a 228° bearing to a 270° bearing from the airport; within a 10.5-mile radius of the center of the airport, extending clockwise from a 270° bearing to a 025° bearing from the airport.

[FR Doc.74-10411 Filed 5-6-74;8:45 am]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Transition Area, Alteration

On page 6123 of the FEDERAL REGISTER for February 19, 1974, the Federal Aviation Administration published a proposed rule which would alter the Olean, N.Y., Transition Area (39 FR 557).

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulation have been received.

In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 G.m.t. June 20, 1974.

(Sec. 307(a), Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c).)

Issued in Jamaica, N.Y., on April 19, 1974.

JAMES BISPO,
Deputy Director, Eastern Region.

1. Amend § 71.181 of Part 71, Federal Aviation Regulations so as to alter the description of the Olean, N.Y. 700-foot floor transition area by deleting, "This transition area shall be effective 0700 to 2200 hours, local time, daily."

[FR Doc.74-10409 Filed 5-6-74;8:45 am]

[Airspace Docket No. 73-SO-79]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Transition Area, Designation

On December 17, 1973, a notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 34672), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Jacksboro, Tenn., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., July 18, 1974, as hereinafter set forth.

In § 71.181 (39 FR 440), the following transition area is added:

JACKSBORO, TENN.

That airspace extending upward from 700 feet above the surface within a 17-mile radius of Campbell County Airport (latitude 36°20'03" N, longitude 84°09'46" W).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in East Point, Ga., on April 26, 1974.

DUANE W. FREER,
Acting Director, Southern Region.

[FR Doc. 74-10408 Filed 5-6-74;8:45 am]

[Airspace Docket No. 73-EA-114]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Transition Area, Alteration

On page 6123 of the FEDERAL REGISTER for February 19, 1974, the Federal Aviation Administration published a proposed rule which would alter the East Hampton, N.Y., Transition Area (39 FR 484).

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulation have been received.

In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 G.m.t., June 20, 1974.

(Sec. 307(a), Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Jamaica, N.Y., on April 19, 1974.

JAMES BISPO,
Deputy Director, Eastern Region.

1. Amend § 71.181 of Part 71, Federal Aviation Regulations by deleting the description of the East Hampton, N.Y. transition area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the center, 40°57'36" N., 72°15'05" W., of East Hampton Airport, East Hampton, N.Y., extending clockwise from a 307° bearing to a 044° bearing from the airport; within a 7-mile radius of the center of the airport, extending clockwise from a 044° bearing to a 092° bearing from the airport; within a 6-mile radius of the center of the airport, extending clockwise from a 092° bearing to a 232° bearing from the airport; and within a 7-mile radius of the center of the airport, extending clockwise from a 232° bearing to a 307° bearing from the airport.

[FR Doc.74-10410 Filed 5-6-74; 8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-844; Amdt. 25]

PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Extension of Time for Continued Use of Existing Ticket Notices

Adopted by the Civil Aeronautics Board at its offices in Washington, D.C., on May 1, 1974.

Part 221 of the Board's Economic Regulations (14 CFR Part 221) contains provisions which require certificated air carriers and foreign air carriers availing themselves of limitations on liability to passengers for death or personal injury, and for loss, damage to, or delay in the delivery of passengers baggage, under the Warsaw Convention, to give notice of such limitations in the form of ticket and sign notices.[1] The dollar limitations specified in these notices are intended to reflect the minimum liability requirements of the Convention, which are also set forth in the carriers' tariffs.

Since the Convention's liability limitations are expressed in French gold francs, the dollar amounts in the tariffs and notices specified in Part 221 have had to be revised as a result of the U.S. dollar devaluations in 1972 and 1973. The second devaluation of the U.S. dollar thus led to the issuance of a Board order requiring tariff revisions[2] and to the issuance, in ER-837, of a rule requiring parallel revision of Part 221 notices of liability limitations.[3] However, recognizing that some carriers might still be using ticket stock ordered in good faith reliance on prior Board actions, and wishing to alleviate the expense attendant upon ordering new ticket stock to comply with its new rule, the Board explained, in ER-837, that it would allow carriers to continue using existing ticket stock until May 15, 1974.

By petition, dated April 11, 1974, the Air Transport Association of America has requested that the Board extend from May 15, 1974 to January 30, 1975 the deadline for revising all ticket notices of Convention dollar limitations on liability.[4] The petition states that ATA's carrier members will incur great expense in ordering and distributing new ticket

[1] §§ 221.75 (Special notice of limited liability for death or injury under the Warsaw Convention) and 221.176 (Notice of limited liability for baggage; alternative consolidated notice of liability limitations).

[2] Order 74-1-16, adopted January 3, 1974, 39 FR 1526.

[3] Approved February 27, 1974, effective April 4, 1974.

[4] Our action herein also disposes of a similar petition by Alitalia, filed April 30, 1974, in this docket.

stock, as well as in recalling and destroying outstanding ticket stock. ATA's petition estimates that the expenses of individual carriers could range from $5000 to $372,300.

ATA's petition fails to demonstrate sufficient grounds to warrant extending until January 30, 1975, the time for all carriers to comply fully with the notice requirements prescribed by ER–837. Indeed, since carriers have been expressly permitted, since the issuance of ER–801, on May 10, 1973, to use ticket notices setting forth the dollar amounts prescribed in ER–837, they have in effect already had close to a full year in which to order the printing of tickets reciting the dollar amounts prescribed by ER–837.

Nonetheless, we have determined to extend from May 15, 1974, until July 15, 1974, the time during which carriers may continue to use existing ticket notices. We believe that such extension would prevent any widespread hardship to the industry. Moreover, it should be noted that the notice required by § 221.175(a) may be given by means of a separate slip of paper. Waivers to permit use of separate slips for the § 221.176(b) notice may be granted to individual carriers who apply in conformity with and make the showing required by § 221.176 (f). The alternative of using paste-overs on existing ticket stock does not require a waiver.

The ATA petition further suggests that the carriers' notice should be permitted to state the date as of which recited dollar amounts have been computed, rather than be required to be revised periodically so as to reflect currency fluctuations. The Board does not consider it necessary at this time to act upon ATA's suggestion. However, should developing circumstances indicate a real need to provide greater flexibiilty in the form of liability limitation notices, we shall certainly consider ATA's suggestion.

Since the within rule relieves a burden, the Board finds that notice and public procedure hereon are unnecessary and that the rule may be made effective immediately.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 221 of the Economic Regulations (14 CFR Part 221) effective May 1, 1974, as follows:

1. Amend § 221.175(a), by changing the deadline date in the proviso at the end thereof, the amended paragraph (a) to read in part as follows:

§ 221.175 Special notice of limited liability for death or injury under the Warsaw Convention.

(a) * * *

Provided, however, That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statement shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as 10-point modern type and in ink contrasting with the stock on: (1) each ticket; (2) a piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or (3) the ticket envelope; *And provided further,* That a carrier which has heretofore been furnishing a statement including either the sum of "$8,290" or the sum of "$9,000," in place of the sum of "$10,000" in the text of the statement prescribed by this paragraph, may continue to use such statement until July 15, 1974.

* * * * *

2. Amend § 221.176(b), by changing the deadline date in the proviso at the end thereof, the amended paragraph (b) to read in part as follows:

§ 221.176 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

* * * * *

(b) * * *

Provided, however, That carriers may include in their ticket notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to the baggage liability limitation for most international travel; *And provided further,* That a carrier which has heretofore been issuing ticket notices including either the sums of "$7.50" and "$330," respectively (and the optional language of "$16.58" and "$7.50," respectively), or the sums of "$8.16" and "$360," respectively (and the optional language of "$18.00" and "$18.16," respectively), in place of "$9.07" and "$400," respectively, in the statement prescribed by this paragraph (and in place of the optional language "$20.00" and "$9.07," respectively, permitted by the first proviso to this paragraph), may continue to use such statement until July 15, 1974.

* * * * *

(Sections 204(a), 403, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, and 771 as amended; 49 U.S.C. 1324, 1373 and 1386)

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.74–10343 Filed 5–6–74;8:45 am]

[Reg. ER–841; Amdt. 12]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Accounting and Reporting Requirements for Transport-Related Revenues and Expenses; Correction

The account title of section 6–2161 of the Uniform System of Accounts and Reports (Regulation ER–841, 39 FR 11993, April 2, 1974) should be corrected to read as follows:

2161 Unearned Security Charges.

* * * * *

Effective: March 31, 1974.

Adopted: February 27, 1974.

Dated: April 29, 1974.

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.74–10454 Filed 5–6–74;8:45 am]

[Reg. ER–845; Amdt. 19]

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Automatic Adjustment of Logair and Quicktrans Domestic Minimum Charter Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., May 1, 1974.

By ER–831, effective November 14, 1973, the Board, in response to a petition for rule making filed by Overseas National Airways, Inc. (ONA), amended Part 288 of its Economic Regulations (14 CFR Part 288) to provide for prospective automatic adjustment of Logair and Quicktrans domestic minimum rates for charter services performed pursuant to contract with the Military Airlift Command (MAC) to reflect future fluctuations in the price of jet fuel purchased by the carriers from the Department of Defense (DOD).

On December 18, 1973, ONA and Saturn Airways, Inc. (Saturn) filed a joint Petition for Reconsideration of ER–831,[1] accompanied by a Motion for Leave to File an Otherwise Unauthorized Document.[2] On January 17, 1974, DOD filed an answer to the petition opposing the relief requested, and contending that the petition is procedurally inappropriate and should not be considered.

The carriers' motion is based on the contention that the base level prices for JP–4 and JP–5 jet fuel established in ER–831 were adopted as the result of an erroneous understanding by both MAC and the Board as to the actual prices of these fuels in effect on August 27, 1973, the date of ONA's petition to the Board, and procedurally, that only through reconsideration of ER–831 can this error of fact be corrected to provide relief from the date of ONA's original petition as opposed to merely prospective relief through further amendment of Part 288.

The petition for reconsideration requests first that the Board correct the factual error in ER–831 by a reduction in the base price levels of JP–4 and JP–5 jet fuel established therein from 14.9 and 16.2 cents per gallon, respectively, to 11.3 and 12.3 cents per gallon, which were the prices in effect on August 27, 1973. Second, the petitioners request that the fuel escalator clause be made effective from August 27, 1973, which was the date

[1] Previously, on November 21, 1973, ONA had filed a telegraphic petition for reconsideration. This filing was assigned Docket number 26133. On December 17, 1973, DOD filed an answer to the petition. Both the petition and answer are effectively disposed of herein.

[2] Rule 38(d) of the Board's Rules of Practice (14 CFR Part 302) states that unless expressly provided for, petitions for reconsideration of adopted rules will not be entertained. ER–831 did not expressly authorize filing of petitions for reconsideration.

ONA's petition was filed with the Board.[3] The petitioner's claim that failure to adjust the base price levels will cost each of the carriers $80,000 a month in additional fuel expenses, and estimate that a failure to make the corrected base price levels effective on the earlier date would cost ONA $189,000 and Saturn $212,000 for the period from August 27 to November 14, 1973.[4] The carriers further contend that the Board's adoption of 14.9 and 16.2 cents per gallon as the base price levels for JP–4 and JP–5 fuel was the result of erroneous advice provided the Board by MAC,[5] and that this advice combined with the time required to act on ONA's petition have benefited the government unfairly at the direct expense of the carriers.

In its answer, DOD asserts that the base price levels for JP–4 and JP–5 jet fuel established in ER–831 were the correct prices in effect on November 14, 1973, the date the amendment was adopted and effective, and contends that the Board has no jurisdiction to retroactively revise the rates for a prior period. Accordingly, DOD's position is that reconsideration based on a claim of factual error is not available.

Upon consideration, we have determined to accept the petition for reconsidertaion, and to revise ER–831 as set forth below.[6]

We are met at the outset by a question of procedure arising from the fact that our rules of practice (14 CFR Part 302) provide that petitions for reconsideration of adopted rules will not be entertained.[7] In general, we do not accept petitions for reconsideration of adopted rules because of concern for the adequacy of notice of the filing by interested persons since in a rule making proceeding as opposed to a formal investigation there are no parties upon whom service of the petition is required. For this reason, in the typical case, to insure interested persons notice of the filing we treat a so-called petition for reconsideration as an original petition for rule making and institute a new proceeding. In the present case, however, the DOD, the only party affected by the rates in question, had notice of the filing of the petition, and has availed itself of the opportunity to make its views known on the matters at issue. Under these circumstances, we find it appropriate to accept the carriers' petition, especially considering that the relief requested is more nearly akin to reconsideration than it is to a petition for rule making, and to act thereon.[8]

Turning now to consideration of the petition itself, at the outset, it should be noted that at the time the Board adopted ER–831, we believed, on the basis of information furnished by MAC, that the prices then in effect for jet fuel purchased from DOD for domestic Logair/Quicktrans charter services were at the same level as the prices in effect on August 27, 1973, the date ONA's petition was filed.[9] It now appears, however, that the prices in effect on August 27, 1973, were lower than the base price levels established in ER–831. In light of the newly-developed facts, we have determined, for the reasons set forth below, to reconsider our action in ER–831, and to revise the base price levels in the rate adjustment clause to reflect the fuel prices in effect on August 27. However, we will not retroactively revise the effective date of the clause.

As indicated, at the time ER–831 was adopted, MAC informed the Board's staff that fuel price increases originally intended to be effective July 1, 1973, but which were delayed as a result of the price freeze, had finally been implemented August 13, prior to ONA's filing. For this reason, in adopting the price escalator clause, we utilized as the base price levels prices we believed to have been in effect since early August. However, had we known that the price increases in fact had not been implemented prior to ONA's filing, we would have utilized the lower prices. Thus, the carriers' assertion that the base price levels were based upon an erroneous understanding of fuel prices in effect on August 27 is correct, and reconsideration as a result of this error is appropriate.

With respect to the carriers' request for a change in the effective date of the price adjustment clause, we reject such proposal as inconsistent with the Board's established rate-making policies and practice. The adjustment the carriers seek would require a retroactive change in the effective date of the price adjustment clause to a date prior to the institution of the rule-making proceeding. Such a change would be inconsistent with the established principle that the minimum rates in Part 288 are final and not subject to retroactive adjustment to a date prior to Board action specifically "re-opening" the rate. In addition, grant of this aspect of the petition would create uncertainty as to the finality of all existing MAC rates. Hereafter, the finality of the pre-existing MAC rate would become uncertain simply by virtue of the action of either a carrier or DOD in filing a petition. Such a situation is clearly not desirable, and we are not persuaded to depart from our established rule against such retroactive adjustments of MAC rates. While it is true that our action herein does involve a retroactive adjustment of rates beginning November 14, this action is not inconsistent with our general practice which has permitted, where appropriate, adjustments back to the date of the rule-making proceeding. In this case, the rule making was, in effect, instituted by ER–831. Moreover, the amendment herein represents the rule which we would have initially promulgated had the staff been accurately informed as to the actual fuel prices in effect in August. Under these circumstances, we do not believe that DOD can reasonably object to our action.

In consideration of the foregoing, the Board hereby amends Part 288 of its Economic Regulations (14 CFR Part 288) effective November 14, 1973, as follows:

1. Amend § 288.7(b) to read as follows:

§ 288.7 Reasonable level of compensation.

* * * * *

(b) For Logair and Quicktrans services, other than specified in paragraph (c) of this section:

(1) * * *

Provided, however, That, effective November 14, 1973, if the price of fuel products purchased from DOD for such services varies from the base levels specified below, the total minimum compensation for the transportation provided shall be adjusted (either upward or downward, as the case may be) by the difference in the price per gallon for such products paid by the carrier and the price specified for such product below, times the number of U.S. gallons of such products purchased by the carrier from DOD for the transportation provided.

The base levels are as follows:

	Standard price per U.S. gallon
AV gas:	
115/145	$0.20
100/130	.38
91/96	.38
80/87	.38
Jet:	
JP–4	.113
JP–5	.113

* * * * *

[3] The carriers do not seek reconsideration of the Board's denial of certain other requests contained in the original petition.

[4] Similar costs would continue to be incurred at least until January 15, 1974, if the Board adopts the proposed amendments to Part 288 set forth in EDR–262, on which date the base fuel price levels would, for other reasons, revert to those being sought by the carriers in the petition.

[5] The base price levels established by the Board in ER–831 for prospective adjustment were posted by DOD for effectiveness on July 1, 1973. However, due to imposition of a price freeze by the Cost of Living Council on June 12, 1973, the July prices could not become effective before August 13, 1973. The carriers contend that the U.S. Air Force did not actually implement the July 1 prices until August 30, 1973, after ONA's petition was filed; and that the U.S. Navy did not finally implement the July prices until September 7, 1973. See the joint Supplemental Reply to the Answer of the Department of Defense dated February 8, 1974, at p. 1. These contentions are not denied by DOD.

[6] On January 22, 1974, and February 8, 1974, ONA and Saturn filed joint replies to DOD's answer accompanied by motions for leave to file. We have determined to grant the motions and have considered the replies.

[7] Rule 38(d). The carrier's petition was accompanied by a motion for leave to file an otherwise unauthorized document. Recognizing that the motion was presaged by a telegraphic petition requesting similar relief filed November 21, 1973 (see supra note 1) we will accept the motion which was not perfected until December 18, 1973, in view of the unusual circumstances hereinafter set forth, and in the absence of any objection thereto.

[8] In any event, even if we were to treat the petition as one for modification of Part 288, we find we have ample authority to act on the petition without further proceedings since all affected parties have made their views known on the matter at issue. Cf., our action in ER–819, adopted August 28, 1973.

[9] In reviewing the original petition and answer, the Board had attempted to verify the prices in effect as of August 27, 1973, and was informally advised by MAC that fuel price increases posted for July 1, 1973, were put into effect on August 13, 1973, prior to ONA's filing.

(Secs. 204, 403 and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, and 771, as amended (49 U.S.C. 1324, 1373, and 1386))

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.74-10453 Filed 5-6-74;8:45 am]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER J—RIGHT-OF-WAY AND ENVIRONMENT

PART 790—PUBLIC HEARINGS (CORRIDOR AND DESIGN)

Design Approval

Part 790 was originally published at 38 FR 12103 on May 9, 1973.

Paragraph 790.3(d) presently concludes with the parenthetical term (PS&E approval) which conveys a misleading construction of that term. To allay any misimpression the following revision of that subsection will conclude the subsection with the word "construction" and insert "PS&E" after the word "estimates."

Paragraph (d) of 23 CFR 790.3 is amended to read as follows:

(d) "Design approval" means that action or series of actions by which the FHWA indicates to the State highway department that the essential elements of a highway as set out in § 790.9 are satisfactory or acceptable for preparation of plans, specifications and estimates (PS&E) for actual construction.

Effective Date: April 30, 1974.

NORBERT T. TIEMANN, *Federal Highway Administrator.*

[FR Doc.74-10450 Filed 5-6-74;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 51—REQUIREMENTS FOR THE PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

Nitrogen Dioxide Control Strategy

On August 14, 1971 (36 FR 15486), the Administrator of the Environmental Protection Agency (EPA) promulgated as 42 CFR Part 420, regulations for the preparation, adoption, and submittal of State implementation plans under section 110 of the Clean Air Act, as amended. These regulations were republished on November 25, 1971 (36 FR 22398) as 40 CFR part 51. Section 51.14, Control Strategy: Carbon monoxide, hydrocarbons, photochemical oxidants, and nitrogen dioxide was revised December 30, 1971 (36 FR 25233) specifically in regard to nitrogen dioxide.

Further regulations to revise the control strategy requirements for nitrogen dioxide were proposed on June 5, 1971 (38 FR 14672). Interested parties were provided an opportunity to comment on these amendments until July 20, 1973. Three comments were received specifically for the proposed regulations to revise the control strategy requirements. All three comments were concerned with the role that nitrogen oxides play in the formation of photochemical oxidants. In addition, one comment believed that the Agency should reconsider its proposal to revise the nitrogen dioxide control strategy requirements and another believed the Agency should modify its regulations with great care.

Presently, 40 CFR 51.14 requires States to adopt nitrogen oxides emission control regulations applicable to certain stationary sources in those AQCR's where emission standards for new motor vehicles and transportation control measures needed for carbon monoxide and/or photochemical oxidants will not result in sufficient nitrogen oxides emission reductions to insure attainment of the national standard for nitrogen dioxide. The underlying rationale for this requirement is related to the complex atmospheric chemistry involved in the formation of nitrogen dioxide in the ambient air. Very little of the nitrogen dioxide present in the ambient air is emitted as nitrogen dioxide from stationary or mobile sources. Most nitrogen dioxide is a secondary pollutant formed as a result of the oxidation of nitric oxide to nitrogen dioxide in the ambient air. Thermal oxidation of nitric oxide by atmospheric oxygen is a very slow process; however, during daylight hours, photochemical conversion of nitric oxide to nitrogen dioxide occurs rapidly, especially in the presence of high concentrations of hydrocarbons and other organic substances. In some cases, the oxidation continues, removing the nitrogen dioxide from the atmosphere. Laboratory experiments consistently have shown that the rate of photochemical conversion of nitric oxide to nitrogen dioxide decreases as concentrations or organic hydrocarbons decrease.

Although it has not been possible, thus far, to quantify the impact of hydrocarbon control on nitrogen dioxide concentrations under actual environmental conditions, EPA's position has been that the impact would be sufficient to obviate a need for widespread control of nitrogen oxides emission beyond that to be achieved directly through implementation of the Federal motor vehicle emission standards and incidentally through transportation control measures and, where necessary, control of certain stationary source emissions. In light of the final reclassification of AQCR's, as set forth elsewhere in this issue of the FEDERAL REGISTER, EPA is now promulgating a revision of 40 CFR 51.14, such that State plans for attainment of the national standard for nitrogen dioxide in Priority I AQCR's will have to include an explicit showing that the national standard will be attained. States still will be able to take credit for nitrogen oxides emission control achieved directly through the Federal motor vehicle emission standards and incidentally through transportation control measures, and, where demonstrable, indirectly through hydrocarbon emission control. Further studies of the hydrocarbon-nitrogen dioxide relationship currently are underway.

For the time being, the requirements of revised 40 CFR 51.14 will need to be applied only in the Los Angeles and Chicago AQCR's. Within four months from the date of this publication, the State of Illinois must submit a demonstration to the Administrator that the present approved control strategy for the Metropolitan Chicago AQCR is adequate to attain and maintain the national standard for nitrogen oxides. The regulations below set forth this requirement.

With respect to the Metropolitan Los Angeles AQCR, EPA previously disapproved California's control strategy for nitrogen oxides, carbon monoxide and photochemical oxidants, and promulgated a transportation control plan. On February 6, 1974, the State of California submitted a plan revision for Los Angeles which provides for a transportation control plan and a control strategy for nitrogen oxides. EPA is presently reviewing the plan to determine its adequacy in fulfilling the requirements of the revised § 51.14.

For the other three AQCR's which remain Priority I, i.e., New Jersey-New York-Connecticut, Wasatch Front (Salt Lake City), and Metropolitan Baltimore, a request for SIP revision would be required at the time of final reclassification. If additional data show that these AQCR's should be classified Priority III, the requirement for SIP revision would be rescinded. Pending final action on a new reference method for measurement of nitrogen dioxide, the adequacy of State plans for attainment of the national standard would be assessed in terms of air quality data related to the candidate methods.

The regulations set forth below shall take effect on June 6, 1974.

(42 U.S.C. 1857c-5 and 1857g(a))

Dated: April 30, 1974.

RUSSELL E. TRAIN, *Administrator.*

Part 51 of Chapter I, Title 40 of the Code of Federal Regulations, is amended as follows:

§ 51.5 [Amended]

1. In § 51.5, paragraph (a)(1) is amended by adding at the end thereof the following note:

NOTE: The State of Illinois shall, not later than September 9, 1974, submit to the Administrator a demonstration that the control strategy approved by the Administrator for the Metropolitan Chicago Air Quality Control Region is adequate to attain and maintain the national standard for nitrogen dioxide.

2. Section 51.14, paragraph (c)(2) is revised and paragraph (c)(3) is revoked to read as follows:

§ 51.14 Control strategy: Carbon monoxide, hydrocarbons, photochemical oxidant, and nitrogen dioxide.

* * * * *

(c) * * *

(2) With respect to control of carbon monoxide and nitrogen oxides, the pro-

portional model which may be used for purposes of this paragraph is described in § 51.13(e)(2).

(3) [Revoked]

* * * * *

[FR Doc.74-10439 Filed 5-6-74;8:45 am]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of Plan; Pennsylvania Revision

On May 31, 1972 (37 FR 10842) pursuant to section 110 of the Clean Air Act the Administrator approved a plan implementing National Ambient Air Quality Standards for the State of Pennsylvania. This publication contains the Administrator's approval of a revision to that plan.

On October 15, 1973, in a letter to the Governors of fourteen States, including Pennsylvania, the Administrator advised that the responsible State agencies should proceed quickly to devise and initiate a strategy to prevent, to the greatest degree possible, any detrimental air pollution effects that might result from a probable low sulfur fuel shortage during the coming months. The Administrator emphasized the need for States to undertake feasible energy conservation measures either prior to or concurrently with any variance requests in order to minimize the need for variances. Among the other measures recommended was the formulation, according to the anticipated degree of shortage, of a comprehensive variance plan for sulfur content in fuel regulations. Priorities for granting variances would be established which would encourage the distribution (or allocation) of available low sulfur fuel to areas where it would be the most needed for the protection of public health. The Administrator described the procedures governing Governor's submissions of such variances to the Environmental Protection Agency for approval as implementation plan revisions. Criteria for approval would be as follows:

1. Compliance with EPA procedural requirements.

2. A demonstration (a) that fuel with a sulfur content low enough to enable compliance with the applicable regulation is in fact unavailable to the source, (b) that the variance requires the use of the low sulfur content fuel that is available, and (c) that the time period involved reflects the reasonably predicted period of shortage.

3. A demonstration that low sulfur fuel that might have been available to the source involved (a) is no longer available, or (b) has been allocated or distributed to other sources deserving higher priority either because of air quality considerations, or because of a Federally imposed allocation plan.

On October 3, 1973, pursuant to 40 CFR 51.4(e), the Governor of Pennsylvania's designee requested EPA approval of a procedure incorporating a 10 day notice period for State public hearings for sulfur content variance requests. On November 7, 1973, the Regional Administrator for EPA Region III granted this request.

On February 4, 1974, the Pennsylvania Department of Environmental Resources submitted for the Administrator's approval a variance to the Philadelphia portion of the approved State Implementation Plan for Atlantic Richfield Company of Philadelphia. The Philadelphia Code requires that No. 6 residual fuel oil combustion sources use fuel with no greater sulfur content than 0.5 percent by weight. The variance would permit Atlantic Richfield Company to sell fuel with a maximum sulfur content of 1.25 percent by weight for a period extending from February 1, 1974, to May 31, 1974.

After a careful evaluation of the State's submittal, the Administrator has determined that the variance is in accordance with the criteria stated above, and is therefore in accordance with the procedural and substantive requirements of 40 CFR Part 51. Information submitted by the State, corroborated by the Agency's own information, indicates that fuel allocation and redistribution measures cannot obviate the need for the variance requested, for the time period commencing February 1, 1974, and ending May 1, 1974. The expiration date authorized by EPA takes into account the current conforming fuel supply outlook. Accordingly, it is approved as a revision to the Pennsylvania Implementation Plan. As approved, it is reflected in the table below.

The State's submittal is available for public inspection during normal business hours at the Offices of EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106; Air Management Services, Department of Public Health, 4320 Wissahickon Avenue, Philadelphia, Pennsylvania 19129; the Bureau of Air Quality and Noise Control, Department of Environmental Resources, Fulton National Building, 18th Floor, P.O. Box 2063, Harrisburg, Pennsylvania 17120; and at the Freedom of Information Center, EPA, 401 M Street SW., Washington, D.C. 20460. In addition, EPA's evaluations of the State's submittal is available during normal business hours at the EPA Region III address listed above.

The Agency finds that good cause exists for not providing notice or permitting public comments on this action and for making it effective immediately upon publication for the following reasons:

1. The emergency nature of the current fuel shortage requires that the affected source know immediately the fuel restrictions which are applicable to it under the Pennsylvania Implementation Plan so that it may make arrangements to obtain the appropriate fuel.

2. The implementation plan revision was adopted in accordance with procedural requirements of State and Federal laws, which provided for an adequate public hearing and comments, and further participation would be impracticable.

Dated: May 1, 1974.

JOHN QUARLES,
Acting Administrator.

§ 52.2036 **Compliance schedules.**

(a) * * *

Source	Location	Regulation involved	Date of adoption	Effective date	Final compliance date
Atlantic Richfield Co.	Philadelphia..	Section 30201(a) and 30207(l)(a) (Philadelphia Air Management Code); Air Management Regulation III, Section IA.	Jan. 31, 1974	Feb. 1, 1974	May 1, 1974

* * * * * * *

[FR Doc.74-10443 Filed 5-6-74;8:45 am]

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

Availability of Unleaded Gasoline

On January 10, 1973, regulations were promulgated by the Environmental Protection Agency to provide for the general availability of one grade of unleaded gasoline compatible with catalytic emission control systems expected to be in general use on 1975 model year light-duty motor vehicles (38 FR 1254). Section 80.22(b) of the regulations provides that after July 1, 1974, every owner or operator of a retail outlet at which 200,000 or more gallons of gasoline were sold during any calendar year beginning with the 1971 calendar year shall offer for sale at least one grade of unleaded gasoline. Section 80.22(c) provides that every owner or operator of six or more retail outlets shall offer for sale at least one grade of unleaded gasoline at no fewer than 60 percent of such outlets after July 1, 1974.

On October 12, 1973, an amendment was proposed to the aforementioned regulations. The proposal was to delete § 80.22(c) and retain § 80.22(b) as the sole availability requirement for unleaded gasoline. The proposed amendment specifically requested comments as to the geographic dispersion, by county, of retail outlets with an annual volume over 200,000 gallons.

Several gasoline marketers have again asserted their objection to EPA's decision that affirmative requirements to market unleaded gasoline are necessary to assure its general availability. EPA addressed this question when the initial requirements were proposed and promulgated, and the Agency concluded that an

affirmative marketing requirement is authorized by the Clean Air Act and essential to assure the general availability of unleaded gasoline.

The legislative history of the Clean Air Act shows that Congress recognized that EPA would need flexibility in promulgating regulations under section 211 if the objectives of the Act were to be achieved. The Senate Committee Report explicitly refers to the need for flexibility to assure availability of unleaded gasoline (S. Rept. No. 91–1196, 91st Cong., 2d Sess., 34–5 (1970)):

> At one time the Committee considered language that would give the Secretary only the authority to "prohibit" a fuel's introduction into commerce. After evaluation, the Committee decided that such authority should also be extended to the "control" of a fuel's introduction into commerce. This authority to "control" the use of fuels is intended to give the Secretary greater flexibility than the authority to "prohibit." For instance, the Committee expects that the Secretary may find it advisable to permit the continued sale of leaded gasolines to allow for the efficient and economic operation of automobiles presently on the highway, even if he finds it necesary to control fuels to assure the availability of non-leaded gasolines for other purposes.

It is clear from this statement that Congress did not intend that EPA prohibit the use of lead additives in all gasoline to protect emission control devices at a time when only part of the vehicle population would require unleaded fuel. The authority "to control fuels to assure the availability of nonleaded gasolines" must, in our view, be directed toward the problem of assuring general availability of unleaded gasoline when vehicles with lead-sensitive emission control systems are being introduced and constitute a small part of the market.

Economic incentives alone cannot be counted on to assure that an adequate number of gasoline retailers will market unleaded gasoline during the first or second model year after the introduction of catalyst-equipped motor vehicles when they constitute as little as 10 percent of the market. In order to offer unleaded gasoline, marketers will be obligated to add a third pump or to convert existing regular or premium pumps to offer unleaded gasoline. Although conversion to three-pump service has been widely accomplished, generally for reasons related to the requirement to offer unleaded gasoline, many marketers have been faced with the need to incur the cost of installing a third pump or giving up sale of regular or premium gasoline to make room for unleaded product. Estimates of the cost of installing a third pump range from $5,000 to $8,000. Some marketers would have preferred not to incur this cost until the market for unleaded gasoline is greater. Conversion of an existing pump saves investment in facilities, but requires that the marketer either give up customers requiring premium fuel or persuade regular grade customers to purchase unleaded gasoline. While the economic consequences of these options are not unduly severe, either option can be viewed as inconvenient or financially unattractive to many retailers until unleaded gasoline demand increases beyond the level projected for the first two model years of catalyst-equipped vehicles. For these reasons, EPA did not believe that market incentives alone could be relied upon to assure the general availability of unleaded gasoline.

EPA concluded, therefore, that reasonable affirmative marketing requirements are necessary for the protection of catalyst-equipped vehicles. Estimates of the extent of catalyst use on 1975 model year vehicles are that these devices will be installed on 60 percent to 85 percent, and possibly more, of the 1975 models. If unleaded gasoline is not generally available at a sufficient number of retail outlets, motorists will be severely inconvenienced and will not purchase vehicles equipped with advanced lead-sensitive emission control systems. This result would effectively defeat the purpose of Congress in establishing stringent emission standards for motor vehicles in the Clean Air Act of 1970. The objectives of the Act would also be frustrated if availability of unleaded gasoline is so spotty that motorists are forced to use leaded gasoline and thereby destroy the emissions-reducing capacity of the catalytic reactors.

The auto manufacturers have expressed concern that EPA adopt whatever requirements are necessary to assure that unleaded gasoline is widely available for purchasers of 1975 vehicles. In addition the American Automobile Association has recently written to EPA stressing the interest of the motorist. Their letter states that "without lead-free gas readily available, catalytic systems will be quickly damaged. This would cause the motorist to be faced with an early, expensive replacement bill. Additionally, the owner-operator would then be contributing to air pollution, probably without his knowledge."

EPA has attempted to assure that the affirmative marketing requirement will cover a sufficient number of stations to assure general availability. The present rulemaking represents the final step in a continuing effort to gather the best data possible and to refine the criteria for general availability to assure adequate coverage.

As a result of the October 12 proposed amendment, several major refiners supplied the Agency with information regarding the geographic dispersion of retail outlets by county.

Comments were received from refiners, independent distributors, owners of retail outlets, and automobile manufacturers. In addition, a report has been subsequently received from the Bureau of Census that provides information from a 1967 Census of Business which designates the number of retail outlets in each county for which gasoline sales constitute 50 percent of their total sales volume. These data are sub-divided by sales dollar volume into five categories. By dividing the sales dollar volume for each category by $0.37/gallon (estimated average price of gasoline in 1967) each outlet could be placed in a gallonage volume category.

A theme found in many of the comments from the oil industry was that the potential for overkill existed even in the amended proposal. It was noted that gasoline stations with volumes greater than 200,000 gallons per year were especially common in urban areas, and the revised formula for the designation of retail outlets that would sell unleaded gasoline did not affect this excessive station concentration. On the other hand, automobile manufacturers were particularly concerned that the revised formula would provide an insufficient concentration of outlets carrying unleaded gasoline in urban and particularly in rural areas.

The extensive data received from the Census Bureau and the petroleum companies were analyzed to assess the adequacy of the promulgation of January 10, 1973, and the proposed amendment of October 12, 1973. Although the census data were usually presented on a county basis, it was determined that, for all practical purposes, a number of large cities completely urbanized the counties in which they were located; therefore, these large city-counties could be evaluated separately from other counties as a means of drawing inferences regarding cities in general. Census information was reported on a city, in addition to a county, basis for the state of Virginia. Many of these cities were of medium size with populations ranging between 50,000 and 300,000 persons, and these data were used to evaluate the distribution of stations in medium-sized cities.

The census data were applied to the requirement expressed in the promulgation of January 10, 1973, that all stations selling at least 200,000 gallons per year of gasoline would be required to offer unleaded gasoline for sale. Two categories of cities and four categories of counties were considered separately. The results of the analysis are indicated below.

Political subdivision	Population or population density	Ratio of unleaded stations to total stations [1]
Large city	Over 500,000 persons	1:1.4
Medium-size city	50,000 to 500,000 persons	1:1.7
County [2] I	Over 1,000 persons per mi [2]	1:1.4
County [2] II	Between 100 and 1,000 per mi.[2]	1:1.6
County [2] III	Between 50 and 100 per mi.[2]	1:2.2
County [2] IV	Under 50 per mi [2]	1:3.4

[1] Ratios include a 20-percent increase to account for estimated growth in stations within each category since 1967.
[2] County population density excludes cities containing 50,000 or more persons.

While the data used in evolving the proposed requirements are the most recent available from the Census Bureau, the survey upon which the data are based is 7 years old. In order to assess the influence of recent industry trends upon the data, inquiry was made of the American Petroleum Institute (API) as to trends regarding changes in the total

number of retail outlets and outlet volume since 1967. Petroleum industry estimates indicate that the number of outlets existing today are approximately the same as existed in 1967. There has been, however, a trend toward higher gallonage pumped per outlet. Another factor that would cause an underestimate if the 1967 data were not adjusted is that the data were obtained only from outlets for which gasoline sales constitute 50 percent of their total sales. A large retail merchandiser who also sells gasoline would not have been included in the data but will be subject to the regulations, as will a motel or restaurant which sells gasoline as a sideline to its major business. Due to these considerations, it was determined that an upward adjustment for each category of 20 percent would provide a reasonable estimate of the growth since 1967 in the number of stations included in each category.

Under the 200,000 gallon/year rule, stations with unleaded gasoline will comprise about 71 percent of all outlets in large cities and 59 percent of total outlets in medium-size cities. Average county coverage will vary from 71 percent to a low of 29 percent in the most sparsely populated counties (County IV category).

The objective of the Agency is to assure that a sufficient number of stations will sell unleaded gasoline to provide the vehicle owner with a readily accessible source of fuel. It is not believed necessary that every gasoline outlet carry the product to achieve general availability, but rather that enough stations be covered to prevent the inconvenience of a motorist in search of gasoline. If unleaded fuel is not easily available, motorists may be encouraged to try to persuade retailers to put leaded gasoline in their vehicles in violation of the regulations. The detriment to air quality that would occur if a significant number of catalysts were poisoned provides the incentive for this Agency to require general availability of unleaded fuel.

The review of census information indicated that about 111,000 retail outlets would be covered by the 200,000 gallon per year requirement. This is less than the number of 160,000 outlets which appeared in the proposed amendments of October 12, 1973 and which has been determined to be an overestimate. The census and petroleum industry data did not permit a more complete review of the geographic dispersion provided by the requirement that 60 percent of the retail outlets in chains of 6 or more sell unleaded gasoline.

The requirement that 60 percent of the outlets in chains of 6 or more carry unleaded fuel may add between 40,000 to 90,000 outlets to those required to sell the product under the 200,000 gallon per year rule. It is not anticipated, however, that these additional outlets will aid materially in achieving reasonable geographic dispersion of stations selling unleaded fuel. Owners of chains would likely sell unleaded gasoline in those outlets located near terminal facilities in order to minimize transportation costs and decrease the opportunities for contamination. Little benefit would be provided to the most sparsely populated counties (the County IV category) where coverage is marginal.

The analysis of the census data has permitted the Agency to conclude that the 200,000 gallon per year requirement provides reasonable geographic dispersion of outlets carrying unleaded gasoline with the exception of counties with population densities under 50 persons per square mile. A proposed amendment to these regulations appears in this FEDERAL REGISTER that is directed at increasing the coverage in the low density counties. The achievement of general availability with the 200,000 gallons per year requirement together with the proposed amendment precludes the necessity of requiring unleaded gasoline to be sold in 60 percent of the outlets in chains of six outlets or more.

Therefore, these regulations promulgate the deletion of § 80.22(c) and the retention of § 80.22(b) as the sole availability requirement for unleaded gasoline.

These regulations represent the result of an extensive review by the Agency of the general availability requirements. The review was conducted in response to requests by members of the petroleum industry, automobile industry, and other persons interested in this subject. Requests by several commentators for a postponement of the July 1, 1974, implementation date are denied due to the planned introduction of catalyst-equipped vehicles for the 1975 model year.

Numerous comments have been received from the petroleum industry requesting that time extensions or exemptions be granted in regard to the July 1, 1974, implementation date and to specific provisions in the regulations. After evaluating the information submitted in support of these requests, the Administrator has determined that under specified circumstances such exemptions or deferments are reasonable. Therefore, these regulations permit exemptions from certain provisions for outlets in which business will be terminated by January 1, 1975. Outlets which encounter equipment procurement delays must comply with the regulations at the earliest possible date and will be subject to all provisions of the regulations on September 1, 1974. In addition, a provision has been added to permit limited relief for retailers who offer for sale more than one grade of unleaded gasoline at a retail outlet.

The regulations promulgated below shall be effective immediately.

Dated: May 1, 1974.

JOHN QUARLES,
Acting Administrator.

Part 80 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 80.22, paragraph (c) is deleted and a new paragraph (c) is substituted in its place, and a new paragraph (h) is added to read as follows:

§ 80.22 Controls applicable to gasoline retailers.

* * * * *

(c) Time extensions or exemptions to these regulations may be granted upon conformance with the following conditions: (1) Any retailer may obtain an exemption from paragraph (b) of this section for outlets at which business will be terminated by January 1, 1975. In order to obtain this exemption, the retailer must present evidence to the Regional Administrator of specific termination plans for each such outlet. Any retailer granted this exemption for a specified outlet(s) who offers for sale unleaded gasoline at such outlet after July 1, 1974, but before January 1, 1975, shall inform the Regional Administrator in writing of such an offering and shall be expected to comply with all applicable provisions of these regulations.

(2) Any retailer may obtain a time extension for compliance with paragraph (b) of this section until September 1, 1974, for outlets at which equipment procurement delays will preclude compliance with these regulations. The extension is limited to a retailer who can present evidence to the Regional Administrator, upon his request, that the equipment was ordered in a timely manner but delivery was delayed for reasons beyond the control of the retail outlet owner and an attempt to procure equipment from alternative sources was made promptly by the owner upon receipt of notice of the delay.

(3) All appications for exemptions or time extensions under paragraph (c)(1) and (c)(2) of this section must state the name and address of the applicant and address of the retail outlet, and must be received by the appropriate Regional Administrator by June 15, 1974. Applications should be sent to the Regional Administrator of the Enviromental Protection Agency in the EPA Region in which the retail outlet is located. A listing of regional office addresses follows:

Region	*Address*
I	John F. Kennedy Federal Building, Boston, Mass. 02203.
II	26 Federal Plaza, New York, N.Y. 10007.
III	Curtis Publishing Building, Sixth & Walnut Sts., Philadelphia, Pa. 19106.
IV	1421 Peachtree St. NE., Atlanta, Ga. 30309.
V	1 North Wacker Dr., Chicago, Ill. 60606.
VI	1600 Patterson St., Dallas, Tex. 75201.
VII	1735 Baltimore Ave., Kansas City, Mo. 64108.
VIII	Lincoln Tower, 1860 Lincoln St., Denver, Colo. 80203.
IX	100 California St., San Francisco, Calif. 94111.
X	1200 Sixth Ave., Seattle, Wash. 98101.

* * * * *

(h) If more than one grade of unleaded gasoline is offered for sale at a

retail outlet covered by these regulations, compliance with paragraph (e) or (f) of this section is required for only one grade.

[FR Doc.74-10438 Filed 5-6-74;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 3—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 3-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 3-4.54—Procurement Clearance of Audiovisual Materials and Contracts for Public Affairs Services

Chapter 3, Title 41, Code of Federal Regulations is amended as set forth below. The purpose of this amendment is to clarify § 3-4.5400 of Subpart 3-4.54, Procurement Clearance of Audiovisual Materials and Contracts for Public Affairs Services.

Section 3-4.5400(a) is hereby deleted and the following is substituted in lieu thereof:

§ 3-4.5400 Scope of subpart.

* * * * *

(a) Duplicating, as defined in current Government Printing and Binding Regulations.

* * * * *

(5 U.S.C. 301; 40 U.S.C. 486(c).)

Effective Date: This amendment shall be effective on May 7, 1974.

Date: April 29, 1974.

S. H. CLARKE,
Acting Assistant Secretary for Administration and Management.

[FR Doc.74-10384 Filed 5-6-74;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5411]

ALASKA

Amendment of Public Land Orders No. 5174, No. 5179, No. 5180, and Any Order Amending the Foregoing Orders

Correction

In FR Doc. 74-3621 appearing at page 5632 in the issue of Thursday, February 14, 1974, the figure "1574" in the 5th line of paragraph 4 should read "5174".

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 74-17; Notice 1]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

New Pneumatic Tires, Tire Selection and Rims for Passenger Cars

Correction

In FR Doc. 74-9144, appearing at page 14594 of the issue for Thursday April 25, 1974, on page 14595 the two numbers in the right-hand column of Table I-W, reading "11.65" and "11.30", should read "11.60" and "11.35" respectively.

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Rice Lake National Wildlife Refuge, Minn.

The following special regulation is effective May 7, 1974.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

MINNESOTA

RICE LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Rice Lake National Wildlife Refuge, Minnesota is permitted only on the area designated by signs as open to fishing. This posted area comprising 50 acres is delineated on a map available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Minneapolis, Minnesota 55111. Sport Fishing shall be in accordance with all applicable State regulations subject to the following special conditions.

(1) The open season for sport fishing on the refuge extends from May 18, 1974, through September 30, 1974, during daylight hours only.

(2) The use of motors on boats is not permitted. The provisions of this special regulation supplement the regulations which govern fishing on wildlife areas generally which are set forth in 50 CFR Part 33, and are effective through September 30, 1974.

CARL E. POSPICHAL,
Refuge Manager, Rice Lake National Wildlife Refuge, McGregor, Minnesota 55760.

APRIL 30, 1974.

[FR Doc.74-10378 Filed 5-6-74;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 150—PHASE IV PRICE REGULATIONS

Submission of Final Reports

The purposes of these amendments are (1) to make it clear that monthly, quarterly and annual reports for periods ending on or before April 30, 1974, are required to be filed notwithstanding the expiration of continuing stabilization authority under the Economic Stabilization Act, (2) to waive the requirement for submission of reports for fiscal periods ending after April 30, 1974, and (3) to clarify the requirement for reporting for the quarter or other period ending on or before April 30, 1974, during which the reporting requirement terminated under § 150.161(b)(1) by virtue of decontrol actions taken by the Council during Phase IV.

In order to provide for orderly termination of reporting and compliance activities under the Economic Stabilization Program, the instructions to the Form CLC-22 are amended to provide as follows:

(1) Monthly reports (food manufacturing): the last report is the report for the last accounting month ending on or before April 30, 1974. The report for the accounting month ending April 30 is required to be filed no later than May 30.

(2) Quarterly reports: the last report is the report for the last fiscal quarter ended on or before April 30, 1974, unless the reporting requirement terminated sooner by virtue of § 150.161(b)(1). The report for a fiscal quarter ended April 30, 1974, is required to be filed no later than June 14, 1974.

(3) Fiscal year reports: the last report is the report for the last fiscal year ended on or before April 30, 1974, unless the reporting requirement terminated sooner by virtue of § 150.161(b)(1). The report for a fiscal year ended April 30, 1974, is required to be filed no later than July 29, 1974.

Authority to receive and examine reports, to require submission of necessary additional information with respect to reports, and to take remedial action in connection with violations disclosed by reports or otherwise will continue to be exercised by the Internal Revenue Service. All firms, including price category III firms and firms with respect to which a reporting requirement is waived hereunder, are reminded of the continuing record-keeping requirements under § 150.164.

Under 6 CFR 150.161(b), quarterly reporting is no longer required of a firm when during its most recent fiscal year it had exempt sales of 90 percent or more of total revenues and sales on non-exempt items were less than $50 million. In CLC Phase IV Price Notice 1974-4, it was explained that the key phrase "during its most recent fiscal year" was a reference not to the actual exempt and non-exempt sales totals for the most recent fiscal year but the exempt/non-exempt sales totals for that year calculated as though the current price exemptions had applied throughout that year. Thus, in view of the gradual extension of exempt status to more and more sales under the decontrol policy of Phase IV a firm may well have found that it met the test of 6 CFR 150.161(b)(1) at some arbitrary point in a quarter and that its reporting requirements ended before the termination of Phase IV.

The purpose of Notice 1974-4 in this respect was to make it clear that § 150.161(b)(1) is not to be interpreted in such a way as to require continued quarterly reporting for up to one year after exemption—that is, to require reports until the current fiscal year eventually becomes the most recent fiscal year. That portion of the notice dealing with § 150.161(b)(1) therefore applies only in those cases in which the 90 percent—$50 million level on a current basis is reached in the first or second fiscal quarter of a fiscal year ending in 1974 or 1975. If that level is reached within the first quarter of a fiscal year ending October 31, 1974, for example, the firm may be able to show

pursuant to Notice 1974–4 that the 90 percent—$50 million test was met on the basis of annual sales and revenues in FY 1973 and that therefore no report is required for any quarters ending after January 31, 1974. On the other hand, if that level is reached in the last quarter of a fiscal year ended December 31, 1973, for example, the most recent fiscal year for purposes of § 150.161(b) is the fiscal year ended December 31, 1973 (not December 31, 1972), and the last report due under the general quarterly reporting requirements is the report for the period ended December 31, 1973.

As stated in Phase IV Price Notice 1974–5, a quarterly report is required for the entire quarter in which exemption occurs. The instructions to the Form CLC–22, as revised under these amendments, make it clear that when a price exemption occurs during the quarter, whether it triggers reporting "termination" or not, the product line concerned is reported for the entire quarter as though the exemption had not occurred. However, as in the case of a profit margin excess, a level of price increases in excess of cost-justification reported for the quarter may be excused to the extent that the firm can demonstrate, to the satisfaction of the Council, that the apparent pricing violation is attributable to exempt sales within the product line or to exemption with respect to the entire product line for a portion of the reporting period. A statement must be attached to the Form CLC–22 if price increases in excess of cost-justification are to be explained on the basis of exempt sales. This applies to Part VI of the CLC–22 and it also applies to the Schedules T (retail/wholesale) and F (food manufacturing) except that in the case of the Schedule T an "excess" is shown in terms of a markup/gross margin which exceeds that of the base period and in the case of the Schedule F in terms of revenues in excess of total permissible revenues for the product line concerned.

In Part VI of the CLC–22, exempt sales are reported on line 38 only if the sales were exempt for the entire reporting period. If the sales were exempt for only a portion of the period, they are reported on lines 1–33 as though they were not exempt, as explained above.

Termination of the profit margin limitation is subject to a 90 percent—$50 million rule in § 150.11(e) similar to that found in § 150.161(b)(1) concerning termination of quarterly reporting. In accordance with the requirement to report for the entire quarter in which termination of the reporting requirement or termination of Phase IV occurs, the profit margin portions of the CLC–22 must be completed for the "termination" quarter in accordance with instructions to the CLC–22. Since the Phase IV rules have always provided for the excusing of a profit margin excess which is attributable to exempt sales, it is not necessary to amend the CLC–22 instructions in this respect.

Because the purpose of these amendments is to provide immediate guidance with respect to the Council's policies and regulations, the Council finds that publication in accordance with normal rulemaking procedure is impracticable and that good cause exists for making this amendment effective in less than 30 days.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11730, 38 FR 19345; E.O. ____, 39 FR ____; Cost of Living Council Order No. 14, 38 FR 1489; Cost of Living Council Order No. 51, 38 FR ____)

In consideration of the foregoing, Part 150 of Title 6 of the Code of Federal Regulations is amended as set forth below, effective May 1, 1974.

Issued in Washington, D.C., on May 3, 1974.

JAMES W. MCLANE,
Deputy Director,
Cost of Living Council.

1. A new § 150.165 is added to read as follows:

§ 150.165 Reporting after Termination of Quarterly Reporting Requirement.

Notwithstanding termination of quarterly reporting requirements pursuant to § 150.161(b)(1) during a quarter or other period covered by a report required to be submitted pursuant to this part or an order issued by the Council, that report shall be submitted within the time required and otherwise in accordance with forms, instructions, and orders issued by the Council.

2. Appendix A to Part 150 is amended by adding at the end of the Specific Instructions to the Form CLC–22 the following:

Special Instructions for Preparation of Final Reports. The last monthly report for food manufacturing is the report for the last accounting month ending on or before April 30, 1974.

The last quarterly report is the report for the last fiscal quarter ended on or before April 30, 1974, unless the reporting requirement terminated sooner by virtue of § 150.161(b).

The last annual report is the report for the last fiscal year ended on or before April 30, 1974, unless the reporting requirement terminated sooner by virtue of § 150.161(b).

The requirement to report may have terminated during a quarter or other reporting period ended on or before April 30, 1974, by virtue of § 150.161(b). In these cases the report is required to be filed for the entire quarter or other period within the time required and otherwise in accordance with these instructions to the Form CLC–22 except as modified by these special instructions.

With respect to Part VI of the CLC–22, the information required on lines 1 through 33 is prepared as though exemption had not occurred. That is, sales which have become exempt during the quarter are reported on lines 1 through 33 together with sales which occurred prior to exemption. Only sales which were exempt for the entire quarter are shown on line 38.

The weighted average percentage price increase (column (e)) and cost-justification (column (f)) are prepared in the same manner as required for prior quarterly reports. If the figure in column (e) exceeds that in column (f), a statement may be attached which explains the extent to which the apparent violation is attributable to exempt sales. The Council will excuse the price increases in excess of cost-justification if the firm can demonstrate, to the satisfaction of the Council, that the excess was attributable to exempt sales. In order to do this the firm must demonstrate that it was in compliance for the portion of the quarter prior to exemption.

The figure to be entered in column (g) is the maximum price increase prior to exemption of the product line.

The same principles apply with respect to the Schedules F and T. Current revenues are entered in column (g) of Schedule F for the entire accounting month or quarter, including revenues from exempt sales. Section 150.606 provides that a revenue excess may be excused if attributable to exempt sales. Similarly, a markup or gross margin excess reported in columns (g) or (h) of Schedule T may be excused pursuant to § 150.312(a), if the firm can demonstrate to the satisfaction of the Council that the excess is attributable to the sale of exempt items.

[FR Doc.74–10577 Filed 5–3–74;3:46 pm]

PART 152—COST OF LIVING COUNCIL PHASE IV PAY REGULATIONS

PART 153—COST OF LIVING COUNCIL PHASE IV PAY PROCEDURES

Rules With Respect to the Period After April 30, 1974

The Cost of Living Council's authority to continue to stabilize wages and salaries expired at midnight, April 30, 1974. The President has issued Executive Order 11781 39 FR, providing that the Cost of Living Council shall continue through June 30, 1974 to accomplish several purposes. The Council is specifically authorized to continue the winding down of the Phase IV controls program and may 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. In exercising this authority, the Council will continue to receive requests for approval and reports, and review pay adjustments with respect to work performed prior to May 1, 1974. The Council will also take appropriate remedial action where such pay adjustments are in violation of or are unreasonably inconsistent with applicable economic controls regulations in effect on or before April 30, 1974.

The Council continues to have stabilization authority with respect to wages and salaries paid for work performed on or before April 30, 1974. Accordingly, wages and salaries may not, on or after May 1, 1974, be paid with respect to work performed on or before April 30, 1974, unless such pay adjustments are consistent with the rules of the Economic Stabilization Program that were in effect during that prior period, or unless the pay adjustments have received the approval of the Cost of Living Council.

In exercising its winding down stabilization authority over such retroactive pay adjustments, the Council will continue to rule on requests for approval and will dispose of pending administrative matters properly before the Council on April 30, 1974. Such pending matters may not be withdrawn without the approval of the Council. In addition, the Council

will continue to receive and act on requests for approval of pay adjustments in the food industry, the health industry, and the construction industry, and will also receive and act on requests for approval of pay adjustments affecting members of executive control groups in all industries, for work performed prior to May 1, 1974. With respect to industries subject to the self-administered controls of subpart B of part 152, the Council may in appropriate cases challenge and review pay adjustments implemented on or after May 1, 1974, that have a retroactive effect into the period ending April 30, 1974.

Reports of pay adjustments required under the rules in effect on April 30, 1974 will continue to be submitted to the Council with respect to all pay adjustments implemented with respect to work performed on or before April 30, 1974. The foregoing requirements are enumerated in a new subpart N which is added to part 152 by these amendments.

The Council in these amendments simultaneously issues a new part 153, Phase IV Pay Procedures. This part 153 has been in preparation for some time and in general embodies procedural rules previously in effect but not previously consolidated into one unit. Procedural rules with respect to pay matters contained in parts 105, 130, 205 and 401 of this title are superseded. Nothing in part 153 extinguishes or otherwise modifies present procedural rules of the Council contained in part 152 of this chapter, or present procedural rules of the Construction Industry Stabilization Committee contained in Chapter V of this title.

Subpart A of part 153 contains general provisions which, except for two new sections and minor technical changes, are substantially similar to the general provisions of part 205 of the Pay Board's regulations. The two new sections are §§ 153.14 (Special proceedings) and 153.15 (Reopening decisions and orders). The former relates to examination by the Council of employee unit designations, classifications or similar matters, and the latter is simply a statement of Council policy with respect to reopening decisions and orders. Subpart B, Applications for Approval, contains procedures for initial action by the Council on applications for approval, prenotifications, requests for exception, or any other filing with respect to a proposed pay adjustment for which prior approval is required by this title. In general, subpart B sets forth the procedures utilized by the Council during most of Phases III and IV. Subpart C is new and establishes procedures governing initial actions of the Council with respect to requests for interpretation from the Office of General Counsel. Subpart D deals with pay challenges in the mandatory and self-administered sectors. In both sectors, the procedures utilized during most of Phases III and IV are set forth.

Subparts E and F establish procedures for initial actions of the Council with respect to requests for exemption, and notices of probable violation and remedial orders. In general, these provisions parallel Phase II regulations of the Cost of Living Council and Price Commission. Subpart G is a new subpart combining all requests for review of decisions issued under Subparts B, C, D, E and F, except as otherwise provided, under a single procedure. Subparts H, I, and J, which relate to petition and comment on rulemaking, published rulings, and public hearings, respectively, are again similar to Phase II rules.

Authority under this part may be exercised by the Director of the Council or his delegate. Through April 30, 1974, authority has been exercised hereunder in accordance with Cost of Living Council Orders No. 25 and 40, as amended (see, 38 FR 12775 and 22909). A new Cost of Living Council Order No. 51 from the Chairman of the Council to the Director, continues this authority.

Since Phase IV substantive regulations with respect to pay matters were previously issued and are presently effective in accordance with the provisions of Executive Order No. 11781, and Subpart N of Part 152, it is essential that the procedures governing appearances before and proceedings by the Cost of Living Council be made effective now. Consequently, in order to give immediate guidance and information to the public with respect to these pay procedures, the Council finds that publication in accordance with usual rulemaking procedures is impracticable and that good cause exists for making these regulations effective in less than 30 days. Interested persons may submit written comments regarding these regulations. Communications should be addressed to the Office of General Counsel, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 28; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; E.O. 11781, 39 FR Cost of Living Council Order No. 14, 38 FR 1489; Cost of Living Council Order No. 51, 39 FR.)

In consideration of the foregoing, Title 6 of the Code of Federal Regulations is amended as set forth herein, effective May 1, 1974.

Issued in Washington, D.C. on May 3, 1974.

JAMES W. MCLANE,
Deputy Director,
Cost of Living Council.

1. In 6 CFR Part 152, a new Subpart N is added to read as follows:

Subpart N—Requirements for Submissions and Approval on and After May 1, 1974

Sec.

AUTHORITY: Economic Stabilization Act of 1970, as amended, Pub. L. 91–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 28; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; E.O. 11781, 39 FR; Cost of Living Council Order No. 14, 38 FR 1489; Cost of Living Council Order No. 51, 39 FR.

Subpart N—Requirements for Submissions and Approval On and After May 1, 1974

§ 152.201 Scope.

This subpart establishes general rules to define the applicability of the Economic Stabilization Program wage controls for winding down purposes on and after May 1, 1974. The rules in this subpart establish the circumstances in which requests for approval or exception are required with respect to wages and salaries paid for work performed on or before April 30, 1974. The rules in this subpart further prescribe the circumstances in which reports are required with respect to wages and salaries paid for work performed on or before April 30, 1974.

§ 152.202 Food industry.

Pay adjustments affecting employees in the food industry, paid with respect to work performed on or before April 30, 1974, remain subject to the applicable rules for prior approval and reporting set forth in Subpart H of this part on April 30, 1974. Thus, for example, a collective bargaining agreement entered into on or after May 1, 1974 that provides a retroactive increase in wages and salaries for work performed prior to May 1, 1974, is subject to the provisions of § 152.76 with respect to wages and salaries paid through April 30, 1974.

§ 152.203 Health industry.

Pay adjustments affecting employees in the health industry, paid with respect to work performed on or before April 30, 1974, remain subject to the applicable rules for prior approval and reporting set forth in subpart I of this part on April 30, 1974. Thus, for example, a pay adjustment implemented on or after May 1, 1974 retroactively through a period ending on or before April 30, 1974, requires prior approval of the Council for the amount in excess of 5.5 percent for such period, and requires prior approval in its entirety for such period if the pay adjustment applies to or affects an appropriate employee unit containing 5,000 or more employees.

§ 152.204 Construction industry.

Pay adjustments affecting employees in the construction industry paid with respect to work performed on or before April 30, 1974, remain subject to the applicable rules for prior approval and reporting set forth in subpart J of this part on April 30, 1974.

§ 152.205 Executive control groups.

(a) *General.* Pay adjustments affecting members of executive control groups (determined pursuant to section 152.130) implemented with respect to work performed on or before April 30, 1974, are subject to the provisions of § 152.130 in effect on April 30, 1974. Thus, for example, retroactive salary increases may not be implemented so as to increase the average group salary rate in excess of 5.5 percent with respect to any date prior

to May 1, 1974, without prior approval of the Council.

(b) *Stock options.* Notwithstanding any other provision of this part, stock options issued on or after May 1, 1974, are exempt from and not limited by the provisions of this part.

(c) *Reporting.* Reports required under the provisions of § 152.130 with respect to a fiscal year that ends on or before April 30, 1974, or on account of incentive compensation payments made with respect to work performed on or before such date, shall be submitted to the Council as required by § 152.130. Thus, for example, if a fiscal year ends March 31, 1974, and incentive compensation payments are made with respect to that fiscal year on May 15, 1974, by a firm with annual sales or revenues in excess of $250 million, then the report required by § 152.130(f)(1) shall be submitted to the Council not later than May 25, 1974.

(d) *Prospective Form PB–3.* Notwithstanding any other provision of this part, a firm that elects to use the alternative method of computation set forth in § 152.130(d)(3)(v) if such report is not required to be submitted prior to May 1, 1974.

§ 152.206 Pay adjustments subject to self-administered controls.

Pay adjustments in industries subject to the self-administered controls of Subpart B of this part remain subject to the provisions of that subpart with respect to wages and salaries paid for work performed on or before April 30, 1974. The Council may, on or after May 1, 1974, challenge and review such pay adjustments under the provisions of Subpart F of this part if such pay adjustments have a retroactive effect with respect to the period through April 30, 1974.

§ 152.207 Pending administrative actions.

The Council shall continue to review, process, and issue appropriate decisions and orders with respect to matters pending before the Council on April 30, 1974. An administrative action pending before the Council on such date may not be withdrawn from the Council's consideration without the prior approval of the Council.

§ 152.208 Violations.

The operation of this title shall not be deemed to relieve any person of liability arising from any violation which has been committed under the Act, under any regulation of the Council, or under any order issued thereunder. The Council will continue to take appropriate compliance action on and after May 1, 1974, with respect to such violations as may have occurred.

§ 152.209 Administrative review.

The Council shall continue to receive and act, after April 30, 1974, on requests for review of actions taken under this title. Where periods of time in which review may be requested are specified elsewhere in this title, such periods shall continue to apply.

2. In 6 CFR, a new Part 153 is added to read as follows:

Subpart A—General Provisions

Sec.
153.1 Purpose and scope.
153.2 Definitions.
153.3 Appearances before the Council.
153.4 Filing of documents.
153.5 Computation of time.
153.6 Service.
153.7 Extension of time.
153.8 Subpenas; witness fees.
153.9 Request for subpena.
153.10 Motion to quash issuance of subpena.
153.11 Disclosure of information; request for confidentiality.
153.12 Consolidations.
153.13 Where to file.
153.14 Special proceedings.
153.15 Reopening decisions and orders.

Subpart B—Applications for Approval

153.21 Purpose and scope.
153.22 Initial action by the Council.
153.23 Oral presentations and hearings.
153.24 Requests for review.

Subpart C—Requests for Interpretation

153.31 Purpose and scope.
153.32 Initial action by the Council.
153.33 Requests for review.

Subpart D—Challenges

153.41 Purpose and scope.

MANDATORY SECTOR PAY CHALLENGES

153.51 Scope.
153.52 Initial action by the Council.
153.53 Oral presentations and hearings.
153.54 Requests for review.

SELF-ADMINISTERED SECTOR PAY CHALLENGES

153.61 Scope.
153.62 General.
153.63 Personal appearances.
153.64 Requests for modification or rescission.

Subpart E—Requests for Exemption

153.71 Purpose and scope.
153.72 Initial action by the Council.
153.73 Requests for review.

Subpart F—Notices of Probable Violation; Remedial Orders

153.81 Purpose and scope.
153.82 General.
153.83 Issuance of notice of probable violation to begin proceedings.
153.84 Issuance of remedial orders to begin proceedings in unusual circumstances.
153.85 Reply.
153.86 Order.
153.87 Requests for review.

Subpart G—Requests for Review

153.101 Purpose and scope.
153.102 Who may request review.
153.103 Where to file.
153.104 When to file.
153.105 Contents of request.
153.106 Review by Council.
153.107 Informal hearings.
153.108 Decision by Council.

Subpart H—Petition and Comment on Rulemaking

153.121 Purpose and scope.
153.122 Who may file.
153.123 Where to file.

Subpart I—Published Rulings

153.131 Rulings for publication.

Subpart J—Public Hearings

153.141 Purpose and scope.
153.142 Appointment of Presiding Officer.
153.143 Notice of hearing.
153.144 Powers and duties of Presiding Officer.
153.145 Record.

AUTHORITY: Economic Stabilization Act of 1970, as amended, Pub. L. 91–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 28; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; E.O. 11781, 39 FR Cost of Living Council Order No. 14, 38 FR 1489; Cost of Living Council Order No. 51 39 FR.

Subpart A—General Provisions

§ 153.1 Purpose and scope.

(a) This part establishes procedures to be utilized in proceedings before the Cost of Living Council relating to pay stabilization matters under Part 152 of this chapter. More specifically, this part contains procedures for:

(1) Initial action with respect to applications for approval;

(2) Initial action on requests for interpretation;

(3) Initial action with respect to pay challenges in both the mandatory and self-administered sectors;

(4) Initial action on requests for exemption;

(5) Issuance of notices of probable violation and remedial orders;

(6) Requests for review;

(7) Petition and comment on rulemaking;

(8) Published rulings; and

(9) Public hearings.

(b) Procedural rules with respect to pay matters contained in Parts 105, 130, 205 and 401 of this title are hereby superseded.

(c) Nothing in this part extinguishes or otherwise modifies present procedural rules of the Council contained in Part 152 of this chapter, or present procedural rules of the Construction Industry Stabilization Committee contained in Chapter V of this title.

(d) Notwithstanding the provisions of paragraph (c) of this section, references in Part 152 of this chapter to "rules and regulations of the Pay Board in effect on January 10, 1973" (or similar language) do not have the effect of incorporating into Part 152 the procedural rules contained in Part 205 of the Pay Board's regulations. Instead, the provisions of this Part 153 shall govern.

§ 153.2 Definitions.

As used in this part, except where the context indicates otherwise, the term:

"Act" means the Economic Stabilization Act of 1970, as amended.

"Board" means the Pay Board established pursuant to section 7 of Executive Order No. 11627 (3 CFR, 1971 Comp. p. 218) and terminated effective March 1, 1973 in accordance with section 10(a) of Executive Order No. 11695.

"Council" means the Chairman of the Cost of Living Council established by Executive Order 11615 (3 CFR, 1971 Comp., p. 199) and continued under the provisions of Executive Orders 11695, 11730, and 11781, or his delegate.

"Director" means the Director of the Cost of Living Council.

"Exception" means a waiver directed to a party at interest in a particular case

which relieves that party from the requirements of a rule, regulation, or order issued pursuant to the Act.

"Exemption" means a general waiver of the requirements of all rules, regulations, and orders issued pursuant to the Act, subject to such restrictions or limitations as may be prescribed by the Council.

"Firm" has the same meaning as in § 152.2 of this chapter.

"Hearing Officer" means a person appointed by the Director of the Cost of Living Council or his delegate to conduct a hearing.

"Interpretation" means a written statement issued by the General Counsel for the Council, or his delegate, in response to a written request filed in accordance with Subpart C of this part. It applies to the particular facts set out in the request and is based on the regulations, guidelines and published rulings of the Council, its predecessor agencies, and court decisions.

"Party at interest" means:

(1) A bargaining representative of employers who could be required to pay the wages and salaries in question, or in the absence of such bargaining representative, an employer who could be required to pay the wages and salaries in question; or

(2) A bargaining representative of employees who could receive payment of wages and salaries in question, or in the absence of such bargaining representative, an employee who could receive payment of the wages and salaries in question and who makes a written request to the Council to be made a party to the proceedings.

"Pay adjustment" has the same meaning as in § 152.2 of this chapter.

"Pay challenge" means:

(1) In a sector subject to mandatory controls, a preliminary objection to a contract in existence prior to November 14, 1971 filed by a party at interest, or the Director or his delegate; or

(2) In a sector subject to self-administered controls, a preliminary objection to a pay adjustment filed by the Director or his delegate.

"Person aggrieved" means, in cases where the Council has denied the position, in whole or in part, of a party at interest with respect to a pay adjustment, a request for interpretation, or a notice of probable violation, that party at interest.

"Petition" means a written objection to or proposal for a published ruling or regulation promulgated by the Council.

"Regulation" means a regulation issued by the Council which appears in Title 6, Code of Federal Regulations.

"Ruling" means an official interpretation by the General Counsel of the Cost of Living Council, published in the FEDERAL REGISTER, which applies the regulations and guidelines of the Cost of Living Council to a specific set of facts.

§ 153.3 Appearances before the Council.

(a) A person may take any action or make any appearance which is required or permitted by this part on his own behalf, or he may be represented by any natural person, age 21 years or older, whom he has designated to represent him. Such designation shall be in writing and signed by the person legally authorized to so designate and shall be filed with the Council.

(b) Persons appearing before the Cost of Living Council in economic stabilization matters may be barred therefrom for disreputable conduct which includes, but is not limited to, the following:

(1) Filing false or altered documents, affidavits, and other papers;

(2) Making false or misleading representations either orally or in writing; or

(3) Using intemperate or abusive language or engaging in disruptive conduct before the Council or its representative.

§ 153.4 Filing of documents.

(a) A document required to be filed with the Council under this title is considered filed when it has been received at the Cost of Living Council offices. Failure to file a document on forms prescribed by and pursuant to instructions issued by the Council may result in a filing being considered improper or untimely.

(b) Documents received after regular business hours are deemed filed on the next regular business day.

(c) An employer or employer association filing any document with respect to—

(1) A reporting or prenotification requirement under this title,

(2) An application for approval,

(3) A request for exception or exemption,

(4) A request for interpretation,

(5) A pay challenge,

(6) A reply, or request for modification or rescission of an order,

(7) A request for hearing or other election accorded the parties with respect to an interim decision and order,

(8) A notice of probable violation, or

(9) A request for review, shall at the same time serve copies of each such document on the collective bargaining agent, if any, of the affected employee unit.

(d) If any of the documents described in paragraph (c) of this section is filed by a collective bargaining agent for employees, such collective bargaining agent must at the same time serve copies on the affected employer or employer association.

(e) A certificate of service shall accompany all such documents filed with the Council.

§ 153.5 Computation of time.

(a) In computing any period of time prescribed or allowed by this chapter for the performance of any act, the day of the act, event, or default on which the designated period of time begins to run will not be counted.

(b) If the last day of the period falls on a Saturday, Sunday, or a Federal legal holiday, the period will be extended to the next day which is not a Saturday, Sunday, or Federal legal holiday.

(c) If the period prescribed or allowed is 7 days or less, an intervening Saturday, Sunday, or Federal legal holiday will not be counted.

§ 153.6 Service.

(a) All documents required to be served under this chapter are to be served personally, by registered or certified mail, or by regular U.S. mail (this option available only for service by the Council).

(b) If a person is represented by a duly authorized representative, service on the representative shall constitute service on the person.

(c) A certificate of service shall be filed with the Council for each document served.

(d) Service by mail is complete upon mailing.

§ 153.7 Extension of time.

If an action is required to be taken within a prescribed time under this title, an extension of time will be granted only upon a showing of good cause.

§ 153.8 Subpenas; witness fees.

(a) The Director of the Council, his duly authorized agent, the General Counsel, or an IRS District director of a key IRS District Office may sign and issue subpenas.

(b) A subpena may require the attendance of witnesses and the production of relevant papers, books, and documents in the possession or under the control of the person served.

(c) A subpena may be served by any person who is not a party and not less than 18 years of age.

(d) The original subpena bearing a certificate of service shall be filed with the issuing official.

(e) A witness to whom a subpena has been issued pursuant to this section shall be paid the same fees and mileage as are paid witnesses in district courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the subpena was issued.

§ 153.9 Request for subpena.

(a) The Council may issue a subpena, at the request of a party at interest (or otherwise), in accordance with section 206 of the Act. The Council will not issue a subpena to a party at interest for use by the party. A request for a subpena may be filed with the Council by a party at interest in connection with any proceeding under this part. The party at interest filing such a request shall serve a copy of the request (including any supporting documentation) upon any other party at interest, and upon any person (whether or not a party at interest) to whom the subpena is to be directed.

(b) A request for subpena must include:

(1) The names of the parties to the proceeding, the number of employees in the unit, and the case number if available;

(2) A specific description of the papers, books, documents, or other data to be produced;

(3) The names and addresses of the officials who are believed to have custody of such documents;

(4) The name or title of any witness requested to appear and a description of the information sought or the testimony to be given by such witness;

(5) A certification that a written request for the same information has been served on the person or persons to whom the subpena is to be directed and that such request was denied or that 10 days have elapsed from service of such request without receipt of the requested information;

(6) A statement setting forth in detail the relevance of the information sought to the particular proceeding, with specific references to Council regulations;

(7) Argument supporting the reasonable scope of the information sought as it relates to the particular proceeding; and

(8) A prima facie showing that the information to be obtained will support the position of the party at interest requesting the subpena.

(c) A request for subpena shall be accompanied by a certification that a copy of such request has been served upon the persons referred to in paragraph (a) of this section.

(d) A request for a subpena shall be filed as early in the applicable proceeding before the Cost of Living Council as is feasible, but not later than 30 days after commencement of the proceeding before the Council. For purposes of the preceding sentence, a proceeding (e.g., an application for approval or exception, a party at interest pay challenge, etc.) shall be deemed to have commenced before the Council upon receipt by the Council of the document requiring action, or, in the case of Council-initiated challenge, upon service by the Council on the parties at interest of a notification of such challenge. Failure to file a request for a subpena within 30 days of the commencement of a proceeding may result in denial of the request for subpena. Notwithstanding the preceding sentence, the Council in its discretion, may grant an extension of time to request a subpena upon a showing of good cause.

§ 153.10 Motion to quash issuance of subpena.

Any person who would be adversely affected if the request for subpena were granted may, within 14 days of the filing of the request, file a motion with the Council to limit the scope of such subpena or to quash its issuance.

§ 153.11 Disclosure of information; request for confidentiality.

(a) In the absence of the filing of a request for confidentiality, described in paragraph (b) of this section, or if the Council determines that no serious injury would result from disclosure, the Council may release any document or other information described in paragraph (c) of this section to a party at interest requesting it, provided that the Council determines that the information is relevant in a proceeding before the Council. If a request for confidentiality is submitted and the Council determines that the information is, in fact, confidential, disclosure may still be made in accordance with means specially designed, on a case-by-case basis, to protect the positions of all parties.

(b) Any person submitting a document to the Council may simultaneously file a request for confidentiality setting forth the adverse consequences of disclosure of such document to a party at interest. Such a request should include—

(1) A specific description of those items in the document which are believed to merit confidential treatment;

(2) Reasons for such belief;

(3) A description of those persons who already have knowledge of the information claimed to be confidential; and

(4) A description of the damage that would result from disclosure.

(c) Any document or other information submitted to the Council by a party at interest on or after [date of publication in F.R.] is subject to the provisions of this section, including any document with respect to a reporting or prenotification requirement under this title, an application for approval, a request for interpretation, exception or exemption, a pay challenge, a request for review, or any document submitted at the request of the Council or in response to a subpena by the Council.

§ 153.12 Consolidations.

Upon the initiative of the Council, or in response to a party's motion, two or more applications for approval or exception, pay challenges or other cases which involve substantially the same parties or issues which are closely related, may be consolidated if it is found that such consolidation will expedite the proceedings.

§ 153.13 Where to file.

Documents submitted to the Council under Part 152 of this chapter shall be filed in accordance with the provisions of § 152.5 of this chapter, if applicable, and shall be sent, as appropriate, to the following addresses:

(a) Submissions with respect to pay adjustments affecting employees in the food industry—Office of Wage Stabilization, P.O. Box 6185, Washington, D.C. 20044.

(b) Submissions with respect to pay adjustments affecting employees in the health services industry—Office of Wage Stabilization, P.O. Box 472, Washington, D.C. 20044.

(c) Submissions with respect to pay adjustments affecting employees in the construction industry—Office of Wage Stabilization, P.O. Box 992, Washington, D.C. 20044.

(d) Submissions with respect to executive and variable compensation (and executive control groups)—Office of Wage Stabilization, P.O. Box 983, Washington, D.C. 20044.

(e) Submissions with respect to pay adjustments affecting employees in State or local government—Office of Wage Stabilization, P.O. Box 6194, Washington, D.C. 20044.

(f) Submissions with respect to pay adjustments affecting employees in the self-administered industries—Office of Wage Stabilization, P.O. Box 672, Washington, D.C. 20044.

(g) Submissions with respect to § 152.4 (pay adjustments subsequent to reduction in wages or salaries)—Office of Wage Stabilization, P.O. Box 672, Washington, D.C. 20044.

(h) Submissions with respect to requests for interpretation—Office of General Council, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

§ 153.14 Special proceedings.

(a) When any report submitted in connection with § 152.6 of this chapter or otherwise, or any audit or investigation discloses, or the Council otherwise discovers that an employer appears to have failed to make proper designations of appropriate employee units, classifications, or similar matters, the Council may begin special proceedings by issuing a notice of examination with respect to the subject designations, classifications or similar matters. In addition, the Council may issue a notice of challenge with respect to any or all pay adjustments which may be involved, and consolidate the proceedings.

(b) Proceedings to challenge pay adjustments under this section, whether involving sectors subject to mandatory controls or sectors subject to self-administered controls, will be conducted in the same manner and under the same procedures as are contained in §§ 152.51 through 152.58 of this chapter.

§ 153.15 Reopening decisions and orders.

Final administrative action by the Council creates a presumption of finality on which employers and employees may ordinarily rely. However, in rare circumstances, the Council may reopen a final administrative action for the purpose of correcting its own errors, curing a failure of notice or opportunity to participate by parties so entitled, or to exercise its continuing jurisdiction over wages and salaries because of changed conditions, equitable considerations, or the maintenance of historical relationships.

Subpart B—Applications for Approval

§ 153.21 Purpose and scope.

(a) The purpose of this subpart is to establish procedures for initial action by the Council on applications for approval, prenotifications, requests for exception, or any other filing with respect to a proposed pay adjustment for which prior approval is required by this title.

(b) Applications for approval under this subpart shall be filed in accordance with § 152.5 of this chapter and with § 153.13 unless the Council directs otherwise.

(c) Initial actions on applications for approval may be made by the Director of

the Council or his delegate. In addition, the Council may prescribe by further regulation, order, or otherwise for further delegations under this subpart.

§ 153.22 Initial action by the Council.

(a) The Council will render its decision on the record which will consist of the application for approval, any written submissions by the parties at interest, and any information developed by the Council. However, if any oral presentation or hearing is conducted in accordance with § 153.23 or Subpart J of this part, or if the Council, in its discretion, otherwise allows an oral presentation or hearing, the record may also contain an account of such oral presentation or hearing in the form of a report, minutes, or transcript.

(b) After considering the record, the Council will either—

(1) Approve the application in full and issue a decision and order, or

(2) Issue a proposed partial approval of the application in the form of an interim decision and order.

(c) If the Council approves the application in full, it will—

(1) Serve upon the applicant and other parties to the proceedings a copy of its decision and order, and

(2) Allow any person aggrieved to request review of the Council's action pursuant to subpart G of this part.

(d) If the Council proposes to approve partially the application, it will serve upon the applicant and other parties to the proceedings a copy of—

(1) The interim decision and order.

(2) A notice of opportunity for an oral presentation or hearing, and

(3) A notice of the options available to them and explanation thereof.

(e) The options referred to in paragraph (d)(3) of this section will include—

(1) Accepting the interim decision and order,

(2) Not accepting the interim decision and order, submitting additional information and requesting an oral presentation or hearing, and

(3) Not accepting the interim decision and order, submitting additional information and not requesting an oral presentation or hearing.

(f) If the interim decision and order is accepted or if no response is received by the 21st calendar day after issuance of the notice of options, the parties at interest will be deemed to have waived the opportunity to request an oral presentation or hearing, to submit additional information, or to request review, and the interim decision and order will automatically and immediately become the final administrative action of the Council without the necessity for further service on the applicant or other parties to the proceedings.

(g) If the interim decision and order is not accepted, the Council will consider the record, including any additional information submitted in writing or by oral presentation or hearing (see § 153.23). The Council will then—

(1) Serve upon the applicant and other parties to the proceedings a copy of its decision and order, and

(2) Allow any person aggrieved to request review of the Council's action pursuant to subpart G of this part.

§ 153.23 Oral presentations and hearings.

(a) If the Council determines that an oral presentation or hearing is required or appropriate, it will direct that an oral presentation or hearing be held before the Council, its delegate, a tripartite industry wage and salary committee, panel, or a Hearing Officer. If the Council determines that a public presentation or hearing is required, those proceedings will be conducted under subpart J of this part, not under this section.

(b) The Council will notify the parties to the proceedings, in writing, of the time and place of the oral presentation or hearing.

(c) If unrepresented employees request to participate in an oral presentation or hearing, the Council may limit participation to that number of employees reasonably required to give the Council the information it needs in reaching its decision and to fairly represent the interests of the employees. Any unrepresented employees not allowed to participate in an oral presentation or hearing may nevertheless submit written arguments on the issues involved.

(d) The applicant and other parties, as appropriate, may present oral argument and submit such additional documentary evidence as the Council, its delegate, a tripartite industry wage and salary committee, panel, or Hearing Officer deems necessary to fully disclose the position of the party or parties.

(e) Unless the Council directs otherwise, within 30 days after the close of the presentation or hearing, the Hearing Officer, if one is used, will submit a report to the Council, and a recommendation with respect to the disposition of the case.

(f) Unless the Council directs otherwise, the person or committee presiding over a presentation or hearing will have the same powers given a presiding officer under subpart J of this part, except that such person or committee may not issue subpenas or orders unless that power is specifically provided for by competent authority.

§ 153.24 Requests for review.

Any person aggrieved by an initial action of the Council under this subpart may request review pursuant to subpart G of this part. The Council will not consider that a person appearing before the Council has exhausted his administrative remedies until he has filed a request for review under subpart G and final action has been taken thereunder by the Council.

Subpart C—Requests for Interpretation

§ 153.31 Purpose and scope.

(a) The purpose of this subpart is to establish procedures for initial action by the Council on requests for interpretation.

(b) Each request for an interpretation must be submitted in writing to the Office of General Counsel and contain—

(1) A complete statement of all relevant facts,

(2) The names, addresses and telephone numbers of all parties at interest (except that the names and addresses of unrepresented employees are not required),

(3) A statement as to whether a previous request for interpretation has been made to a stabilization agency on the same subject matter by the applicant or his representative and the disposition of any such request,

(4) A statement as to whether an application for approval, request for exception, prenotification, report, pay challenge, or request for exemption has been filed, or whether a notice of probable violation has issued, with respect to the same subject matter,

(5) A statement of the applicant's contentions, grounds therefor, and relevant authorities in support of his view, and

(6) A statement of the applicant's view as to the effect of Council regulations and guidelines even if he is urging no particular interpretation.

(c) An employer or employer association filing any document with respect to a request for interpretation shall at the same time serve copies of each such document on the collective bargaining agent, if any, of the affected employee unit. If a request for interpretation or any document relating thereto is filed by a collective bargaining agent for employees, such collective bargaining agent must at the same time serve copies on the affected employer or employer association. A certificate of service shall accompany all such documents filed with the Council.

(d) Advisory opinions with respect to permissible levels for wage and salary increases will not be given.

(e) Requests for interpretation under this subpart shall be filed in accordance with paragraphs (b), (c) and (d) of this section and § 153.13 unless the Council directs otherwise.

(f) Initial actions on requests for interpretation may be made by the General Counsel for the Council, or his delegate.

§ 153.32 Initial action by the Council.

After considering a request for interpretation, filed in accordance with § 153.31, and the comments or arguments, if any, of other parties at interest, the Council will—

(a) Render its interpretation,

(b) Serve upon the applicant and other parties to the proceedings a copy of such interpretation, and

(c) Allow any person aggrieved who was also a party to the proceedings to request review pursuant to subpart G of this part.

§ 153.33 Request for review.

Any person aggrieved by an initial action of the Council who was also a party

to the proceedings under this subpart may request review pursuant to subpart G of this part. The Council will not consider that a person appearing before the Council has exhausted his administrative remedies until he has filed a request for review under subpart G and final action has been taken thereunder by the Council.

Subpart D—Challenges

§ 153.41 Purpose and scope.

(a) The purpose of this subpart is to establish procedures for pay challenges and initial actions by the Council with respect to such challenges in sectors subject to mandatory controls (see Subparts H, I, J and K of Part 152 of this chapter) and sectors subject to self-administered controls (see, Subparts B, F and K of Part 152 of this chapter).

(b) In a sector subject to mandatory controls, a pay challenge may be issued by the Council or filed by a party at interest. A pay challenge by a party at interest shall be filed in accordance with § 152.5 of this chapter and with §§ 153.13 and 153.51. In a sector subject to self-administered controls a pay challenge may only be issued by the Council.

(c) Initial actions with respect to pay challenges may be made by the Director of the Council or his delegate. In addition, the Council may prescribe by further regulation, order, or otherwise for further delegations under this subpart.

Mandatory Sector Pay Challenges

§ 153.51 Scope.

(a) In a sector subject to mandatory controls, employment contracts which existed prior to November 14, 1971 are allowed to operate according to their terms. However, any such specific contract when challenged by a party at interest or by the Council is subject to review to determine whether any wage and salary increase granted pursuant to such contract is unreasonably inconsistent with the standard or exceptions thereto as set forth in the rules and regulations of the Pay Board in effect on January 10, 1973 (see, subpart B of Part 201 of this title):

(b) Employment contracts described in paragraph (a) of this section may be challenged pursuant to subparts H (Food Industry), I (Providers of Health Care), J (Construction Industry), or K (Executive and Variable Compensation) of Part 152 of this chapter.

(c) Each pay challenge by a party at interest must be clearly designated as such, be submitted in writing in accordance with § 152.5 of this chapter and with § 153.13, and contain—

(1) A complete statement of all relevant facts,

(2) The name and address of the other party at interest,

(3) A statement as to whether a previous filing has been made with respect to the same pay adjustment together with a copy of such filing, and

(4) A statement of the challenger's contentions, grounds therefor, and relevant authorities in support of his view that the pay adjustment is unreasonably inconsistent with the standard or exceptions thereto described in paragraph (a) of this section.

§ 153.52 Initial action by the Council.

(a) The Council will render its decision on the record which will consist of the pay challenge, any written submissions by the parties at interest, and any information developed by the Council. However, if any oral presentation or hearing is conducted in accordance with § 153.53, subpart J of this part, or if the Council, in its discretion, otherwise allows an oral presentation or hearing, the record may also contain an account of such oral presentation or hearing in the form of a report, minutes, or transcript.

(b) After considering the record, the Council will either—

(1) Approve the pay adjustment in full and issue a decision and order,

(2) Dismiss the pay challenge and issue a decision and order, or

(3) Issue a proposed partial approval of the pay adjustment in the form of an interim decision and order.

(c) If the Council approves the pay adjustment in full, it will—

(1) Serve upon the parties to the proceedings a copy of its decision and order, and

(2) Allow any person aggrieved to request review of the Council's action pursuant to subpart G of this part.

(d) If the Council proposes to approve partially the pay adjustment, it will serve upon the parties to the proceedings a copy of—

(1) The interim decision and order,

(2) A notice of opportunity for an oral presentation or hearing, and

(3) A notice of the options available to them and explanation thereof.

(e) The options referred to in paragraph (d)(3) of this section will include.

(1) Accepting the interim decision and order.

(2) Not accepting the interim decision and order, submitting additional information and requesting an oral presentation or hearing, and

(3) Not accepting the interim decision and order, submitting additional information and not requesting an oral presentation or hearing.

(f) If the interim decision and order is accepted or if no response is received by the 21st calendar day after issuance of the notice of options, the parties at interest will be deemed to have waived the opportunity to request an oral presentation or hearing, to submit additional information, or to request review, and the interim decision and order will automatically and immediately become the final administrative action of the Council without the necessity for further service on the parties to the proceedings.

(g) If the interim decision and order is not accepted, the Council will consider the record, including any additional information submitted in writing or by oral presentation or hearing (see § 153.53). The Council will then—

(1) Serve upon the parties to the proceedings a copy of its decision and order, and

(2) Allow any person aggrieved to request review of the Council's action pursuant to Subpart G of this part.

§ 153.53 Oral presentations and hearings.

(a) If the Council determines that an oral presentation or hearing is required or appropriate, it will direct that an oral presentation or hearing be held before the Council, its delegate, a tri-partite industry wage and salary committee, panel, or a Hearing Officer. If the Council determines that a public presentation or hearing is required, those proceedings will be conducted under Subpart J of this part and not this section.

(b) The Council will notify the parties to the proceedings, in writing, of the time and place of the oral presentation or hearing.

(c) In unrepresented employees request to participate in an oral presentation or hearing, the Council may limit participation to that number of employees reasonably required to give the Council the information it needs in reaching its decision and to represent fairly the interests of the employees. Any unrepresented employees not allowed to participate in an oral presentation or hearing may nevertheless submit written arguments on the issues involved.

(d) The parties to the proceedings may present oral argument and submit such additional documentary evidence as the Council, its delegate, a tri-partite industry wage and salary committee, panel, or Hearing Officer deems necessary to fully disclose the position of the party or parties.

(e) Unless the Council directs otherwise, within 30 days after the close of the presentation or hearing, the Hearing Officer, if one is used, will submit a report to the Council, and a recommendation with respect to the disposition of the case.

(f) Unless the Council directs otherwise, the person or committee presiding over a presentation or hearing will have the same powers given a presiding officer under Subpart J of this part, except that such person or committee may not issue subpenas or orders unless that power is specifically provided for by competent authority.

§ 153.54 Requests for review.

Any person aggrieved by an initial action of the Council under this subpart may request review pursuant to Subpart G of this part. The Council will not consider that a person appearing before the Council has exhausted his administrative remedies until he has filed a request for review under Subpart G and final action has been taken thereunder by the Council.

Self Administered Sector Pay Challenges

§ 153.61 Scope.

(a) In the sectors subject to self-administered controls, no wage or salary increase should be placed into effect

which is unreasonably inconsistent with the standard or goals of the Economic Stabilization Program.

(b) When any report required by this chapter or any audit or investigation discloses, or the Council otherwise discovers, that a person appears to have implemented or is about to implement a wage or salary increase which is unreasonably inconsistent with the general pay standard set forth in § 152.13 of this chapter or the goals of the Economic Stabilization Program, the Council may conduct proceedings to challenge such conduct and issue appropriate orders in accordance with the provisions of §§ 153.61 through 153.64.

(c) The Council will begin proceedings under this subpart by issuing a notice of challenge to the person involved stating that the Council has reason to believe that conduct which is unreasonably inconsistent with the standards set forth in this chapter has occurred or is about to occur.

§ 153.62 General.

The procedural regulations contained in §§ 152.51 through 152.58 of this chapter (relating to pay challenges in the sectors subject to self-administered controls) are herewith adopted.

§ 153.63 Personal appearances.

(a) If a person to whom a notice of challenge has been issued requests a personal appearance, the Council will direct that an oral presentation or hearing be held before the Council, its delegate, or a Hearing Officer. If the Council determines that a public presentation or hearing is required, those proceedings will be conducted under Subpart J of this part and not this section.

(b) The Council will notify the parties to the proceedings, in writing, of the time and place of the oral presentation or hearing.

(c) If unrepresented employees request to participate in an oral presentation or hearing, the Council may limit participation to that number of employees reasonably required to give the Council the information it needs in reaching its decision and to represent fairly the interests of the employees. Any unrepresented employees not allowed to participate in an oral presentation or hearing may nevertheless submit written arguments on the issues involved.

(d) The parties to the proceedings may present oral argument and submit such additional documentary evidence as the Council, its delegate, or Hearing Officer deems necessary to fully disclose the position of the party or parties.

(e) Unless the Council directs otherwise, within 30 days after the close of the presentation or hearing, the Hearing Officer, if one is used, will submit a report to the Council, and a recommendation with respect to the disposition of the case.

(f) Unless the Council directs otherwise, the person presiding over a presentation or hearing will have the same powers given a presiding officer under Subpart J of this part, except that he may not issue subpenas or orders unless that power is specifically provided for by competent authority.

§ 153.64 Requests for modification or rescission.

Any person aggrieved by an order of the Council issued under § 152.57 of this chapter may request modification or rescission of that order in accordance with § 152.58 of this chapter. A request for review under Subpart G of this part is inappropriate.

Subpart E—Requests for Exemption

§ 153.71 Purpose and scope.

(a) All requests for pay exemption must be filed with the Office of Wage Stabilization, Cost of Living Council, 2025 M Street NW., Washington, D.C. 20508.

(b) This subpart establishes the rules of practice of the Council governing initial action on requests for pay exemption.

(c) Notwithstanding the provisions of this subpart, the Council may, on its own motion or in connection with a request for price exemption, issue a pay exemption.

§ 153.72 Initial action by Council.

After considering the request, the Council may—

(a) If it grants the exemption,

(1) Publish a regulation describing the exemption and any conditions which apply thereto, or

(2) Serve upon the applicant a copy of its order; or

(b) If it denies the exemption, in whole or in part, serve upon the applicant a copy of its order, which will contain a statement of the grounds for denial, and advise the applicant that he may request review pursuant to Subpart G of this part.

§ 153.73 Requests for review.

Any person aggrieved by an order of the Council under this subpart may request review pursuant to Subpart G of this part. The Council will not consider that a person appearing before the Council has exhausted his administrative remedies until he has filed a request for review under Subpart G and final action has been taken thereunder by the Council.

Subpart F—Notices of Probable Violation; Remedial Orders

§ 153.81 Purpose and scope.

(a) This subpart establishes the procedures for determining the nature and extent of violations and the procedures for the issuance of remedial orders.

(b) A "remedial order" is an order requiring a person to cease a violation or to take action to eliminate or to compensate for the effects of a violation, or both, or which imposes other sanctions.

(c) The Council may seek an injunction or other relief provided for in § 152.154 of this chapter without complying with the procedures contained in this subpart.

(d) A violation under the provisions of Part 152 of this chapter or subpart A of this part begins when committed and not when a remedial order is issued under this subpart. Failure to comply with a remedial order is a separate violation.

§ 153.82 General.

When any report required by the Council or any audit or investigation discloses, or the Council otherwise discovers, that a person appears to be in violation of the Act or any regulation in this title, the Council may conduct proceedings to determine the nature and extent of the violations and issue remedial orders. The Council may commence proceedings by serving a notice of probable violation or by issuing a remedial order.

§ 153.83 Issuance of notice of probable violation to begin proceedings.

The Council may begin proceedings under this subpart by issuing a notice of probable violation if the Council has reason to believe that a violation has occurred or is about to occur.

§ 153.84 Issuance of remedial orders to begin proceedings in unusual circumstances.

Remedial orders may be issued to begin proceedings under this subpart if the Council finds on preliminary examination that the violations are patent or repetitive, that their immediate cessation is required to avoid irreparable injury to others or unjust enrichment to the person to whom the order is issued, or for any other unusual circumstance the Council deems sufficient.

§ 153.85 Reply.

(a) Within 10 days of receipt of a notice of probable violation issued under § 153.83 or a remedial order issued under § 153.84, the person to whom the notice or order is issue may file a reply. The reply must be in writing. Such person may also request an appointment for a personal appearance, which must be held within the 10-day period provided for reply. He may be represented or accompanied by counsel at the personal appearance. The Council will extend the 10-day reply period for good cause shown.

(b) If a person does not reply within the time allowed by a notice of probable violation, the violation will be considered admitted as alleged and the Council may issue whatever remedial order would be appropriate.

(c) If a person has not replied to the Council within the 10-day period provided and a remedial order has been issued to begin proceedings, the order will go into effect or remain in effect, in accordance with its terms as the case may be.

(d) An order which goes into effect or is permitted to remain in effect under paragraph (c) of this section or an order issued under paragraph (b) of this section is not subject to judicial or any other review with respect to any finding of fact or conclusion of law which could

have been raised in the proceedings before the Council by the filing of a reply.

§ 153.86 Order.

(a) If the Council finds, after the person has filed a reply under § 153.85, that no violation has occurred or is about to occur or that for any other reason the issuance of a remedial order would not be appropriate, it will issue an order so stating and, if necessary, revoke or modify any remedial order which already may be outstanding.

(b) If the Council finds that a violation has occurred or is about to occur and that a remedial order is appropriate, it will issue an order so stating and, if necessary, direct remedial action, vacate the suspension of any outstanding remedial order, or modify as appropriate, any outstanding remedial order. The order will state the grounds upon which it is based.

§ 153.87 Requests for review.

Any person aggrieved by an initial action of the Council under this subpart may request review pursuant to subpart G of this part. Requests for review of an order under this subpart will be accorded expedited treatment by the Council. The Council will not consider that a person appearing before the Council has exhausted his administrative remedies until he has filed a request for review under subpart G and final action has been taken thereunder by the Council.

Subpart G—Requests for Review

§ 153.101 Purpose and scope.

(a) Except as otherwise provided, this subpart establishes the procedures governing review of initial actions taken under Subparts B, C, D, E, and F of this part.

(b) Unless otherwise provided, the Council will not consider that a person who has appeared before the Council in connection with a matter arising under Subpart B, C, D, E, or F has exhausted his administrative remedies until he has filed a request for review under this subpart and final action thereon has been taken by the Council.

§ 153.102 Who may request review.

Unless otherwise provided, any person aggrieved by an initial action of the Council under Subpart B, C, D, E, or F of this part may request review hereunder.

§ 153.103 Where to file.

A request for review shall be filed with the Council official who issued the initial action or decision from which review is sought.

§ 153.104 When to file.

A request for review must be filed within 14 days of service of the initial action or decision from which review is sought.

§ 153.105 Contents of request.

(a) A request for review shall—

(1) Be in writing and signed by the appellant;

(2) Be designated clearly as a request for review;

(3) Contain a concise statement of the grounds for review and the requested relief;

(4) Be accompanied by briefs, if any;

(5) Be marked on the outside of the envelope—"Review"; and

(6) Be served on the parties at interest in accordance with § 153.4.

(b) If the request for review is from an order issued under § 153.86 and involves an outstanding remedial order, the envelope should be marked "Review—Outstanding Remedial Order."

§ 153.106 Review by Council.

(a) The Council will review its initial action if the request for review makes a prima facie showing that—

(1) The initial action was erroneous in fact or in law, or

(2) Such initial action appears to be otherwise inequitable.

(b) If the Council determines that the request for review failed to make a prima facie showing, the Council may summarily reject the request for review, notify the applicant and other parties at interest of its action, and advise the applicant that he has exhausted his administrative remedies and that he may seek judicial review under the Act.

(c) If the Council determines that the request for review has made a prima facie showing, it will proceed in accordance with the provisions of §§ 153.107 and 153.108.

§ 153.107 Informal hearings.

(a) If the Council in its discretion deems that a hearing or presentation is advisable, it may direct that an informal hearing or presentation be held before the Council, its delegate, or a Hearing Officer.

(b) The Council will notify the parties at interest and other parties, as appropriate, in writing, of the time and place of the hearing.

(c) The appellant and other parties, as appropriate, may present oral argument and submit such additional documentary evidence as the Hearing Officer, the Council, or its delegate deems necessary to fully disclose the position of the party or parties.

(d) If a Hearing Officer is used, he will conduct the hearing as expeditiously as possible in accordance with instructions received from the Council.

(e) Within 30 days after the close of the hearing, the Hearing Officer, if one is used, will submit a report to the Council, and, when the Council so directs, a recommendation with respect to the disposition of the case.

§ 153.108 Decision by Council.

(a) The Council will issue a decision in writing and direct it and an appropriate order to the person requesting review.

(b) A copy of the decision and order will be served upon the parties to the proceedings.

(c) If the decision denies the relief requested by any person aggrieved, in whole or in part, the decision will contain a statement of the grounds for denial unless the denial is self-explanatory or is affirming a prior denial.

(d) Any person aggrieved may seek judicial review under the Act if the decision denies the relief requested.

Subpart H—Petition and Comment on Rulemaking

§ 153.121 Purpose and Scope.

(a) The provisions of 5 U.S.C. 553 will be followed for the issuance of all regulations or amendments to regulations by the Council, to the extent such provisions apply.

(b) In addition, the Council will accept from interested persons written comments on or written objections to its regulations or its published rulings at any time. If in the opinion of the Council such comments or objections warrant a proceeding similar to a rule making proceeding as provided by 5 U.S.C. 553, the Council will conduct such a proceeding pursuant to notice published in the FEDERAL REGISTER.

§ 153.122 Who may file.

Any interested person may file a comment on or objection to a regulation or published ruling at any time.

§ 153.123 Where to file.

A written comment or objection to a regulation or published ruling shall be filed with the Office of General Counsel, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

Subpart I—Published Rulings

§ 153.131 Rulings for publication.

(a) From time to time, the General Counsel of the Cost of Living Council will issue rulings for publication in the Federal Register which are:

(1) Of general applicability,

(2) Illustrative of a general principle, or

(3) Of assistance to the public in applying the Act, regulations and guidelines to a specific situation.

(b) Unless otherwise provided, a published ruling, being explanatory in nature, relates back to the effective date of the regulations or guidelines it explains. However, if prior to issuance of the ruling, a person changed a practice previously followed in good faith reliance upon and in accordance with the presumed intent of the regulations, the Council will, in the course of determining whether that person has violated the regulations, take into account the extent to which that person could reasonably be deemed to have prior notice of the interpretation contained in the ruling.

Subpart J—Public Hearings

§ 153.141 Purpose and scope.

(a) To the maximum extent possible, the Council will conduct formal hearings or presentations for the purpose of hearing arguments or acquiring information bearing on wage and salary increases or proposed wage or salary increases if such increases or proposed increases have or

may have a significantly large impact upon the national economy.

(b) A formal hearing held pursuant to this subpart will be open to the public, but such hearings may be closed to the public for the purpose of receiving information considered to be confidential under section 205 of the Act.

§ 153.142 Appointment of Presiding Officer.

If a public hearing is directed by the Council in accordance with § 153.141, a Hearing Officer may be appointed by the Council to preside over such hearing. In the absence of the appointment of a Hearing Officer, the General Counsel or his delegate will preside over the hearing.

§ 153.143 Notice of hearing.

At the Council's discretion, notice will be published in the Federal Register of the nature, date, and time of the hearing and of the appointment of the Hearing Officer if appropriate. Thereafter, all documents and other papers shall be filed with the Hearing Officer, or in the absence of the appointment of a Hearing Officer, with the Executive Secretary of the Council.

§ 153.144 Powers and duties of the Presiding Officer.

(a) In addition to any other powers specified in this part, the presiding officer shall have the power:

(1) To administer oaths and affirmations;

(2) To examine or cross-examine witnesses;

(3) To issue subpenas authorized by the Act;

(4) To rule upon offers of proof and receive evidence;

(5) To regulate the course and conduct of the hearing, including—

(i) Continuing the hearing from day to day or adjourning it to a later date or different place by announcement thereof at the hearing or by other appropriate notice;

(ii) Taking official notice of any material fact not appearing in evidence in the record;

(iii) Excluding from the hearing persons who engaged in misconduct; and

(iv) Striking all related testimony of a witness who refuses to answer questions ruled to be proper;

(6) To rule on motions and to dispose of procedural requests or similar matters; and

(7) To issue recommendations and prepare orders.

(b) The presiding officer will conduct the hearing as expeditiously as possible, in accordance with instructions received from the Director or his delegate in each individual case. If a Hearing Officer is appointed as the presiding officer, he will, within 30 days after the close of the hearing, transmit the record of the hearing together with his recommendations and proposed order, if any, to the Director or other deciding official.

(c) The Hearing Officer's authority in each case will terminate upon transmitting the record of the hearing and his recommendation and proposed order, if any, to the deciding official.

§ 153.145 Record.

(a) The record of a public hearing will consist of an account of the proceedings of such hearing and all documents and exhibits submitted during the course of such hearing.

(b) The Council will determine whether the account of the hearing shall be in the form of a report, minutes or transcript. If the hearing is conducted by a Hearing Officer, such determinations will be part of the instructions given to such Officer pursuant to § 153.144(b).

(c) Copies of the account of the hearing may be obtained by any party upon payment of the fees fixed therefor, if any.

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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.

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 80]

REGULATION OF FUELS AND FUEL ADDITIVES

Availability of Unleaded Gasoline

Regulations were promulgated on January 10, 1973, by the Environmental Protection Agency to require gasoline retail outlets to offer unleaded gasoline for sale in order to protect catalytic emission control systems on a substantial number of 1975 model year light duty motor vehicles. (38 FR 1254). These regulations obligated every owner or operator of a retail outlet at which 200,000 or more gallons of gasoline were sold during any calendar year beginning with the 1971 calendar year to offer for sale one grade of unleaded gasoline after July 1, 1974. In addition, every owner or operator of six or more retail outlets were required to offer for sale at least one grade of unleaded gasoline at no fewer than 60 percent of such outlets after July 1, 1974. On October 12, 1973, it was proposed that the regulations be amended to delete the provision which required owners or operators of chains of six or more outlets to sell unleaded gasoline in at least 60 percent of these outlets (38 FR 28301). This FEDERAL REGISTER contains the promulgation of the deletion of this provision.

An extensive analysis has been made to assess the adequacy of the remaining general availability provision that all outlets which sell 200,000 or more gallons of gasoline annually be required to carry unleaded gasoline. The results of this analysis indicate this requirement will provide general accessibility of unleaded fuel in cities and all counties except those most sparsely populated. It is estimated that the average ratio of unleaded gasoline stations to total stations will vary from 1 of 1.4 stations (70%) to 1 of 2.2 (45%) throughout most of the nation under the 200,000 gallon rule, except in counties which have a population density of under 50 persons/square mile. In these counties, only 1 of each 3.4 stations (29%) will be required to carry unleaded gasoline. Since stations are usually more widely dispersed in rural counties than in urban areas, 29 percent coverage may provide an insufficient availability of stations selling unleaded gasoline. This proposed amendment is directed at rectifying this situation by increasing the coverage in the low population density counties.

It is proposed that after January 1, 1975 an owner or operator of a retail outlet located in a county containing a population density less than 50 persons per square mile must offer unleaded gasoline at outlets which sold at least 150,000 gallons of gasoline in 1971 or later. The calculation of county population density excludes cities containing populations equal to or greater than 50,000 persons. A list of counties included in this category appears in the accompanying appendix.

Under the 200,000 gallon per year rule, about 111,000 gasoline stations are required to offer for sale unleaded gasoline. It is estimated that the inclusion of outlets selling 150,000 or more gallons in these sparsely populated counties will add approximately 10,000 more stations to those carrying the product. The average ratio of unleaded stations to total stations will be increased to 1 of every 2.1 stations or 48 percent. The Agency believes that this coverage will generally be adequate to assure the availability of unleaded fuel necessary for use in vehicles equipped with catalysts in most cities and counties.

A review of the data available to the Agency indicates that a maximum of 41 counties may have no gasoline stations and 95 counties may have as few as 1 station which will be required to offer unleaded gasoline for sale. However, due to the growth in gallonage volume pumped per station since much of the data were accumulated and the indications that some petroleum companies will sell unleaded gasoline at stations which are not covered by these regulations, we believe that considerably fewer counties will not have unleaded gasoline available. Nevertheless, even if all of these 136 counties were without a lead-free station, there are only 233,000 vehicles registered in these counties or 0.2 percent of the total United States vehicle population. If by the end of the 1975 model year 10 percent of these 233,000 vehicles required unleaded gasoline, less than 24,000 or 0.034 percent of all vehicles would be adversely affected. For the reasons mentioned, however, it is believed that a significant portion of this small vehicle population will, in fact, be serviced by unleaded outlets. EPA will continue to encourage the petroleum industry to increase the coverage of outlets selling unleaded gasoline in these counties.

The following list indicates those counties which may contain no retail outlets offering unleaded gasoline for sale.

State and County

Arkansas—Newton.
Colorado—Gilpin, Hinsdale.
Florida—Lafayette.
Georgia—Banks, Chattahoochee, Echols, Glascock, Taliaferro.
Idaho—Camas.
Illinois—Polk.
Kansas—Elk.
Kentucky—Menifee.
Mississippi—Issaquena.
Nebraska—Arthur, Banner, Garfield.
Nevada—Story.
New Mexico—Mora.
North Dakota—Sheridan, Slope.
South Dakota—Campbell, Hanson, McPherson, Mellette, Washabaugh, Ziebach.
Tennessee—Stewart, Van Buren.
Texas—Borden, Glasscock, Jeff Davis, Kenedy, Kent, Loving, McMullen.
Virginia—Bland, Charles City, Craig, King and Queen.
Wisconsin—Menominee.

The regulations, as promulgated, are directed to the availability and quality of unleaded gasoline which is offered for sale to the public. They do not now apply to public or private operators of vehicle fleets which are serviced from an outlet that does not sell to the public. A considerable number of vehicles are controlled and operated by private corporations (including rental and company fleets) and governmental entities, and the impairment of the emission control system of those vehicles that require unleaded gasoline could detrimentally affect air quality. The Agency believes that owners and operators of vehicle fleets should be subject to the provisions of these regulations with the exception of the requirement that they offer unleaded gasoline for sale to the public. This purpose is achieved by a proposed change in the definition of retail outlet to include "any establishment at which gasoline is sold, dispensed, or offered for sale to an ultimate consumer," and by an explicit exception for fleet owners from § 80.22(b).

Interested persons may submit written comments on the proposed amendment, in triplicate, to the Director of Mobile Source Enforcement Division, EG–340, Environmental Protection Agency, Waterside Mall, 401 M Street S.W., Washington, D.C. 20460.

All relevant comments postmarked on or before July 8, 1974 will be considered. Comments will be available for public inspection during normal working hours (8 a.m. to 4:30 p.m.) at the Office of Public Affairs, Environmental Protection Agency, Waterside Mall, 401 M Street S.W., Room 329C, Washington, D.C. 20460.

(Secs. 211, 301, Clean Air Act as amended (42 U.S.C. 1857f–6c, 1857g(a).)

Dated: May 1, 1974.

JOHN QUARLES,
Acting Administrator.

It is proposed to amend Part 80 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

1. In § 80.2, paragraph (j) is revised as follows:

§ 80.2 Definitions.

* * * * *

(j) "Retail outlet" means any establishment at which gasoline is sold, offered for sale, or dispensed to an ultimate consumer.

* * * * *

2. In § 80.22, paragraph (b) is revised as follows:

§ 80.22 Controls applicable to gasoline retailers.

* * * * *

(b) After July 1, 1974, every person who owns, leases, operates, controls or supervises one or more retail outlets with gasoline sales as described in paragraph (b)(1)(i) of this section or with gasoline, sales and location as described in paragraph (1)(ii) of this section shall offer for sale at each such retail outlet at least one grade of unleaded gasoline of not less than 91 Research Octane Number: Provided, however, that the octane number of unleaded gasoline offered for sale in areas where altitude is greater than 2,000 feet may be reduced one (1) octane number for each succeeding 1,000 feet, but not more than three (3) octane numbers in total.

(1) Unleaded gasoline must be offered for sale at each retail outlet:

(i) at which 200,000 or more gallons of gasoline were sold during any calendar year beginning with the year 1971;

(ii) at which 150,000 or more gallons of gasoline were sold during any calendar year beginning with the year 1971, if such retail outlet is located in a county containing a population density of less than 50 persons per square mile according to statistical data from the 1970 census of population, excluding cities containing populations of 50,000 or more persons.

(2) Any retailer may defer compliance with paragraph (b)(1)(ii) of this section until January 1, 1975. However, if a retailer subject to paragraph (b)(1)(ii) of this section offers for sale unleaded gasoline at such outlet after July 1, 1974, but before January 1, 1975, the retailer shall comply with all applicable provisions of these regulations.

(3) This paragraph shall not be applicable to retail outlets at which gasoline is not sold, offered for sale, or dispensed to the general public.

* * * * *

3. Appendix C is added as follows:

APPENDIX C—LIST OF COUNTIES WITH POPULATION DENSITIES LESS THAN 50 PERSONS PER SQUARE MILE (EXCLUDING CITIES WITH POPULATIONS EQUAL TO OR GREATER THAN 50,000 PERSONS)

State/County	Population[1]
Alabama:	
Autauga	41
Baldwin	38
Barbour	25
Bibb	22
Blount	42
Bullock	19
Butler	28
Cherokee	28
Chilton	36
Choctaw	18
Clarke	22
Clay	21
Cleburne	19
Conecuh	18
Coosa	16
Covington	35
Crenshaw	22
Escamibia	36
Fayette	26
Franklin	37
Geneva	38
Greene	17
Hale	24
Henry	24
Jackson	36
La Mar	24
Lawrence	40
Lowndes	18
Macon	40
Marengo	24
Marion	32
Monroe	20
Montgomery	46
Perry	21
Pickins	23
Pike	37
Randolph	32
St. Clair	44
Selby	48
Sumter	19
Tallapoosa	48
Tuscaloosa	39
Washington	15
Wilcox	18
Winston	27
Alaska:	
Aleutian Islands	1
Angoon	1
Barrow	1
Bethel	1
Bristol Bay Borough	2
Bristol Bay	1
Cordova-McCarthy	1
Fairbanks	6
Haines	1
Juneau	11
Kenai-Cook Inlet	1
Ketchikan	7
Kobuk	1
Kodiak	2
Kuskokwim	1
Matanuska-Susitna	1
Nome	1
Outer Ketchikan	1
Prince of Wales	1
Seward	1
Sitka	3
Skagway-Yakutat	1
Southeast Fairbanks	1
Upper Yukon	1
Valdez-Chitina-Whittier	1
Wade Hampton	1
Wrangell-Petersburg	1
Yukon-Koyukuk	1
Arizona:	
Apache	3
Cochise	10
Coconino	3
Gila	6
Graham	4
Greenlee	5
Maricopa	22
Mohave	2
Navajo	5
Pima	10
Pinal	13
Santa Cruz	11
Yavapai	5
Yuma	6
Arkansas:	
Arkansas	23
Ashley	27
Baxter	29
Boone	33
Bradley	20
Calhoun	9
Carroll	20
Chicot	28
Clark	25
Clay	29
Cleburne	19
Cleveland	11
Columbia	11
Columbia	34
Conway	30
Crawford	43
Cross	32
Dallas	15
Desha	25
Drew	18
Faulkner	49
Franklin	18
Fulton	13
Grant	15
Greene	43
Hempstead	27
Hot Springs	35
Howard	20
Independence	30
Izard	13
Jackson	33
Jefferson	32
Johnson	20
Lafayette	19
Lawrence	28
Lee	31
Lincoln	23
Little River	23
Logan	23
Lonoke	33
Madison	11
Marion	12
Monroe	26
Montgomery	8
Nevada	16
Newton	7
Quachita	42
Perry	10
Pike	15
Poinsett	35
Polk	15
Pope	35
Prairie	16
Randolph	20
St. Francis	49
Scott	9
Searcy	12
Sebastian	34
Sevier	22
Sharp	14
Stone	11
Union	43
Van Buren	12
White	38
Woodruff	20
Yell	15
California:	
Alpine	1
Amador	20
Calaveras	13
Colusa	11
Del Norte	14
El Dorado	26
Fresno	42
Glenn	13
Humboldt	28
Imperial	18
Inyo	2
Kern	32
Kings	48
Lake	16
Lassen	4
Madera	19
Mariposa	4
Mendocino	15
Modoc	2
Mono	1
Nevada	27
Plumas	5
Riverside	45
San Benito	13
San Bernardino	26
San Luis Obispo	33
Shasta	20
Sierra	2
Siskiyou	5
Tehama	10
Trinity	2
Tulare	39
Tuolumme	10
Colorado:	
Alamosa	16
Archuleta	2
Baca	2
Bent	4
Chaffee	10
Cheyenne	1
Clear Creek	12
Conejos	6
Costilla	3
Crowley	4
Custer	2
Delta	13
Dolores	2
Douglas	10
Eagle	4
Elbert	2
El Paso	48
Fremont	14
Garfield	5
Gilpin	9
Grand	2
Gunnison	2
Hinsdale	1
Huerfano	4
Jackson	1
Kiowa	1
Kit Carson	3
Lake	22
La Plata	11
Larimer	34
Las Animas	3
Lincoln	2
Logan	10
Mesa	16
Mineral	1
Moffat	1
Montezuma	6
Montrose	8
Morgan	16
Otero	19
Ouray	3
Park	1
Phillips	6
Pitkin	6
Prowers	8
Rio Blanco	1
Rio Grande	11
Routt	3
Saguache	1
San Juan	2
San Miguel	2
Sedgwick	6
Summit	4
Teller	6
Washington	2
Weld	22
Yuma	4
Florida:	
Alachua	45
Baker	16
Calhoun	14
Charlotte	39
Citrus	34
Collier	19
Columbia	32
De Soto	20
Dixie	8
Flagler	9
Franklin	13
Gilchrist	10
Glades	5
Gulf	18
Hamilton	15
Hardee	24
Hendry	10
Hernando	35
Highlands	30
Holmes	22
Jackson	37
Jefferson	15
Lafayette	5
Leon	48
Levy	12
Liberty	4
Madison	19
Marion	43
Nassau	32
Okeechobee	14
Osceola	19
Putnam	47
Santa Rosa	37
Sumter	27
Suwannee	23
Taylor	13
Union	34
Wakulla	10
Walton	15
Washington	20
Georgia:	
Appling	25
Atkinson	18
Bacon	28
Baker	11
Banks	30
Berrien	25
Bleckley	47
Brantley	13
Brooks	28
Bryan	15
Bullock	46
Burke	22
Calhoun	23
Camden	17
Candler	26
Charlton	7
Clay	18
Clinch	8
Coffee	37
Crawford	18
Dawson	17
Decatur	39
Dodge	31
Dooly	26
Early	24
Echols	5
McIntosh	17
Macon	32
Madison	48
Marion	14
Meriwether	39
Miller	22

[1] County density (persons per square mile) excluding cities of 50,000 or more.

State/County	Population [1]
Georgia—Con.	
Mitchell	37
Monroe	28
Montgomery	26
Morgan	28
Murray	38
Oconee	43
Oglethorpe	17
Pickens	43
Pierce	27
Pike	32
Pulaski	32
Putnam	25
Quitman	14
Rabun	23
Randolph	20
Schley	19
Screven	19
Seminole	29
Stewart	14
Talbot	17
Taliaferro	12
Tattnall	34
Taylor	20
Telfair	26
Terrell	35
Towns	28
Treutlen	29
Turner	30
Twiggs	23
Union	22
Ware	37
Warren	23
Washington	26
Wayne	28
Webster	12
Wheeler	15
White	32
Wilcox	18
Wilkes	22
Wilkinson	21
Worth	26
Hawaii:	
Hawaii	16
Kauai	48
Maui	39
Idaho:	
Ada	37
Adams	2
Bannock	47
Bear Lake	6
Benewah	8
Bingham	14
Blaine	2
Boise	1
Bonner	9
Bonneville	29
Boundary	4
Butte	1
Camas	1
Caribou	4
Cassia	7
Clark	1
Clearwater	4
Custer	1
Elmore	6
Franklin	11
Fremont	5
Gem	17
Gooding	12
Idaho	2
Jefferson	11
Jerome	17
Kootenai	28
Latah	23
Lemhi	1
Lewis	8
Lincoln	3
Madison	28
Minidoka	21
Nez Perce	36
Oneida	2
Owyhee	1
Payette	31
Power	3
Shoshone	8
Teton	5
Twin Falls	21
Valley	1
Washington	5
Illinois:	
Bond	37
Brown	18
Bureau	45
Calhoun	23
Carroll	42
Cass	38
Clark	32
Clay	32
Crawford	45
Cumberland	28
De Witt	43
Douglas	45
Edgar	34
Edwards	32
Fayette	30
Ford	34
Fulton	48
Gallatin	23
Greene	31
Hamilton	20
Hancock	30
Hardin	27
Henderson	22
Iroquis	30
Jasper	22
Jersey	49
Jo Daviess	36
Johnson	22
Lawrence	47
Livingston	39
Marshall	34
Mason	30
Menard	31
Mercer	31
Monroe	49
Montgomery	43
Moultrie	41
Perry	45
Piatt	35
Pike	23
Pope	10
Pulaski	43
Putnam	31
Richland	46
Schuyler	19
Scott	24
Shelby	30
Stark	26
Union	39
Warren	40
Washington	24
Wayne	24
White	34
Indiana:	
Benton	28
Brown	28
Carroll	47
Crawford	26
Fountain	46
Franklin	43
Fulton	46
Greene	49
Harrison	43
Jasper	36
Martin	32
Newton	28
Ohio	49
Orange	42
Owen	31
Parke	33
Pike	37
Pulaski	29
Ripley	48
Spencer	43
Sullivan	44
Switzerland	29
Union	39
Warren	24
Washington	37
White	42
Iowa:	
Adair	17
Adams	15
Allamakee	24
Appanoose	29
Audubon	21
Benton	32
Boone	46
Buchanan	38
Buena Vista	36
Butler	29
Calhoun	25
Carroll	40
Cass	30
Cedar	30
Cherokee	30
Chickasaw	30
Clarke	18
Clay	32
Clayton	26
Crawford	27
Dallas	44
Davis	16
Decateur	18
Delaware	33
Dickinson	33
Dubuque	48
Emmet	36
Effingham	28
Elbert	48
Emanuel	27
Evans	39
Fonnin	34
Franklin	49
Gilmer	20
Glascock	16
Grady	38
Greene	25
Hancock	19
Harris	25
Heard	18
Irwin	22
Jasper	15
Jeff Davis	28
Jefferson	32
Jenkins	24
Johnson	25
Jones	30
Lanier	28
Laurens	40
Lee	20
Liberty	34
Lincoln	31
Long	9
Lumpkin	30
Fayette	37
Floyd	39
Franklin	23
Fremont	18
Greene	22
Grundy	28
Guthrie	21
Hamilton	32
Hancock	24
Hardin	39
Harrison	23
Henry	41
Howard	24
Humboldt	29
Ida	22
Iowa	26
Jackson	32
Jasper	48
Jefferson	36
Jones	34
Keokuk	24
Kossuth	23
Louisa	27
Lucas	23
Lyon	23
Madison	20
Mahaska	39
Mills	26
Mitchell	28
Monona	17
Monroe	22
Montgomery	30
O'Brien	30
Osceola	21
Page	35
Palo Alto	24
Plymouth	28
Pocahontas	22
Pottawattamie	29
Poweshiek	32
Ringgold	12
Sac	27
Shelby	26
Sioux	37
Tama	28
Taylor	17
Union	32
Van Buren	18
Warren	49
Washington	33
Wayne	16
Winnebago	32
Winneshiek	32
Woodbury	21
Worth	22
Kansas:	
Allen	30
Anderson	15
Atchison	45
Barber	6
Barton	34
Bourbon	24
Brown	20
Butler	27
Chase	4
Chautaugua	7
Cherokee	37
Cheyenne	4
Clark	3
Clay	16
Cloud	19
Coffey	12
Comanche	3
Cowley	31
Decatur	6
Dickinson	23
Doniphan	23
Edwards	7
Elk	6
Ellis	27
Ellsworth	9
Finney	15
Ford	21
Franklin	35
Gove	4
Graham	5
Grant	10
Gray	5
Greeley	2
Greenwood	8
Hamilton	3
Harper	10
Haskell	6
Hodgeman	3
Jackson	16
Jefferson	23
Jewell	7
Kearney	4
Kingman	10
Kiowa	6
Labette	39
Lane	4
Linn	13
Logan	4
Lyon	38
McPherson	28
Marion	15
Marshall	15
Meade	5
Miami	33
Mitchell	11
Morris	9
Morton	5
Nemaha	17
Neosho	32
Ness	8
Norton	8
Osage	19
Osborne	7
Ottawa	9
Pawnee	11
Phillips	9
Pottawatomie	14
Pratt	14
Rawlins	4
Reno	48
Republic	12
Rice	17
Rooks	9
Rush	7
Russell	11
Scott	8
Seward	25
Sheridan	4
Sherman	7
Smith	8
Stafford	7
Stevens	6
Sumner	20
Thomas	7
Trego	5
Wabaunsee	8
Wallace	2
Washington	10
Wichita	5
Wilson	20
Woodson	10
Kentucky:	
Adair	35
Allen	36
Anderson	45
Ballard	32
Bath	32
Bracken	35
Breathitt	29
Breckinridge	27
Butler	22
Caldwell	37
Carlisle	27
Casey	30
Clay	39
Clinton	43
Crittenden	23
Cumberland	22
Elliott	29
Estill	25
Fleming	32
Gallatin	41
Garrard	40
Grant	40
Grayson	33
Green	37
Hancock	38
Harrison	46
Hart	33
Henry	38
Hickman	25
Jackson	30
Knott	41
Larue	41
Lee	25
Leslie	31
Letcher	28
Lewis	25
Lincoln	49
Livingston	24
Logan	39
Lyon	26
McCreary	30
McLean	35
Magoffin	34
Marion	49
Martin	41
Menifee	19
Metcalfe	28
Monroe	35
Morgan	27
Nicolas	32
Ohio	32
Owen	21
Owsley	25
Pendleton	36
Powell	45
Robertson	21
Rockcastle	40
Russell	41
Spencer	28
Todel	29
Trigg	21
Trinple	37
Union	47
Washington	35
Wayne	32
Webster	39
Wolfe	25
Louisiana:	
Allen	27
Avoyelles	45
Beauregard	19
Bienville	19
Caldwell	17
Cameron	6
Catahoula	16
Claiborne	22
Concordia	31
De Soto	25
East Carroll	30
East Feliciana	39
Evangeline	48
Franklin	37
Grant	20
Iberville	49
Jackson	27
Jefferson Davis	45
La Salle	21
Madison	23
Morehouse	40
Natchitoches	27
Plaquenines	24
Pointe Coupee	39
Red River	23
Richland	38
Sabine	21
St. Helena	24
St. Martin	44
Tensas	16
Union	21
Vermilion	36
Vernon	40
West Carroll	37
West Feliciana	28
Winn	17
Maine:	
Aroostook	14
Franklin	13
Hancock	23
Lincoln	45
Oxford	21
Penobscot	37
Piscataquis	4
Somerset	10
Waldo	32
Washington	12
Maryland:	
Garrett	33
Queen Annes	49
Michigan:	
Alcona	10
Alger	9
Antrim	26
Arenac	30
Baraga	9
Benzie	27
Charlevoix	40
Cheboygan	23

[1] County density (persons per square mile) excluding cities of 50,000 or more.

State/County	Population[1]
Michigan: Con.	
Chippewa	20
Clare	29
Crawford	12
Delta	31
Dickinson	31
Emmet	40
Gladwin	27
Gogebic	19
Houghton	34
Huron	42
Iosco	46
Iron	12
Kalkaska	9
Keweenaw	4
Lake	10
Leelanau	32
Luce	7
Mackinac	10
Manistee	37
Marquette	35
Mason	46
Menominee	24
Missaukee	13
Montmorency	9
Newaygo	33
Oceana	34
Ogemaw	21
Ontonagon	8
Osceola	26
Oscoda	8
Otsego	20
Presque Isle	20
Roscommon	19
Sanilac	37
Schoolcraft	7
Weford	35
Minnesota:	
Aitkin	6
Becker	19
Beltrami	11
Big Stone	16
Brown	47
Carlton	33
Cass	9
Chippewa	26
Chisago	42
Clay	45
Clearwater	8
Cook	3
Cottonwood	23
Crow Wing	35
Dodge	30
Douglas	35
Faribault	29
Fillmore	26
Goodhue	46
Grant	14
Houston	31
Hubbard	11
Isanti	38
Itasca	13
Jackson	21
Kanabec	19
Kandiyohi	39
Kittson	6
Koochiching	5
Lac Qui Parle	15
Lake	6
Lake of the Woods	3
Le Sueur	48
Lincoln	15
Lyon	34
Mahnomen	10
Marshall	7
Martin	35
Meeker	30
Mille Lacs	28
Morrison	24
Murray	18
Nobles	33
Norman	11
Otter Tail	23
Minnesota—Con.	
Pennington	21
Pine	12
Pipestone	28
Polk	17
Pope	17
Red Lake	12
Redwood	23
Renville	22
Rock	23
Roseau	7
St. Louis	36
Sherburne	43
Sibley	27
Stevens	20
Swift	18
Todd	23
Traverse	11
Wabasha	33
Wadena	23
Waseca	40
Watonwan	31
Wilkin	12
Yellow Medicine	19
Mississippi:	
Amite	19
Attala	27
Benton	18
Calhoun	25
Carroll	15
Chickasaw	33
Choctaw	20
Claiborne	21
Clarke	22
Clay	46
Copiah	32
Covington	34
Franklin	14
George	26
Greene	12
Grenada	46
Hancock	36
Holmes	30
Humphreys	35
Issaquena	7
Itawamba	31
Jasper	23
Jefferson	18
Jefferson Davis	31
Kemper	14
Lafayette	36
Lamar	30
Lawrence	26
Leake	29
Lincoln	45
Madison	41
Marion	42
Marshall	34
Monroe	44
Montgomery	32
Neshoba	37
Newton	33
Noxubee	21
Panola	39
Pearl River	34
Perry	14
Pontotoc	35
Prentiss	48
Quitman	39
Scott	35
Sharkey	20
Simpson	34
Smith	21
Stone	18
Tallahatchie	30
Tate	46
Tippah	34
Tishomingo	34
Tunica	26
Union	45
Walthall	31
Wayne	20
Webster	24
Wilkinson	16
Mississippi—Con.	
Winston	30
Yalobusha	24
Yazoo	29
Missouri:	
Adair	39
Andrew	27
Atchison	17
Audrain	37
Barry	25
Barton	18
Bates	18
Benton	13
Bollinger	14
Butler	47
Caldwell	19
Callaway	31
Camden	21
Carroll	18
Carter	8
Cedar	19
Chariton	15
Christian	27
Clark	16
Clinton	30
Cooper	26
Crawford	20
Dade	14
Dallas	19
Daviess	15
Dekalb	17
Dent	15
Douglas	11
Gasconade	23
Gentry	17
Grundy	27
Harrison	14
Henry	25
Hickory	12
Holt	15
Howard	22
Howell	26
Iron	17
Johnson	41
Knox	11
Laclede	26
Lafayette	42
Lawrence	40
Lewis	22
Lincoln	29
Linn	24
Livingston	29
McDonald	23
Macon	19
Madison	17
Maries	13
Mercer	11
Miller	25
Mississippi	40
Moniteau	26
Monroe	14
Montgomery	21
Morgan	17
New Madrid	34
Nodaway	26
Oregon	12
Osage	18
Ozark	9
Perry	31
Phelps	44
Pike	25
Polk	24
Putnam	11
Ralls	16
Randolph	47
Ray	31
Reynolds	7
Ripley	15
St. Clair	11
Ste. Genevieve	26
Saline	33
Schuyler	15
Scotland	12
Shannon	7
Shelby	16
Missouri—Con.	
Stoddard	31
Stone	22
Sullivan	12
Taney	21
Texas	15
Vernon	23
Warren	23
Washington	20
Wayne	11
Webster	26
Worth	13
Wright	20
Montana:	
Beaverhead	1
Big Horn	2
Blaine	2
Broadwater	2
Carbon	3
Carter	1
Cascade	8
Chouteau	2
Custer	3
Daniels	2
Dawson	5
Deer Lodge	21
Fallon	2
Fergus	3
Flathead	8
Gallatin	13
Garfield	0
Glacier	4
Golden Valley	1
Granite	2
Hill	6
Jefferson	3
Judith Basin	1
Lake	10
Lewis and Clark	10
Liberty	2
Lincoln	5
McCone	1
Madison	1
Meagher	1
Mineral	2
Missoula	22
Musselshell	2
Park	4
Petroleum	0
Philips	1
Pondera	4
Powder River	1
Powell	3
Prairie	1
Ravalli	6
Richland	5
Roosevelt	4
Rosebud	1
Sanders	3
Sheridan	3
Stillwater	3
Sweet Grass	2
Teton	3
Toole	3
Treasure	1
Valley	2
Wheatland	2
Wibaux	2
Yellowstone	10
Nebraska:	
Antelope	11
Arthur	1
Banner	1
Blaine	1
Boone	12
Box Butte	9
Boyd	7
Brown	3
Buffalo	33
Burt	19
Butler	16
Cass	33
Nebraska—Con.	
Cedar	16
Chase	5
Cherry	1
Cheyenne	9
Clay	15
Colfax	23
Cuming	21
Custer	6
Dawes	7
Dawson	20
Deuel	6
Dixon	16
Dundy	3
Fillmore	14
Franklin	8
Frontier	4
Furnas	10
Gage	30
Garden	2
Garfield	4
Gosper	5
Grant	1
Greeley	7
Hamilton	17
Harlan	8
Hayes	2
Hitchcock	6
Holt	5
Hooker	1
Howard	12
Jefferson	18
Johnson	15
Kearney	13
Keith	8
Keya Paha	2
Kimball	6
Knox	11
Lancaster	23
Lincoln	12
Logan	2
Loup	1
McPherson	1
Madison	48
Merrick	18
Morrill	4
Nance	12
Nemaha	22
Nuckolls	13
Otoe	25
Pawnee	10
Perkins	4
Phelps	18
Pierce	15
Platte	40
Polk	15
Red Willow	18
Richardson	22
Rock	2
Saline	22
Saunders	22
Seward	25
Sheridan	3
Sherman	8
Sioux	1
Stanton	13
Thayer	13
Thomas	1
Thurston	18
Valley	10
Washington	34
Wayne	23
Webster	9
Wheeler	2
York	24
Nevada:	
Churchill	2
Clark	19
Douglas	10
Elko	1
Esmeralda	0
Eureka	0
Humboldt	1
Lander	0
Lincoln	0
Nevada—Con.	
Lyon	4
Mineral	2
Nye	0
Pershing	0
Storey	3
Washoe	8
White Pine	1
New Hampshire:	
Carroll	20
Coos	19
Grafton	32
New Mexico:	
Catron	0
Chaves	7
Colfax	3
Curry	28
De Baca	1
Dona Ana	18
Eddy	10
Grant	6
Guadalupe	2
Harding	1
Hidalgo	1
Lea	11
Lincoln	2
Luna	4
McKinley	8
Mora	2
Otero	6
Quay	4
Rio Arriba	4
Roosevelt	7
Sandoval	5
San Juan	10
San Miguel	5
Santa Fe	29
Sierra	2
Socorro	1
Taos	8
Torrance	2
Union	1
Valencia	7
New York:	
Allegany	44
Delaware	31
Essex	19
Franklin	26
Hamilton	3
Herkimer	47
Lewis	18
St. Lawrence	41
Schoharie	40
North Carolina:	
Alleghany	36
Anson	46
Beaufort	44
Bertie	29
Bladen	30
Brunswick	28
Camden	23
Caswell	45
Chatham	42
Cherokee	36
Clay	25
Currituck	28
Dare	18
Duplin	47
Gates	25
Graham	22
Greene	26
Hoke	42
Hyde	9
Jackson	44
Jones	21
Macon	31
Madison	36
Montgomery	39
Northampton	45
Pamlico	28
Pender	21
Perquimans	34

State/County	Population [1]
North Carolina—Con.	
Polk	49
Sampson	48
Swain	17
Tyrell	10
Warren	37
Washington	41
Yancey	40
North Dakota:	
Adams	4
Barnes	10
Benson	6
Billings	1
Bottineau	6
Bowman	3
Burke	4
Burleigh	25
Cass	12
Cavalier	5
Dickey	6
Divide	4
Dunn	2
Eddy	6
Emmons	5
Foster	7
Golden Valley	3
Grand Forks	42
Grant	3
Griggs	6
Hettinger	4
Kidder	3
Lamoure	6
Logan	4
McHenry	5
McIntosh	6
Williams	9
Ohio:	
Adams	32
Harrison	42
Hocking	48
Meigs	45
Monroe	35
Morgan	29
Noble	26
Paulding	46
Pike	43
Vinton	23
Oklahoma:	
Adair	27
Alfalfa	8
Atoka	11
Beaver	4
Beckham	17
Blaine	13
Bryan	29
Caddo	23
Canadian	36
Carter	45
Cherokee	31
Choctaw	19
Cimarron	2
Coal	11
Comanche	32
Cotton	10
Craig	19
Creek	49
Custer	23
Delaware	25
Dewey	6
Ellis	4
Garvin	31
Grady	27
Grant	7
Greer	13
Harman	9
Harper	5
Haskell	16
Hughes	16
Jackson	38
Jafferson	9
Johnston	12
Kingfisher	14
Kiowa	12
Latimer	12
Le Flore	21
Lincoln	20
Logan	26
Coal	11
Comanche	32
Cotton	10
Craig	19
Creek	49
Custer	23
Delaware	25
Dewey	6
Ellis	4
Garvin	31
Grady	27
Grant	7
Greer	13
Harman	9
Harper	5
Haskell	16
Hughes	16
Jackson	38
Jefferson	9
Johnston	12
Kingfisher	14
Kiowa	12
Latimer	12
Le Flore	21
Lincoln	20
Logan	26
Love	11
McClain	25
McCurtain	16
McIntosh	21
Major	8
Marshall	21
Maves	36
Murray	25
Noble	14
Nowata	18
Okfuskee	17
Osage	13
Pawnee	20
Pittsburg	30
Pontotoc	39
Pushmataha	7
Roger Mills	4
Rogers	41
Seminole	40
Sequoyah	34
Stephens	40
Texas	8
Tillman	14
Wagoner	39
Washita	12
Woods	9
Woodward	12
Oregon:	
Baker	5
Clatsop	35
Columbia	45
Coos	35
Crook	3
Curry	8
Deschutes	10
Douglas	14
Gilliam	2
Grant	2
Harney	1
Hood River	25
Jackson	34
Jefferson	5
Josephine	22
Klamath	8
Lake	1
Lane	30
Lincoln	26
Linn	31
Malheur	2
Morrow	2
Polk	48
Sherman	3
Tillamook	16
Umatilla	14
Union	10
Wallowa	2
Warsco	8
Wheeler	1
Pennsylvania:	
Bedford	42
Cameron	18
Clinton	42
Elk	47
Forest	12
Huntingdon	44
Juniata	43
Pike	22
Potter	15
Sullivan	12
Susquehanna	41
Tioga	35
Wayne	40
Wyoming	48
South Carolina:	
Abbeville	42
Allendale	23
Bamberg	40
Barnwell	31
Calhoun	30
Chesterfield	43
Clarendon	43
Colleton	26
Edgefield	33
Fairfield	29
Georgetown	41
Hampton	28
Jasper	18
Kershaw	44
Lee	45
McCormick	22
Newberry	46
Saluda	32
Willamsburg	37
South Dakota:	
Aurora	6
Beadle	3
Bennett	15
Brookings	28
Brown	22
Brule	7
Buffalo	4
Butte	3
Campbell	4
Charles Mix	9
Clark	6
Clay	32
Codington	28
Corson	2
Custer	3
Davison	40
Day	8
Deuel	9
Dewey	2
Douglas	11
Edmunds	5
Fall River	4
Faulk	4
Grant	13
Gregory	7
Haakon	2
Hamlin	11
Hand	4
Hanson	9
Harding	1
Hughes	16
Hutchinson	13
Hyde	3
Jackson	2
Jerauld	6
Jones	2
Kingsbury	9
Lake	20
Lawrence	22
Lincoln	20
Lyman	2
McCook	13
McPherson	4
Marshall	7
Meade	5
Mellette	2
Miner	8
Minnehaha	29
Moody	15
Pennington	21
Perkins	2
Potter	5
Roberts	11
Sanborn	6
Shannon	4
Spink	7
Stanley	2
Sully	2
Todd	5
Tripp	5
Turner	16
Union	21
Walworth	11
Washabaugh	1
Yankton	37
Ziebach	1
Tennessee:	
Benton	31
Bledsoe	19
Cannon	31
Carroll	43
Cheatham	43
Chester	35
Claiborne	44
Clay	28
Cumberland	31
Decatur	28
Dekalb	40
Dickson	45
Fayette	32
Fentress	25
Franklin	49
Giles	36
Grainger	49
Grundy	30
Hancock	29
Hardeman	34
Hardin	31
Haywood	38
Henderson	34
Henry	42
Hickman	20
Houston	29
Humphreys	26
Jackson	25
Johnson	39
Lake	48
Lauderdale	42
Lawrence	46
Lewis	24
Lincoln	42
McNairy	32
Macon	41
Marion	41
Marshall	46
Meigs	27
Monroe	36
Moore	29
Morgan	25
Overton	34
Perry	13
Pickett	24
Polk	27
Scott	27
Sequatchie	23
Sevier	47
Smith	39
Stewart	16
Trousdale	45
Union	43
Van Buren	15
Wayne	17
White	43
Texas:	
Anderson	26
Andrews	7
Aransas	32
Archer	6
Armstrong	2
Atascosa	16
Austin	21
Bailey	10
Bandera	6
Bastrop	19
Baylor	6
Bee	27
Blanco	5
Borden	1
Bosque	11
Brewster	1
Briscoe	3
Brooks	9
Brown	28
Burleson	15
Burnet	11
Caldwell	39
Calhoun	34
Callahan	10
Camp	42
Carson	7
Cass	26
Castro	12
Chambers	20
Cherokee	31
Childress	9
Clay	7
Cochran	7
Coke	3
Coleman	8
Collingsworth	5
Colorado	19
Comal	43
Comanche	13
Concho	3
Cocke	26
Coryell	34
Cottle	4
Crane	5
Crockett	1
Crosby	10
Culberson	1
Dallam	4
Dawson	18
Deaf Smith	13
Delta	18
De Witt	21
Dickens	4
Dimmit	7
Donley	4
Duval	6
Eastland	19
Ector	15
Edwards	1
El Paso	39
Erath	17
Falls	23
Fannin	25
Fayette	19
Fisher	7
Floyd	11
Foard	3
Franklin	18
Freestone	13
Frio	10
Gaines	8
Garza	6
Gillespie	10
Glasscock	1
Gonzales	16
Gray	29
Grimes	15
Guadalupe	47
Hale	35
Hall	7
Hamilton	9
Hansford	7
Hardeman	10
Hardin	33
Hartley	2
Haskell	10
Hays	43
Hamphill	3
Henderson	28
Hill	22
Hockley	22
Hood	15
Hopkins	26
Houston	14
Howard	41
Hudspeth	1
Hutchinson	28
Irion	1
Jack	7
Jackson	15
Jasper	27
Jeff Davis	1
Jim Hogg	4
Jim Wells	39
Jones	17
Karnes	18
Kaufman	40
Kendall	10
Kenedy	0
Kent	2
Kerr	18
Kimble	3
King	0
Kinney	1
Kleberg	39
Knox	7
Lamar	40
Lamb	17
Lampasas	13
La Salle	3
Lavaca	18
Lee	13
Leon	8
Liberty	28
Limestone	19
Lipscomp	4
Live Oak	6
Llano	7
Loving	0
Lubbock	37
Lynn	10
McCulloch	8
McMullen	1
Madison	16
Marion	22
Martin	5
Mason	4
Matagorda	24
Maverick	14
Medina	15
Menard	3
Midland	6
Milam	19
Mills	6
Mitchell	10
Montague	16
Montgomery	45
Moore	15
Morris	47
Motley	2
Nacogdoches	40
Navarro	29
Newton	12
Nolan	18
Nueces	44
Ochiltree	11
Oldham	2
Palo Pinto	31
Panola	18
Parker	38
Parmer	12
Pecos	3
Polk	13
Potter	50
Presidio	1
Rains	18
Randall	50
Reagan	3
Real	3
Red River	14
Reeves	6
Refugio	12
Roberts	1
Robertson	16
Rockwall	48
Runnels	11
Rusk	36

State/County	Population [1]
Texas—Con.	
Sabine	16
San Augustine	17
San Jacinto	11
San Saba	5
Schleicher	2
Scurry	17
Shackelford	4
Shelby	25
Sherman	4
Smith	43
Somervell	14
Starr	15
Stephens	9
Sterling	1
Stonewall	3
Sutton	2
Swisher	12
Taylor	10
Terrell	1
Terry	16
Throckmorton	2
Titus	40
Tom Green	5
Travis	46
Trinity	11
Tyler	14
Upshur	36
Upton	4
Uvalde	11
Val Verde	8
Van Zandt	26
Walker	35
Waller	28
Ward	16
Washington	32
Webb	1
Wharton	34
Wheeler	7
Wichita	43
Wilbarger	16
Willacy	26
Williamson	34
Wilson	16
Winkler	11
Wise	21
Wood	26
Yoakum	9
Young	17
Zapata	5
Zavala	9
Utah:	
Beaver	1
Box Elder	5
Cache	36
Carbon	11
Daggett	1
Duchesne	2
Emery	1
Garfield	1
Grand	2
Iron	4
Juab	1
Kane	1
Millard	1
Morgan	7
Piute	2
Rich	2
San Juan	1
Sanpete	7
Sevier	5
Summit	3
Tooele	3
Unitah	3
Utah	42
Wasatch	5
Washington	6
Wayne	1
Vermont:	
Addison	31
Bennington	44
Caledonia	37
Essex	8
Franklin	47
Grand Isle	43
Lamoille	28
Orange	26
Orleans	28
Windham	43
Windsor	46
Virginia:	
Alleghany	28
Amelia	21
Appomattox	28
Augusta	45
Bath	10
Bedford	37
Bland	15
Botetourt	33
Brunswick	28
Buckingham	18
Caroline	26
Carroll	47
Charles City	34
Charlotte	26
Clarke	47
Craig	10
Culpeper	47
Cumberland	21
Dickenson	48
Dinwiddie	49
Essex	28
Fauquier	40
Floyd	26
Fluvanna	26
Franklin	39
Giles	46
Goochland	35
Grayson	34
Greene	34
Greensville	32
Halifax	38
Highland	6
King and Queen	17
King George	46
King William	27
Lee	46
Louisa	27
Lunenburg	26
Madison	26
Mecklenburg	48
Middlesex	48
Nelson	25
New Kent	25
Northumberland	49
Nottoway	46
Orange	39
Patrick	33
Powhatan	29
Prince Edward	40
Rappahannock	19
Richmond	34
Rockbridge	28
Scott	45
Shenandoah	45
Southampton	31
Spotsylvania	40
Surry	21
Sussex	23
Wythe	48
Washington:	
Adams	6
Asotin	22
Benton	39
Chelan	14
Clallam	20
Columbia	5
Douglas	9
Ferry	2
Franklin	21
Garfield	4
Grant	16
Grays Harbor	31
Jefferson	6
Kittitas	11
Klickitat	6
Lewis	19
Lincoln	4
Mason	22
Okanogan	5
Pacific	17
Pend Oreille	4
San Juan	22
Skagit	30
Skamania	3
Stevens	7
Wahkiakum	14
Walla Walla	33
Whatcom	39
Whitman	18
Yakima	34
West Virginia:	
Barbour	41
Braxton	25
Calhoun	25
Clay	27
Doddridge	20
Gilmer	23
Grant	18
Greenbrier	31
Hampshire	18
Hardy	15
Jackson	45
Lewis	46
Lincoln	43
Monroe	24
Morgan	37
Nicholas	35
Pendelton	10
Pocahontas	9
Preston	39
Randolph	24
Ritchie	22
Roane	29
Summers	38
Tucker	18
Tyler	39
Webster	18
Wirt	18
Wisconsin:	
Adams	14
Ashland	16
Barron	39
Bayfield	8
Buffalo	19
Burnett	11
Chippewa	47
Clark	25
Crawford	27
Door	41
Douglas	34
Dunn	34
Florence	7
Forest	8
Grant	42
Green	46
Green Lake	48
Iowa	25
Iron	9
Jackson	5
Juneau	24
Lafayette	22
Langlade	22
Lincoln	26
Marinette	26
Marquette	19
Menominee	7
Monroe	35
Oconto	26
Oneida	22
Pepin	31
Pierce	45
Polk	29
Pierce	12
Richland	29
Rock	16
St. Croix	47
Sauk	46
Sawyer	8
Shawano	36
Taylor	17
Trempealeau	32
Vernon	31
Vilas	13
Washburn	13
Waushara	24
Wyoming:	
Albany	6
Big Horn	3
Campbell	3
Carbon	2
Converse	1
Crook	2
Fremont	3
Goshen	5
Hot Springs	2
Johnson	1
Laramie	21
Lincoln	2
Natrona	10
Niobrara	1
Park	3
Platte	3
Sheridan	7
Sublette	1
Sweetwater	2
Teton	1
Uinta	3
Washakie	3
Weston	3

[FR Doc.74-10437 Filed 5-6-74;8:45 am]

[41 CFR Part 15-1]

OPTIONS

Proposed Policy and Procedure

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to the Federal Property and Administrative Services Act of 1969, as amended, the Administrator is considering an amendment to 41 CFR Chapter 15, by adding a new Subpart 15-1.57, Options. The Subpart will establish EPA policy and procedures applicable to options.

Any person who wishes to submit written data, views, or objections pertaining to the proposed amendment may do so by filing them in duplicate with the Director, Contracts Management Division, Room 413, Waterside Mall, West, 401 M Street, SW., Washington, D.C. 20460 on or before June 6, 1974. All comments submitted pursuant to this notice will be available for public inspection during regular business hours in the office of the Director, Contracts Management Division.

Dated: May 1, 1974.

JOHN QUARLES,
Acting Administrator.

Subpart 15-1.57—Options

Sec.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 15-1.57—Options

§ 15-1.5700 Scope of subpart.

This subpart applies to contracts for supplies and services other than for

(a) The construction, alterations, or repair of buildings, bridges, roads, or other kinds of real property.

(b) Research and development, or

(c) Contracts to be awarded on a cost reimbursement basis. However, it does not preclude the use of appropriate option provisions in such contracts. Where options are used in cost reimbursement contracts examples of suggested language are included in § 15-1.5706.

§ 15-1.5701 Definition of options.

As used in this subpart, an option is a provision in a contract under which, for a specified time, the Government may elect to purchase, at an established price or at a price that can be established by reference to some specific method of calculation which will make the price certain, additional quantities of the supplies or services called for by the contract, or may elect to extend the period of performance of the contract.

§ 15-1.5702 Applicability.

(a) Option clauses may be included in contracts where increased requirements within the period of contract performance are foreseeable, or where continuing performance beyond the original period of contract performance may be in the best interest of the Government. Since options require offerors to guarantee prices for definite periods of time with no guarantee that orders will be placed, their improper use could result in prices which are unfair to either the Government or the contractor. Option clauses may require that option quantities be offered at prices no higher than those for the initial quantities or they may allow option quantities to be offered without such limitation as to price. When additional requirements are foreseeable and subsequent competition would be impracticable because of such factors as production lead time and delivery requirements, the use of options which require prices no higher than those for the initial quantities may be preferable to later negotiating a price with the con-

tractor (in lieu of exercising such an option) at a time when he is the only practical source. An option normally should not be used where it can reasonably be foreseen that (1) supplies will have to be procured at some future date in such a quantity that would constitute an economic production run, and (2) startup costs, production lead time, and probable delivery requirements would not preclude adequate future competition.

(b) Option provisions and clauses shall not be included in contracts when—

(1) The supplies or services being purchased are readily available on the open market, except that in the case of services, option clauses may be included for foreseeable requirements if the use of such option is considered to be in the best interest of the Government;

(2) The contractor would be required to incur undue risks: e.g., the price or availability of necessary materials or labor is not reasonably foreseeable;

(3) An indefinite quantity contract or requirements contract is appropriate except that options for continuing performance may be used in such contracts;

(4) Market prices for the supplies or services involved are likely to change substantially; or

(5) The option quantities represent known firm requirements for which procurement funds are available unless (i) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance and (ii) realistic competition for the option quantity is impracticable once the initial contract is awarded.

(c) When options are to be evaluated pursuant to § 15–1.5703(d), the total of the basic and option periods shall not exceed five years in the case of services, and the total of the basic and option quantities shall not exceed the requirements for five years in the case of supplies. This five year limitation shall not apply to Automatic Data Processing Equipment acquisitions; however, the basic option periods shall not exceed the approved systems life as defined in the Federal Property Management Regulations.

§ 15–1.5703 Procedures.

(a) When a contract is to contain an option clause, the solicitation must contain an appropriate option provision. If the contract is to be negotiated, the determination and findings shall set forth the approximate quantity to be awarded and the extent of the increase to be permitted by the option. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of the period for which performance of the contract may be extended, under the option and will fix the period within which the option may be exercised. This period shall be set so as to afford the contractor adequate notice of the requirement for performance under the option but with respect to service contracts the period for providing adequate notice may extend beyond the contract completion date when exercise of the option would obligate funds not available in the fiscal year in which the contract would otherwise be completed. In fixing the period within which the option may be exercised consideration shall be given to (1) necessary lead time in order to assure continuous production and (2) the time required for additional funding and other necessary approval action. The period specified for exercising the option shall in all cases be kept to a minimum. When a solicitation contains an option which requires the offering of additional quantities of supplies at unit prices no higher than those for initial quantities, it shall provide that the option quantities shall not exceed 50% of the initial quantity. When unusual circumstances exist, however, the Chief, Contracts Operations Office or his designee may approve a greater percentage or quantity. The quantities and the period under option and the period during which the option may be exercised shall be justified and documented by the contracting officer in the contract file.

(b) Except as provided in (c) and (d) below, solicitations containing option provisions shall state that evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity.

(c) When it is anticipated that the Government may exercise the option at time of award, the solicitation shall include an Evaluation of Options provision substantially as follows:

EVALUATION OF OPTIONS

If the Government elects to exercise an option simultaneously with award, bids or proposals will be evaluated for purposes of award on the basis of the total price for the basic quantity and the option quantity exercised with award.

(d) In firm fixed price contracts, the option quantity may be considered in the evaluation for award if, before issuance of the solicitation, it has been determined at a level higher than the contracting officer that:

(1) There is a known requirement which exceeds the basic quantity to be awarded, but either (i) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, or (ii) due to the unavailability of funds, the option cannot be exercised at the time of award of the basic quantity provided that in this latter case there is reasonable certainty that funds will be available thereafter to permit exercise of the option; and

(2) Realistic competition for the option quantity is impracticable once the initial contract is awarded and hence it is in the best interests of the Government to evaluate options in order to eliminate the possibility of a buy-in. This determination shall be based on factors such as, but not limited to, substantial start-up or phase-in costs, superior technical ability resulting from performance of the initial contract, and long preproduction lead time for a new producer. In such cases, the solicitation shall contain an Evaluation of Options provision substantially as follows:

EVALUATION OF OPTIONS

(i) Bids and proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity. Evaluation of options will not obligate the Government to exercise the option or options.

(ii) Any bid or proposal which is materially unbalanced as to prices for basic and option quantities may be rejected as nonresponsive. An unbalanced bid or proposal is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(e) Solicitations which allow the offer of option quantities at unit prices which differ from the unit prices for the basic contract quantities shall also state that varying prices may be offered for the option quantities depending on the quantities actually ordered and the date or dates when ordered. However, if the solicitation contains an Evaluation of Options provision pursuant to paragraph (c) and (d) of this section, it shall also specify the price at which the options will be evaluated (e.g., highest option price offered or option price for specified quantities or dates).

(f) Where exercise of the option would result in increased quantities of supplies, the option may be expressed in terms of (1) percentage of specific contract line items, (2) a number of additional units of specific contract line items, or (3) additional numbered line items identified as the option quantity with the same nomenclature as line items initially included in the contract. Where exercise of the option would result in an increase in the performance of services by the contractor, the option may similarly be expressed in terms of percentages, increase in specific line items, or additional numbered line items, expressed in terms of the units of work initially used in the contract such as man hours, man years, square feet, pounds or tons handled. Where exercise of the option would result in an extension of duration of the contract, the option may be expressed in terms of an extended terminal date or of an additional time period, such as days, weeks, or months.

§ 15–1.5704 Exercise of options.

(a) The exercise of an option by the Government requires the contracting officer's written notification to the contractor within the time period specified in the contract.

(b) Where the contract provides for price escalation and the contractor requests revision of price pursuant to such provisions, or the provision applies only to the option quantity, the effect of escalation on prices under the option must be ascertained before the option is exercised.

(c) Options should be exercised only if it is determined that—

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing need of the Government; and

(3) The exercise of the option is most advantageous to the Government, price and other factors considered.

(d) Insofar as price is concerned, the determination under (c)(3) above shall be made on the basis of one of the following:

(1) A new solicitation fails to produce a better price than that offered by the option. When the contracting officer anticipates that the option price will be the best price available, he should not use this method of testing the market but should use one of the methods in paragraph (a) (2), (3), or (4) of this section.

(2) An informal investigation of prices, or other examination of the market indicates clearly that a better price than that offered by the option cannot be obtained.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable, considering such factors as market stability and a comparison of the time since award with the usual duration of contracts for such supplies and services.

(4) Established prices are readily ascertainable and clearly indicate that formal advertising or informal solicitation can obviously serve no useful purpose.

(e) Insofar as the "other factors" mentioned in paragraph (c)(3) of this section are concerned, the determination should, among other things, take into account the Government's need for continuity of operations and potential costs to the Government of disrupting operations, including the cost of relocating necessary Government furnished equipment (as, for example, in certain repair and overhaul contracts for complex equipment).

(f) When it has been determined that an option may properly be exercised in accordance with the principles set forth herein, such determination shall be set forth in writing and made a part of the contract file. Written notification to the contractor of the exercise of the option and any contract modification resulting therefrom shall cite the option article contained in the original contract as authority for the procurement of the option quantity; and no citation under 41 U.S.C. 252(c) is required.

§ 15–1.5705 Examples of option articles.

(a) An article in the contract schedule substantially as follows may be used where the contract expresses the option quantity as a percentage of the basic contract quantity or as an additional quantity of a specific line item.

OPTION FOR INCREASED QUANTITY

The Government may increase the quantity of supplies called for herein by the amount stated in the Schedule and at the unit price specified therein. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract unless the parties otherwise agree and the contract is modified accordingly.

(b) A schedule article substantially as follows may be used where the contract identifies the option quantity as a separately priced line item having the same nomenclature as a corresponding basic contract line item.

OPTION OF INCREASED QUANTITY-LINE ITEM

The Government may increase the quantity of supplies called for herein by requiring the delivery of the numbered line item identified in the Schedule as an option item, in the quantity and at the price set forth therein. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract unless the parties otherwise agree and the contract is modified accordingly.

(c) An article substantially as follows may be used where it is intended to extend the services described in the Schedule.

OPTIONS TO EXTEND SERVICES

The Government may require the Contractor to continue to perform any or all items of services under this contract within the limits stated in the Schedule. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. The rates set forth in the Schedule shall apply to any extension made pursuant to this option provision.

(d) An article substantially as follows may be used to provide for continuing performance of the contract beyond its original term.

OPTION TO EXTEND THE TERM OF THE CONTRACT

This contract is renewable, at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor within the period specified in the Schedule; provided, that, the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least sixty (60) days before this contract is to expire. (Such a preliminary notice will not be deemed to commit the Government to renewals.) If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed—years.

§ 15–1.5706 Examples of option articles for cost reimbursement contracts.

(a) The following may be used as the article which defines an option, when the contract is a Cost Only Term Form, not involving the use of task orders. The article may be used, with appropriate modification, when the contract involves payment of fee.

ARTICLE—OPTION TO RENEW CONTRACT

1. At the option of the Government, this contract is renewable, by the Contracting Officer giving written notice of renewal to the Contractor prior to the expiration date of this contract; provided, that the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least sixty (60) days before this contract is to expire. (Such a preliminary notice will not be deemed to commit the Government to renewals.)

2. The Contractor shall continue the effort described in ARTICLE I—SCOPE OF WORK, during the ( ) month period immediately following that set forth in ARTICLE _____-PERIOD OF PERFORMANCE. The parties hereto agree that upon issuance of the order exercising this option, the following modifications will be made to the contract schedule, in effect as of the date that such issuance is made:

(i) The period of performance specified in ARTICLE _____-PERIOD OF PERFORMANCE will be increased by _____ months.

(ii) The estimated cost specified in ARTICLE _____-ESTIMATED COST will be increased by $_____.

(b) The following may be used as the article which defines an option, where the contract is a CPFF Completion Form which contains a separated scope of work for the optional effort.

ARTICLE—OPTION FOR INCREASED SCOPE OF WORK

1. At the option of the Government, the Scope of Work of this contract may be increased to include the work set forth in Exhibit B, attached hereto and hereby made a part hereof. This option shall be exercised by the issuance of an order by the Contracting Officer citing the authority of this article. This option shall be valid for a period of _____ months from the effective date of this contract.

2. The parties hereto agree that upon issuance of the order exercising this option, the following modifications will be made to the contract schedule in effect as of the date such issuance is made:

(i) ARTICLE I—SCOPE OF WORK will be modified to incorporate Exhibit B, attached hereto, into this contract.

(ii) The period of performance specified ANCE will be increased by _____ months.

(iii) The Estimated Cost, Fixed Fee, and Total Cost Plus Fixed Fee specified in ARTICLE _____ will be increased by $_____, $_____, $_____ and $_____ respectively.

(c) The following may be used as the article which defines an option, when the contract is a Cost Plus Fixed Fee (CPFF) Term Form involving the issuance of task orders.

ARTICLE—OPTION TO EXTEND THE TERM OF THE CONTRACT

1. At the option of the Government, this contract may be extended by the Contracting Officer giving written notice of extension to the Contractor prior to the expiration date of this contract; provided, that the Contracting Officer shall have given preliminary notice of the Government's intention to extend at least sixty (60) days before this contract is to expire. (Such a preliminary notice will not be deemed to commit the Government to renewals.)

2. The Contractor shall provide approximately _____ manhours of additional direct labor in pursuit of the effort described in ARTICLE I—SCOPE OF WORK, during the ( ) month period immediately following that set forth in ARTICLE _____-PERIOD OF PERFORMANCE. The parties hereto agree that upon issuance of the order exercising this option, the following modifications will be made to the contract schedule, in effect as of the date that such issuance is made:

(i) The period of performance specified in ARTICLE _____=PERIOD OF PERFORMANCE, will be increased by ( ) months.

(ii) ARTICLE _____=LEVEL OF EFFORT, will be increased from "approximately _____ manhours" to "approximately _____ manhours" and the last sentence of Paragraph A will be changed to read "not less than _____ nor more than _____ manhours."

(iii) The Estimated Cost, Fixed Fee, and Total Cost Plus Fixed Fee specified in ARTICLE _____ will be increased by $_____, $_____, and $_____ respectively.

(d) The period of performance for the option shown in Paragraph 2 of the suggested articles may be adjusted to conform to the requirement. Additional optional periods may be included beyond the first option period provided: however, that consideration is given to the prohibitions contained in § 15-1.5702(b) and, the restrictions concerning renewal of Basic Ordering Agreements and Level of Effort Task Order Type Contracts contained in EPA Order of that title.

[FR Doc.74-10442 Filed 5-6-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

[30 CFR Part 100]

CIVIL PENALTY ASSESSMENT PROCEDURES

On April 24, 1973, the Secretary of the Interior suspended the procedures for informal assessment of civil penalties for violations of the Federal Coal Mine Health and Safety Act of 1969 contained in Part 100 of Title 30, Code of Federal Regulations, 38 FR 10085. The suspension was in response to a decision and order of the United States District Court for the District of Columbia in National Independent Coal Operators' Association, et al v. Rogers C. B. Morton, Secretary of the Interior et al., Civil Action No. 397-72 in which the District Court declared unlawful the procedures set forth in 30 CFR Part 100, and permanently enjoined the Department in continuing to utilize or enforce these procedures. The Department appealed the District Court's decision, and in the interim instituted an amended procedure whereby a petition for assessment of civil penalty was filed with the Office of Hearings and Appeals in all cases. (See 38 FR 10086) In addition, the operator received a recommended civil penalty computed by application of a formula to the six statutory criteria contained in section 109(a)(1) of the Act. Under the interim system, the operator could close the case by paying the recommended civil penalty, or he could use it as the basis of settlement discussion.

On February 11, 1974, the United States Court of Appeals for the District of Columbia Circuit reversed the decision of the District Court and upheld the validity of the Department's civil penalty procedures codified at 30 CFR Part 100. However, in the related cases of Rogers C. B. Morton v. Delta Mining, Inc., G.M.&W. Coal Corp., and Edward Mears, et al., Nos. 73-1752, 1753 and 1848, concerning enforcement of several final assessment orders entered under the authority of the now suspended Part 100, the United States Court of Appeals for the Third Circuit has taken a contrary position and has declared that the assessment procedures contained in existing Part 100 do not meet the requirements of section 109(a)(3) of the Act.

Despite these conflicting decisions, and pending resolution of the conflict, the Department now feels that it has sufficient guidance and experience to propose a new Part 100. This new Part 100 will not affect the ongoing court litigation, nor will it affect the several thousand final orders of assessment entered under the prior regulation.

Under the proposed procedures, similar to the earlier provisions, the operator will receive an order of assessment and then be given an opportunity for either a field conference or a formal administrative hearing, as he desires. However, any matters unresolved by the conference will be filed with the Office of Hearings and Appeals for adjudication by an Administrative Law Judge.

As a convenience to the public there is published following the proposed regulations an Appendix A containing samples of the order of assessment and the card given the operator to request an informal conference or formal hearing.

A new formula method of computation is proposed in place of the formula now used. The formula computation is detailed in the proposed § 100.3 Basically, the system substitutes the addition of points for the multiplying of factors to arrive at the proposed assessment. Experience gained under the multiplication formula has shown that in a borderline case a decision one way or the other may result in doubling (a factor of 2) or cutting in half (a factor of .5) of the proposed penalty in considering just one of the statutory criteria. Under the new system which is being proposed a borderline case may receive a few additional

points, but the overall total will not be subject to radical fluctuation.

In considering the operator's history of previous violations, it is proposed to introduce a new concept of rating previous history based on the average number of violations per inspection day at a mine in addition to considering the average number of violations per year for the preceding 24 months. This new evaluation will take into account mines which are inspected frequently and thus have greater likelihood of being cited for violations.

The size of the operator is reflected first in the different penalty conversion tables which apply to the different classes of mines as well as points which may be added according to the size of the company.

In considering gravity, the formula weighs separately three elements: the likelihood of the occurrence of the event against which the standard was directed; the severity of injury if injury occurred or were to occur; and the number of men affected if the event occurred or were to occur. The criteria of negligence is assigned points on a scale of 1 to 30 on the basis of the inspector's statement of the conditions concerning the violation. Similarly, the criteria of good faith is assigned points on a scale of minus 5 to plus 10 penalty points based upon the inspector's evaluation of the situation at the time of abatement. Information concerning these last three criteria will be obtained from an inspector's statement with the option of further recourse to the inspector where the information is not complete or needs refinement.

As under previous regulations, the Department will initially presume that an operator's ability to continue in business will not be affected by assessment of the civil penalty. If the operator comes forward with evidence to the contrary, the Office of Assessments will consider it and make an appropriate determination.

In applying the penalty tables, it should be noted that as the number of points progresses, the amount of the penalty rises at an accelerating rate. Thus, several points added to a low point accumulation will not produce as great an increase as the same number of points added to an already high point accumulation.

After receipt of the order of assessment, an operator may (1) pay the assessment, or (2) request a hearing before the Office of Hearings and Appeals, or (3) request an informal conference with the Office of Assessments. The informal conference will be held in the field near the location of the operator and will afford the operator an opportunity to discuss each violation and the facts available surrounding it. Those violations not resolved will be forwarded to the Office of Hearings and Appeals for formal adjudication.

Where an operator requests a hearing before the Office of Hearings and Appeals without a conference, the case will be forwarded immediately to the Office of the Solicitor for filing with the Office of Hearings and Appeals.

Where an operator requests neither of the two options, the order of assessment will be enforced as the final order of the Secretary pursuant to section 109 (a) (4) of the Act. In all instances, the operator will receive the Office of Assessment worksheet showing the formula computation.

Because this system can only be implemented where findings not heretofore recorded are readily available, the Department proposes to use the new assessment formula for violations occurring after the effective date of the new procedures. Violations which have occurred prior to the effective date would be assessed using the present civil penalty formula, and will be sent to the operator by the Office of Assessments. However, the operator will be given an opportunity to confer with the Office of Assessments, and, if feasible, to the extent that the operator can present new information the Office of Assessments will apply the new assessment formula to these violations. With respect to those cases filed with the Office of Hearings and Appeals which have not yet been heard by an Administrative Law Judge, the operator may file a request with the Office of Hearings and Appeals to be given an opportunity to confer informally with the Office of Assessments on the same basis. The operator must file this request within 30 days from the effective date of the final regulations.

Accordingly, notice is hereby given that pursuant to the authority contained in sections 109(a) and 508 of the Federal Coal Mine Health and Safety Act of 1969, P.L. 91-173, 83 Stat. 742, it is proposed to amend and revise Part 100, Title 30, Code of Federal Regulations as set forth below. Interested persons are invited to submit any views, data or comments concerning these proposed rules on or before June 21, 1974. Comments should be addressed to: Administrator, Mining Enforcement and Safety Administration, Department of the Interior, Washington, D.C. 20240. Copies of the proposed rulemaking are available at the Washington headquarters and all field offices of the Office of Assessments.

C. K. MALLORY,
Deputy Assistant Secretary of the Interior.

MAY 1, 1974.

PART 100—CIVIL PENALTIES FOR VIOLATIONS OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Sec.

AUTHORITY: Secs. 109, 508, Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, P.L. 91-173, 30 U.S.C. 801).

§ 100.1 Purpose.

The assessment of civil penalties under section 109(a) of the Federal Coal Mine Health and Safety Act of 1969 shall be made for the purpose of maintaining the health and safety of the miner and of insuring the maximum compliance effort on the part of the coal mining industry.

§ 100.2 Assessment of Civil Penalties; General.

(a) Each Notice of Violation and Order of Withdrawal issued on or after (effective date of this part) shall be reviewed by the Office of Assessments, Mining Enforcement and Safety Administration, in accordance with the assessment procedures described in this Part to determine liability of the operator or miner and the amount of penalty to be assessed.

(b) Each pending Notice of Violation and Order of Withdrawal issued prior to (effective date of this part) and not filed with the Office of Hearings and Appeals shall be reviewed by the Office of Assessments, Mining Enforcement and Safety Administration, in accordance with the civil penalty assessment procedures described in the Office of Assessments Manual, May 1973 and in 38 FR 10086, April 24, 1973 to determine liability of the operator or miner and the amount of penalty to be assessed.

(c) Each order of assessment against an operator shall be made after taking into consideration (1) the operator's history of previous violations, (2) the appropriateness of the penalty to the size of the operator's business, (3) whether the operator was negligent, (4) the effect on the operator's ability to continue in business, (5) the gravity of the violation, and (6) the demonstrated good faith of the operator in attempting to achieve rapid compliance after notification of violation.

§ 100.3 Determination of Penalty.

(a) The amount of the penalty assessed against an operator will be determined by a formula that takes into account the six criteria stated in § 100.2(c). The formula will consist of assigning penalty points against the violation being assessed. Penalty points will be determined for each of the criteria stated in § 100.2(c) and totaled. These penalty points will be converted into a dollar amount by using the applicable penalty conversion tables listed in paragraph (g) of this section. The penalty points will be assigned within each of the six criteria according to the schedules in paragraphs (b) through (f) of this section.

(b) The Appropriateness of the Penalty to the Size of the Operator's Business. The appropriateness of the penalty to the size of the operator's business is calculated on both the size of the mine cited and the size of the company. The size of the mine is taken into account by selecting the proper penalty conversion table as listed in paragraph (b)(1) of this section. The size of the company is

to be considered by using the schedule in paragraph (b)(2) of this section.

(1) *Size of Mine.*

Annual tonnage of mine	*Penalty conversion table*
Over 1,000,000	1
Over 500,000 to 1,000,000	2
Over 100,000 to 500,000	3
Over 50,000 to 100,000	4
50,000 or under	5

(2) *Size of Company.* The annual tonnage of the company to which the mine belongs will be considered in determining the appropriateness of the penalty to the size of the business of the operator, using the following schedule:

Annual tonnage of company	*Penalty points*
Over 3,000,000 tons	5
700,000 to 2,999,999	4
300,000 to 699,999	3
200,000 to 299,999	2
100,000 to 199,999	1
Under 100,000 tons	0

As used in paragraph (b)(1) and (2) of this section the term "annual tonnage" means the tonnage produced in the previous calendar year or in the case of a mine opened less than one calendar year the amount of tonnage produced converted to an annual basis.

(c) History of Previous Violations. The history of previous violations of the Act will account for a maximum of 15 penalty points towards the total amount of penalty points assessed. The penalty points for history of previous violations will be derived from the following schedules:

(1) Average number of violations assessed per year in the preceding 24 months:

Number of violations	*Penalty points*
1 to 10	0
11 to 20	1
21 to 30	2
31 to 40	3
41 to 50	4
Over 50	5

(2) Average number of violations assessed per inspection day in the preceding 24 months:

Violations per inspection day	*Penalty points*
Under 0.1	0
0.1 to 0.199	1
0.2 to 0.299	2
0.3 to 0.399	3
0.4 to 0.499	4
0.5 to 0.599	5
0.6 to 0.699	6
0.7 to 0.799	7
0.8 to 0.899	8
0.9 to 0.999	9
1 and over	10

(d) Negligence. Negligence generally means committed or omitted conduct which falls below a standard of conduct established by law to protect persons against the risks of harm. The standard of care established under the Act is that the operator of a mine owes a high degree of care to the miners employed by him. A mine operator is required to be on the alert for conditions and hazards in the mine which affect the safety or health of his employees and to take the steps necessary to correct or prevent such conditions or practices. Failure to do so is negligence on the part of the operator. This criterion will contribute a maximum of 30 penalty points to the assessment total, divided between no negligence, ordinary negligence, and gross negligence. A violation which occurs through no negligence of the operator will be assigned no penalty points for negligence. A violation which occurs through ordinary negligence of the operator will be assigned from 1 to 15 points depending on the specific facts involved. A violation which occurs through gross negligence of the operator will be assigned 16 through 30 penalty points depending on the specific facts involved. In determining the degree of negligence involved in a violation and the amount of penalty points to be assessed, the following definitions apply:

(1) "*No Negligence*" means that the operator could not reasonably have known of the violation or under the circumstances the operator had taken reasonable precautions to prevent the violation.

(2) "*Ordinary Negligence*" means the operator either failed to exercise reasonable care to prevent the violation or failed to exercise reasonable care to correct a violation he knew or should have known existed.

(3) "*Gross Negligence*" means an operator either caused the condition or practice which occasioned the violation by exercising reckless disregard of mandatory health and safety standards or he recklessly or deliberately failed to correct an unsafe condition or practice he knew or should have known existed.

(e) Gravity. This criterion will contribute a maximum of 40 penalty points to the assessment total. The points will be applied from the following schedules:

(1) Probability of the occurrence of the event against which a standard is directed may account for a maximum total of 14 penalty points using the listed definitions and schedules:

Probability of occurence	*Penalty points*
Improbable	0
Possible	1–3
Probable	4–9
Imminent	10–13
Occurred	14

As used in this paragraph the following terms have the following meanings:

Improbable -- Unlikely to happen.
Possible ----- That which may or can happen.
Probable ---- That which is likely to occur.
Imminent --- That which is likely to occur at any moment.

(2) Gravity of injury if it occurred or were to occur, using the listed definitions and the following schedule, may account for a maximum of 13 penalty points:

Gravity of injury	*Penalty points*
Slight	0
First aid	1
Nondisabling	2–3
Temporary total disabling	4–6
Permanent partial disabling	7–9
Permanent total disabling	10–12
Fatal	13

Types of injury or illness expected if the event caused or could cause injury are defined as follows:

Slight. Injury or illness would be treated in working area and no other treatment would be required;

First Aid. Injury or illness would require additional treatment after end of work shift;

Nondisabling. Injury or illness, other than disabling, which required treatment by a physician;

Temporary Total Disabling. The injury or illness causes the injured person to lose one full day of work or more after the day of the injury;

Permanent Partial Disabling. In injury or illness which results in the total or partial loss or use of any member of function of the body;

Permanent Total Disabling. An injury or illness which results in total incapacitation of the injured person for any gainful work;

Fatal. Any work related injury or illness resulting in death;

(3) Number of personnel affected if event occurred or were to occur.

Number of persons affected	*Penalty points*
0	0
1	1
2	2
3	3–4
4 to 5	5–7
6 to 9	8–9
10 to 15	10–12
More than 15	13

(f) Demonstrated Good Faith of the Operator Charged in Attempting to Achieve Rapid Compliance. This criteria awards negative points for a manifestly conscientious effort to achieve rapid compliance, and can contribute a maximum of 10 points as indicated in the following schedule and definitions:

Degree of good faith	*Penalty points*
Rapid	−1−−5
Normal	0–5
Lack of good faith	6–10

In determining the operator's good faith in attempting to achieve rapid compliance, the following definitions apply:

"*Rapid Compliance*" means there is demonstrated evidence that the operator has taken extraordinary measure to insure abatement of the violation in the shortest possible time.

"*Normal Compliance*" means the operator has abated the violation within the time given for abatement either originally or as extended.

"*Lack of Good Faith*" means the operator has been untimely and has not shown diligence and effort in attempting to abate the violation.

(g) Penalty Conversion Tables. The penalty conversion tables which take into account the size of the mine, based on annual tonnage, shall be used to convert the point accumulation total to the appropriate amount of the penalty.

Penalty conversion table No. 1

[Over 1,000,000 tons a year]

Points	Penalty	Points	Penalty	Points	Penalty	Points	Penalty
1	3	26	86	51	257	76	618
2	6	27	91	52	266	77	667
3	9	28	96	53	275	78	726
4	12	29	101	54	284	79	796
5	15	30	106	55	293	80	878
6	18	31	111	56	303	81	973
7	21	32	117	57	313	82	1,082
8	24	33	123	58	323	83	1,206
9	27	34	129	59	333	84	1,346
10	30	35	135	60	344	85	1,503
11	33	36	141	61	355	86	1,678
12	36	37	148	62	366	87	1,873
13	39	38	155	63	377	88	2,092
14	42	39	162	64	389	89	2,341
15	45	40	169	65	401	90	2,627
16	48	41	176	66	413	91	2,958
17	51	42	183	67	426	92	3,343
18	54	43	191	68	439	93	3,793
19	58	44	199	69	453	94	4,320
20	62	45	207	70	468	95	4,936
21	66	46	215	71	484	96	5,653
22	70	47	223	72	501	97	6,485
23	74	48	231	73	521	98	7,457
24	78	49	239	74	546	99	8,609
25	82	50	248	75	578	100	10,000

Penalty conversion table No. 2

[500,000 to 1,000,000 tons a year]

Points	Penalty	Points	Penalty	Points	Penalty	Points	Penalty
1	3	26	78	51	230	76	556
2	5	27	82	52	238	77	600
3	7	28	86	53	246	78	653
4	9	29	91	54	254	79	716
5	12	30	96	55	263	80	790
6	15	31	101	56	272	81	876
7	18	32	106	57	281	82	974
8	21	33	111	58	290	83	1,085
9	24	34	116	59	300	84	1,210
10	27	35	122	60	310	85	1,350
11	30	36	128	61	320	86	1,507
12	33	37	134	62	330	87	1,683
13	36	38	140	63	341	88	1,883
14	39	39	146	64	352	89	2,107
15	42	40	152	65	363	90	2,364
16	45	41	158	66	374	91	2,662
17	48	42	165	67	386	92	3,009
18	51	43	172	68	398	93	3,414
19	54	44	179	69	410	94	3,888
20	57	45	186	70	423	95	4,442
21	60	46	193	71	436	96	5,088
22	63	47	200	72	450	97	5,839
23	66	48	207	73	468	98	6,716
24	70	49	214	74	491	99	7,753
25	74	50	222	75	520	100	9,000

Penalty conversion table No. 3

[100,000 to 500,000 tons a year]

Points	Penalty	Points	Penalty	Points	Penalty	Points	Penalty
1	2	26	69	51	205	76	494
2	4	27	72	52	212	77	534
3	6	28	76	53	219	78	581
4	8	29	80	54	226	79	637
5	10	30	84	55	234	80	702
6	12	31	89	56	242	81	778
7	14	32	94	57	250	82	865
8	16	33	99	58	258	83	964
9	18	34	104	59	266	84	1,076
10	21	35	109	60	275	85	1,202
11	24	36	114	61	284	86	1,343
12	27	37	119	62	293	87	1,500
13	30	38	124	63	302	88	1,676
14	33	39	130	64	311	89	1,875
15	36	40	136	65	321	90	2,102
16	39	41	142	66	331	91	2,363
17	42	42	148	67	341	92	2,665
18	45	43	154	68	351	93	3,016
19	48	44	160	69	362	94	3,425
20	51	45	166	70	374	95	3,903
21	54	46	172	71	387	96	4,464
22	57	47	178	72	401	97	5,126
23	60	48	184	73	417	98	5,912
24	63	49	191	74	437	99	6,851
25	66	50	198	75	462	100	8,000

Penalty conversion table No. 4

[50,000 to 100,000 tons a year]

Points	Penalty	Points	Penalty	Points	Penalty	Points	Penalty
1	2	26	60	51	181	76	434
2	4	27	64	52	187	77	468
3	6	28	68	53	193	78	509
4	8	29	72	54	199	79	558
5	10	30	76	55	205	80	615
6	12	31	80	56	212	81	681
7	14	32	84	57	219	82	757
8	16	33	88	58	226	83	844
9	18	34	92	59	233	84	942
10	20	35	96	60	240	85	1,052
11	22	36	100	61	248	86	1,175
12	24	37	104	62	256	87	1,311
13	26	38	108	63	264	88	1,464
14	28	39	113	64	272	89	1,639
15	30	40	118	65	280	90	1,839
16	32	41	123	66	289	91	2,071
17	34	42	128	67	298	92	2,340
18	36	43	133	68	307	93	2,655
19	39	44	139	69	317	94	3,024
20	42	45	145	70	328	95	3,455
21	45	46	151	71	339	96	3,957
22	48	47	157	72	351	97	4,540
23	51	48	163	73	365	98	5,220
24	54	49	169	74	383	99	6,026
25	57	50	175	75	406	100	7,000

Penalty conversion table No. 5

[Less than 50,000 tons a year]

Points	Penalty	Points	Penalty	Points	Penalty	Points	Penalty
1	1	26	52	51	150	76	366
2	3	27	55	52	156	77	396
3	5	28	58	53	162	78	433
4	7	29	61	54	168	79	477
5	9	30	64	55	174	80	528
6	11	31	67	56	180	81	587
7	13	32	70	57	186	82	654
8	15	33	73	58	193	83	729
9	17	34	76	59	200	84	812
10	19	35	80	60	207	85	904
11	21	36	84	61	214	86	1,007
12	23	37	88	62	221	87	1,121
13	25	38	92	63	228	88	1,249
14	27	39	96	64	235	89	1,396
15	29	40	100	65	242	90	1,567
16	31	41	104	66	250	91	1,767
17	33	42	108	67	258	92	2,001
18	35	43	112	68	266	93	2,274
19	37	44	116	69	274	94	2,592
20	39	45	120	70	283	95	2,962
21	41	46	125	71	292	96	3,392
22	43	47	130	72	301	97	3,891
23	45	48	135	73	311	98	4,474
24	47	49	140	74	324	99	5,165
25	49	50	145	75	342	100	6,000

(h) The Effect on the Operator's Ability to Continue in Business. It is initially presumed that the operator's ability to continue in business will not be affected by the order of assessment. The operator will be informed that he has a right under the statutory criterion to a consideration of his financial condition in mitigation of the order of assessment. The operator may submit information to the Office of Assessments concerning his financial status to show that payment of the order of assessment will affect his ability to continue in business. If the information provided by the operator indicates that the order of assessment will adversely affect his ability to continue in business, the Office of Assessments may reduce the penalty.

(i) Waiver of Use of Formula to Determine Civil Penalty. The Office of Assessments may elect to waive the use of the formula contained in this § 100.3 in determining the civil penalty for a violation of the Act if it deems that conditions concerning the violation warrant. Such special assessments shall take into account the six criteria in § 100.2(c) and all findings shall be in narrative form. All provisions of this part except the formula provisions of this § 100.3 shall apply to such special assessments.

§ 100.4 Procedures for Assessment of Civil Penalties.

(a) The Office of Assessments shall, by certified mail, serve upon the operator or miner charged a copy of the order of assessment together with a copy of the Office of Assessments worksheets showing the formula computation prepared by the Assessment Officer.

(b) The operator or miner shall have 20 days from receipt of the order of assessment to either (1) pay the penalty, (2) request, in writing, a conference with the Office of Assessments to provide information relating to the violations listed in order of assessment, or (3) request, in writing, a hearing on the violations in question before the Department's Office of Hearings and Appeals pursuant to 43 CFR Part 4. If the operator or miner does not exercise his right under this subsection within 20 days of receipt of the order of assessment, the order of assessment will be enforced under section 109(a)(4) of the Act.

§ 100.5 Payment of Assessed Civil Penalty.

(a) Payment by the operator or miner of the assessed penalty will close the case.

§ 100.6 Request for Conference.

(a) The Office of Assessments shall provide a return mailing card with each order of assessment to allow the operator or miner to indicate his desire to have a conference. Upon receipt of such request, the Office of Assessments shall arrange for a timely conference convenient to both the operator or miner and the Office of Assessments.

(b) If the operator or miner requests a conference with the Office of Assessments, he may submit any material to the official assigned his case which may be relevant to the fact of the violation or the amount of the penalty. Such information may be submitted prior to the conference and discussed during the conference. To expedite the conference, the official assigned to the case may contact the operator or miner to discuss the case prior to such conference.

(c) The Office of Assessments will consider all relevant information on the violation(s) in question presented by the operator or miner and is authorized to recalculate the assessed penalty on the basis of any new information presented to it. When the facts warrant a finding that no violation of the Act or a mandatory health or safety standard occurred, a penalty will not be assessed.

(d) If the operator or miner appears in person and the issues are resolved, he may, at this time, tender payment of the amount agreed upon and thereby dispose of the case, or he may have 10 days within which to submit payment to the Office of Assessments of the amount agreed upon and thereby dispose of the case. All such agreements must be in writing and signed by both parties. Failure to tender payment of the agreed amount within the 10-day period will result in the agreed amount being entered as the final order of the Secretary, enforceable under section 109(a)(4) of the Act.

(e) If all issues cannot be resolved during the conference, the operator or miner may settle those violations in agreement as provided in paragraph (d) of this section and have those deleted from the case. Violations not resolved will be forwarded to the Associate Solicitor—Mine Health and Safety, who shall file a petition to assess a civil penalty with the Office of Hearings and Appeals of the Department of the Interior pursuant to 43 CFR 4.540.

§ 100.7 Request for Hearing.

(a) The Office of Assessments shall provide a return mailing card with each order of assessment to allow the operator or miner to indicate his desire to have a hearing under section 109(a)(3) of the Act. When an operator or miner

requests a hearing, the Office of Assessments shall forward the case to the Associate Solicitor—Mine Health and Safety, who shall file a petition for assessment of civil penalty with the Office of Hearings and Appeals of the Department of the Interior pursuant to 43 CFR 4.540.

(b) The petition shall be served on the operator or miner who, in accordance with the Department's Hearings and Appeals procedures (43 CFR 4.541), shall then have 30 days within which to file an answer to the petition and be afforded an opportunity for a public hearing.

(c) In accordance with 43 CFR 4.545, the Office of Hearings and Appeals shall thereafter issue an order, based on findings of fact and conclusions of law unless the petition is dismissed by consent of the parties.

(d) In assessing a penalty, the Office of Hearings and Appeals may determine de novo the amount of the civil penalty, taking into consideration the six criteria specified in section 109(a)(3) of the Act.

§ 100.8 Civil penalty Cases Pending before the Office of Hearings and Appeals.

(a) In all cases previously filed with the Office of Hearings and Appeals which have not yet been heard or decided by an Administrative Law Judge, an operator may file with the Office of Hearings and Appeals a request for a conference with the Office of Assessments as provided in § 100.4(b)(2). Such request must be postmarked on or before 30 days after the effective date of this part.

(b) Such request should identify the civil penalty case by name, docket number and assessment control number and be addressed to:

Office of Hearings and Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

The Office of Hearings and Appeals will promptly notify the Office of Assessments of those cases which have timely requested a conference.

(c) The submission of a timely conference request in those cases described in paragraph (a) of this section will operate to stay further proceedings pending holding of the informal conference, but shall in no instance warrant dismissal of the pending case. Failure to resolve the issue involved in the case by conference will result in the stay of proceedings being dissolved.

APPENDIX A—ORDER OF ASSESSMENT

AO Control No.:
Mine ID No.:
No. of Employees:
Annual Tonnage
Conversion Table No.:

Operator:
Address:
Mine Name:
Mine Location:

Upon reviewing the violations cited in the attached notices and orders and the data supplied by the Secretary's Authorized Representative I find that the violations cited below did in fact occur and applying that data to the formula described in 30 CFR 100.3 based upon the findings set forth in the attached worksheets I assess the penalty specified below.

In making this order of assessment it is presumed that the operator's ability to continue in business is not affected. You are informed that you have a right to submit information concerning your financial status and the effect of the order of assessment on your ability to continue in business to the Office of Assessments for reconsideration and possible reduction of this assessed penalty.

Pursuant to 30 CFR 100.4(b), you have 20 days from receipt of this order of assessment to either (1) pay the penalty, (2) request, in writing, a conference with the Office of Assessments to provide informtaion relating to the violations listed in the order of assessment, or (3) request, in writing, a hearing on the violations in question before the Department's Office of Hearings and Appeals pursuant to Subpart F, Part 4, Title 43, Code of Federal Regulations. If you do not exercise the rights described herein within 20 days of receipt of this order of assessment, this order of assessment will be enforced under section 109(a)(4) of the Act.

_____
Signature

Citation designation	Date	Standard 30 CFR	Summary of criterion points from form AO-22						Penalty
			A	B	C	D	E	Total	

Pursuant to § 100.3, 30 CFR, a citation is assigned penalty points within each criterion. The total of these points is applied to a conversion table and the assessment is extracted therefrom. The selection of the table is determined by the annual tonnage of the cited mine. The subdivisions are as follows (100.3(a)(1)):

Annual tonnage of mine	*Penalty conversion table*
Over 1 million tons	1
Over 500,000 to 1 million tons	2
Over 100,000 to 500,000 tons	3
Over 50,000 to 100,000 tons	4
50,000 tons or under	5

Penalty Conversion Table No. [ ] governs this assessment.

CRITERION A. APPROPRIATENESS OF THE PENALTY TO THE SIZE OF BUSINESS OF THE OPERATOR CHARGED

This criterion is applied primarily by the selection of the penalty conversion table as described immediately above. Secondarily, penalty points are assigned based upon the annual tonnage of the company to which the cited mine belongs provided the company owns more than one mine. The points are assigned as follows:

Annual tonnage of company	*Penalty points*
Over 3,000,000 tons	5
700,000 to 2,999,999	4
300,000 to 6,999,999	3
200,000 to 299,999	2
100,000 to 199,999	1
Under 100,000 tons	0

[ ] number of penalty points assigned to this criterion.

CRITERION B. HISTORY OF PREVIOUS VIOLATIONS

(1) Average number of violations assessed per year.

Number of violations	*Penalty points*
0 to 10	0
11 to 20	1
21 to 30	2
31 to 40	3
41 to 50	4
Over 50	5

[ ] number of penalty points assigned to this category.

(2) Average number of violations assessed per inspection day.

Violations per inspection day	*Penalty points*
Under 0.1	0
0.1 to 0.199	1
0.2 to 0.299	2
0.3 to 0.399	3
0.4 to 0.499	4
0.5 to 0.599	5
0.6 to 0.699	6
0.7 to 0.799	7
0.8 to 0.899	8
0.9 to 0.999	9
1 and over	10

[ ] number of penalty points assigned to this category.

[ ] Total assigned to this criterion.

CRITERION C. NEGLIGENCE

Penalty points under this criterion range from 0 to 30 as the degree of negligence increases from "no" through "ordinary" to "gross". The degrees of negligence are explained in § 100.3(c).

_____ negligence is found.

[ ] number of penalty points assigned to this criterion.

CRITERION D GRAVITY

(1) Probability of the occurrence of the event against which the standard is directed.

Probability of occurrence	*Penalty points*
Improbable	0
Possible	1–3
Probable	4–9
Imminent	10–13
Occurred	14

[ ] number of penalty points assigned to this category.

(2) Gravity of the injury if it occurred or were to occur.

Gravity of injury	*Penalty points*
Slight	0
First aid	1
Nondisabling	2–3
Temporary total disabling	4–6
Permanent partial disabling	7–9
Permanent total disabling	10–12
Fatal	13

[ ] number of penalty points assigned to this category.

(3) Number of personnel injured.

Number injured	*Penalty points*
0	0
1	1
2	2
3	3
4 to 5	5
6 to 9	8
10 to 15	10
More than 15	13

[ ] number of penalty assigned to this category.

[ ] total penalty points assigned to this criterion.

CRITERION E. DEMONSTRATED GOOD FAITH OF THE OPERATOR CHARGED IN ATTEMPTING TO ACHIEVE RAPID COMPLIANCE

Penalty points under this criterion range from −5 to 10 as the degrees of compliance decrease from "rapid" through "normal" to "lack of good faith". The degrees of compliance are explained in § 100.3(f).

---------- is found.

[ ] number of penalty points assigned to this criterion.

To Mine Operator:

This is to advise you of your rights to a formal hearing or an informal conference on the order of assessment, ---------- as provided under § 100.4(b), Part 100—Civil Penalties for Violation of the Federal Coal Mine Health and Safety Act of 1969, Title 30, Code of Federal Regulations.

Section 100.4(b) gives you the right to an informal conference with the Office of Assessments, and a formal hearing with the Office of Hearings and Appeals. If you desire a hearing or conference, please mark the proper line below:

Conference with Office of Assessments ------

Formal Hearing with Office of Hearings and Appeals ----------

The selection of a conference with the Office of Assessments does not waive your right to a formal hearing with the Office of Hearings and Appeals if a settlement is not reached.

If you have indicated your desire to have a conference, please complete this card:

1. ----------
Name of Mine

2. ----------
Mine I.D. No.

3. ----------
Name of Company

4. ----------
Company Office to Contact

5. ----------
Telephone No. including Area Code

If possible I would like the conference to be conducted at:

Town County State

Signature Date

[FR Doc.74-10312 Filed 5-6-74;8:45 am]

NATIONAL PARK SERVICE

[36 CFR Part 7]

YELLOWSTONE NATIONAL PARK, WYOMING

Designation of Snowmobile Routes and Related Special Regulations

In accordance with the requirements of § 2.34(c) of the general regulations pertaining to Public Use and Recreation in areas of the National Park System and pursuant to authority contained in Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3), the Act of May 7, 1894 (28 Stat. 73, as amended; 16 U.S.C. 26), 245 DM-I (34 FR 13879), National Park Service Order No. 77 (38 FR 7478), as amended, Regional Director, Midwest Region Order No. 5 (37 FR 6324), as amended, notice is hereby given that amendments are proposed to § 7.13 of Title 36 of the Code of Federal Regulations as set forth below.

The purpose of these proposed amendments is to designate snowmobile routes, to define the term "Unplowed roadway," and to specify a minimum age for operators of snowmobiles in Yellowstone National Park.

In arriving at the designations of snowmobile routes, we have been guided by the criteria in sections 3 and 4 of E.O. 11644 (37 FR 2877), and the requirements of the general National Park Service regulations referred to above. In order to properly designate such routes along public highways, it was deemed necessary to define the boundaries that would determine or establish the width of the routes; i.e., the "unplowed roadway." Because of the anticipated heavy traffic, the relative high speeds of oversnow vehicles, and in the interest of promoting greater vehicle safety, we have determined it necessary, also, to fix a minimum age for operators of snowmobiles.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Moreover, regarding the designation of routes for the use of snowmobiles, the Department will adhere to the 30-day period for comment established by § 2.34(c) of this chapter, as amended in the FEDERAL REGISTER of April 1, 1974 (39 FR 11882). Accordingly, interested persons may submit written comments, suggestions, or objections, with respect to the proposed amendments to the Superintendent, Yellowstone National Park, Wyoming 82190, on or before June 6, 1974.

Section 7.13 of Title 36 of the Code of Federal Regulations is amended as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l) Skiing, sledding, tobogganing, snowshoeing, and oversnow vehicles. (1) The following activities are prohibited:

* * * * *

(iv) No person under the age of 16 shall operate a snowmobile.

* * * * *

(3) Snowmobiles:

(i) Definitions: *Unplowed Roadway.* The unplowed roadway shall be limited to that portion of the roadway located between the road shoulders designated by snow poles or poles, ropes, and signs erected by the Superintendent to regulate snowmobile activity.

(ii) Designated routes: The designated routes for snowmobile use shall be that portion of the unplowed roadway from:

(*a*) The Grand Loop Road from its junction with Terrace Springs Drive to Norris Junction.

(*b*) Norris Junction to Canyon Road.

(*c*) The Virginia Cascade Drive.

(*d*) The Grand Loop Road from Norris Junction to Madison Junction.

(*e*) The West Entrance Road from the Park Boundary at West Yellowstone to Madison Junction.

(*f*) The Grand Loop Road from Madison Junction to West Thumb.

(*g*) The Firehole Canyon Drive.

(*h*) The Blacktail Plateau Drive.

(*i*) The Fountain Flat Drive.

(*j*) The South Entrance Road from the South Entrance to West Thumb.

(*k*) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(*l*) The East Entrance Road from the East Entrance to its junction with the Grand Loop Road.

(*m*) The Grand Loop Road from its junction with the East Entrance Road to Canyon junction.

(*n*) The Canyon Rim Drives.

(*o*) The Grand Loop Road from Canyon junction to Tower junction.

(*p*) In the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon and Norris Junction, snowmobile routes to scenic points of interest, lodging and other facilities will be designated by appropriate snow poles and signs; said routes being limited to the unplowed roadways. The criteria for determining specific routes in these areas will be: the most direct access, weather and snow conditions and the elimination of congestion and improvement of circulation in the interest of public safety.

(*q*) Maps showing designated routes shall be available at Park Headquarters and each entrance station.

(iii) The Superintendent shall determine the opening and closing dates for use of the designated snowmobile routes each year, taking into consideration snow and other weather conditions, road plowing schedules and other factors that may relate to public safety, and he shall notify the public of such dates by the posting of appropriate signs at the entrances to the routes.

(iv) Snowmobile use outside designated routes is prohibited. This prohibition shall not apply to (*1*) emergency routes designated by the Superintendent with appropriate signs and poles and (*2*) emergency administrative travel by employees of the National Park Service or its contractors and concessioners.

* * * * *

JACK K. ANDERSON,
Superintendent,
Yellowstone National Park, Wyoming.

[FR Doc.74-10431 Filed 5-6-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 57]

EMERGENCY MEDICAL SERVICES TRAINING

Inter-Professional Training Grants

Section 776 of the Public Health Service Act authorizes the Secretary of Health, Education, and Welfare, to make grants to schools of medicine, dentistry, osteopathy, nursing, training centers for

allied health professions, and other appropriate educational entities to assist in meeting the costs of training programs in the techniques and methods of providing emergency medical services, including the skills required in connection with the provision of ambulance service. Proposed regulations for this program were published in the FEDERAL REGISTER of April 29, 1974 (39 FR 15011).

This document is intended to provide notice that in addition to the funding priority established for those projects which afford, as part of their training program, clinical experience in emergency medical services systems receiving assistance under Title XII of the Public Health Service Act (§ 57.2107(b) of the proposed regulations), the Secretary, as a result of an examination of national health needs, proposes for fiscal year 1974 to give special consideration in funding to the establishment and operation of programs in interprofessional training for a team approach to the delivery of emergency medical services and the establishment and operation of programs that would provide a regional or area-wide resource for the training of one or more types of emergency medical personnel.

Written comments concerning the proposed funding priorities are invited from interested persons. Inquiries may be addressed, and data, views and arguments relating to the proposed priorities may be presented in writing in triplicate, to the Director, Bureau of Health Resources Development, Health Resources Administration, 9000 Rockville Pike, Building 31, Room 5C02, Bethesda, Maryland 20014. All comments received in response to this notice will be available for public inspection at the Office of Grants Policy, Bureau of Health Resources Development, Health Resources Administration, 9000 Rockville Pike, Building 31, Room 5B34, Bethesda, Maryland 20014 on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m. All relevant material received on or before May 22, 1974 will be considered.

Dated: April 29, 1974.

CHARLES C. EDWARDS,
Assistant Secretary for Health.

Approved: May 2, 1974.

CASPER W. WEINBERGER,
Secretary.

[FR Doc.74-10573 Filed 5-6-74;8:45 am]

Social Security Administration

[20 CFR Part 404]

[Regs. No. 4]

FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

Quarters of Coverage and Insured Status; Disability Insured Status

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553) that the amendments to the regulations set forth in tentative form are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendments provide that an individual disabled by reason of blindness (as defined in section 216(i)(1) of the Social Security Act, as amended) may qualify for a period of disability and/or disability insurance benefits if he has fully insured status. Prior to the enactment of section 117 of Public Law 92-603, such individual had to meet, in addition to the fully insured status test, one of two other insured status tests involving substantial recent covered work. (Insured status relates to the amount of covered work required to qualify for social security benefits.) Also, because section 116 of Public Law 92-603 reduced to five months the disability "waiting period" (that continuous period of time beginning with the first month of an individual's disability and ending with the month of his entitlement to disability insurance benefits), § 404.115 of the proposed amendments incorporates the appropriate changes in the points in time at which the individual may have disability insured status. New § 404.118 reflects the liberalized age computation point for men enacted by section 104 of Public Law 92-603. This computation point has been reduced from age 65 to age 62 after a 2 year phase-in period. Thereafter, men and women will receive the same treatment in determining the number of quarters of coverage required for a fully insured status.

Prior to final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, D.C. 20201, on or before June 7, 1974.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue SW., Washington, D.C. 20201.

The proposed amendments are to be issued under the authority contained in section 205, 216, 223, and 1102, 53 Stat. 368, as amended, 68 Stat. 1080, as amended, 70 Stat. 815, as amended, 49 Stat. 647, as amended; 42 U.S.C. 405, 416, 423, and 1302.

(Catalog of Federal Domestic Assistance Program No. 13.802, Social Security—Disability Insurance)

Dated: April 8, 1974.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: April 29, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Regulations No. 4 of the Social Security Administration, as amended (20 CFR 404.1 et seq.), are further amended to read as follows:

1. Paragraph (b) of § 404.115 is revised to read as follows:

§ 404.115 When disability insured status must be met.

* * * * *

(b) *Disability insurance benefits.* To become entitled to a disability insurance benefit, in addition to meeting certain other requirements (see section 223(a) of the Act), an individual must meet the insured status requirement for disability insurance benefits as of the first full month that he was under a disability (as defined in § 404.1501(a)), or, if later,

(1) For benefits payable for months before January 1973, as of the 18th month (the 12th month, where no "waiting period" is required—see section 223 (a) of the Act) prior to the month in which the application for disability insurance benefits is filed; or

(2) For benefits payable for months beginning January 1973 or later, as of the 17th month (the 12th month, where no "waiting period" is required—see section 223(a) of the Act) prior to the month in which the application for disability insurance benefits is filed, provided the application is filed:

(i) After September 1972; or

(ii) Before October 1972, and

(A) Notice of the final decision of the Secretary was not given to the applicant before October 1972; or

(B) Notice of the final decision of the Secretary was given to the applicant before October 1972 but a civil action with respect to such final decision is commenced under section 205(g) of the Act (whether before, in, or after October 1972) and the decision in such civil action did not become final before October 1972.

If the individual does not meet the insured status requirement at such times, he will be insured for disability insurance benefit purposes as of the first month thereafter in which he acquires such insured status provided that at such later time he meets all other requirements for disability insurance benefits.

2. Section 404.116 is revised as follows:

§ 404.116 Disability insured status.

(a) *Period of disability, general.* For the purpose of establishing a period of disability, an individual has disability insured status as of a calendar quarter if such individual:

(1) Would have been fully insured had the individual filed application for old-age insurance benefits on the first day of such calendar quarter (see § 404.118 for requirement regarding the point in time when fully insured status must be met); and

(2) (i) Had not less than 20 quarters of coverage during the 40-quarter period (see paragraph (e) of this section) which ends with such quarter, or

(ii) Effective with respect to applications for disability determinations filed after December 1967;

(A) Such quarter ends before the individual attains (or would attain) age 31, and

(B) Not less than one-half of the quarters during the period ending with such quarter and beginning with the quarter after he attained the age of 21 were quarters of coverage (when the number of quarters in a period is an odd number, such number is reduced by one). If the number of quarters in such period is less than 12, at least six of the quarters (including quarters prior to age 21) in the 12-quarter period ending with such quarter must have been quarters of coverage.

(b) *Period of disability—individual who is statutorily blind.* For the purpose of establishing a period of disability, an individual, who is disabled by reason of blindness (as defined in section 216(i)(1) of the Act), has disability insured status as of a calendar quarter if such individual:

(1) Meets the requirements in paragraphs (a)(1) and (a)(2)(i) of this section, or

(2) With respect to applications filed after June 1965, meets the requirements of paragraphs (a)(1), (a)(2)(ii)(A), and (a)(2)(ii)(B) of this section, or

(3) Would have been fully insured (see § 404.118) had the individual filed application for old-age insurance benefits on the first day of such quarter provided an application for a period of disability is filed

(i) After September 1972; or

(ii) Before October 1972, and

(A) Notice of the final decision of the Secretary was not given to the applicant before October 1972; or

(B) Notice of the final decision of the Secretary was given before October 1972 but a civil action with respect to such final decision is commenced under section 205(g) of the Act (whether before, in, or after October 1972) and the decision in such civil action did not become final before October 1972.

(c) *Disability insurance benefits, general.* For the purpose of entitlement to disability insurance benefits, an individual has disability insured status in a month if:

(1) He would have been fully insured (see § 404.118) had the individual filed application for old-age insurance benefits on the first day of such month; and

(2)(i) Had not less than 20 quarters of coverage during the 40-quarter period (see paragraph (e) of this section) which ends with the quarter in which such month occurred, or

(ii) Effective with respect to benefits for months after January 1968 on the basis of an application filed after December 1967:

(A) Such month ends before he attains (or would attain) age 31, and

(B) Not less than one-half of the quarters during the period ending with the quarter in which such month occurred and beginning with the quarter after he attained the age of 21 were quarters of coverage (when the number of quarters in a period is an odd number, such number is reduced by one). If the number of quarters in such period is less than 12, at least six of the quarters (including quarters prior to age 21) in the 12-quarter period ending with such quarter must have been quarters of coverage.

(d) *Disability insurance benefits—individual who is statutorily blind.* For the purpose of entitlement to disability insurance benefits, an individual, who established a period of disability on the basis of blindness (as defined in section 216(i)(1) of the Act), has disability insured status in a month if such individual:

(1) Meets the requirements in paragraphs (c)(1) and (c)(2)(i) of this section, or

(2) Effective with respect to benefits for months after August 1965 on the basis of an application filed after June 1965, meets the requirements of paragraphs (c)(1), (c)(2)(ii)(A) and (c)(2)(ii)(B) of this section, or

(3) Would have been fully insured (see § 404.118) had such individual filed an application for old-age insurance benefits on the first day of such quarter provided an application for disability insurance benefits is filed

(i) After September 1972; or

(ii) Before October 1972; and

(A) Notice of the final decision of the Secretary was not given to the applicant before October 1972; or

(B) Notice of the final decision of the Secretary was given before October 1972 but a civil action with respect to such final decision is commenced under section 205(g) of the Act (whether before, in, or after October 1972) and the decision in such civil action did not become final before October 1972.

For purpose of this paragraph, no monthly benefits under Title II of the Social Security Act shall be payable or increased by reason of this subparagraph (3) for months before January 1973.

(e) *Determining 40-quarter or other period.* In determining the 40-quarter or other period for the purpose of paragraphs (a)(2) or (c)(2) of this section, any quarter which is not a quarter of coverage, all or any part of which is included in a period of disability established for the individual, is not counted as part of such 40-quarter period or such other period. (See §§ 404.103 and 404.104.)

3. A new section 404.118 is added to read as follows:

§ 404.118 Quarters of coverage requirement for period of disability and/or disability benefits—fully insured status.

(a) The period for determining the number of quarters of coverage needed to satisfy the fully insured status requirement (see §§ 404.108–404.113) for a female will end as of:

(1) The year of attainment of age 62; or, if earlier

(2) The year in which:

(i) The period of disability begins or disability benefits are payable

(ii) The waiting period (see § 404.308) for disability benefits begins, or if there is no waiting period

(iii) Entitlement to disability benefits begins.

(b) The period for determining the number of quarters of coverage needed to satisfy the fully insured status requirement (see §§ 404.108–404.113) for a male born January 1, 1913, or earlier will end as of:

(1) The year 1975; or, if earlier

(2) The year in which:

(i) The period of disability begins or disability benefits are payable

(ii) The waiting period (see § 404.308) for disability benefits begins, or, if there is no waiting period.

(iii) Entitlement to disability benefits begins.

(c) The period for determining the number of quarters of coverage needed to satisfy the fully insured status requirement (see §§ 404.109–404.113) for a male born January 2, 1913, or later will end as of:

(1) The year of attainment of age 62; or, if earlier

(2) The year in which:

(i) The period of disability begins or disability benefits are payable

(ii) The waiting period (see § 404.308) for disability benefits begins; or, if there is no waiting period

(iii) Entitlement to disability benefits begins.

[FR Doc.74–10382 Filed 5–6–74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 74–AL–8]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amendments to Part 71 of the Federal Aviation Regulations which would alter the terminal airspace structure at Gulkana, Alaska.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Alaskan Region, Federal Aviation Administration, 632 Sixth Avenue, Anchorage, Alaska 99501. All communications received on or before June 6, 1974 will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Division. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the office of the Regional Counsel, Federal

Aviation Administration, 632 Sixth Avenue, Anchorage, Alaska.

Application of criteria for U.S. Terminal Instrument Procedures (TERPS) for establishment of terminal controlled airspace, the conversion of the RR to an NDB, and the installation of DME arc approach system at Gulkana, Alaska, require amendments to the Gulkana, Alaska control zone and transition area. Refined coordinates of the Airport Reference Point (ARP) and revised configuration of the 1,200-foot transition area to encompass new DME holding fixes are also contained in this proposed amendment.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

1. Section 71.171 (39 FR 354) the Gulkana, Alaska, control zone is amended to read:

GULKANA, ALASKA

Within a 5-mile radius of the Gulkana Airport (latitude 62°09'19" N., longitude 145°-27'08" W.); within 3.5 miles each side of the Gulkana VORTAC 346° radial extending from the 5-mile radius zone to 11.5 miles N of the VORTAC; and within 3 miles each side of the Gulkana VORTAC 181° radial extending from the 5-mile radius zone to 8.5 miles S of the VORTAC.

2. In § 71.181 (39 FR 440) the Gulkana, Alaska, transition area is amended to read:

GULKANA, ALASKA

That airspace extending upward from 700 feet above the surface within 6 miles E and 10.5 miles W of the 346° radial extending from Gulkana VORTAC to 22 miles N of the VORTAC; within 4.5 miles E and 9.5 miles W of the 181° radial extending from the Gulkana VORTAC to 18.5 miles S of the VORTAC; and within a 16.5 mile radius of the Gulkana VORTAC; that airspace extending upward from 1,200 feet above the surface within 8.5 miles E and 5.5 miles W of the Gulkana VORTAC 184° radial extending from 9 miles S. to 30 miles S of the VORTAC; and within 8.5 miles W and 5.5 miles E of the Gulkana VORTAC 356° radial extending from 9 miles N to 30 miles N of the VORTAC.

The action proposed herein would alter the Gulkana, Alaska, control zone by reducing the length of the north zone extension by 2 miles and expanding the width thereof by 0.5 miles and expanding the length of the south zone extension by 0.5 miles and the width by 1.0 miles.

The 1,200-foot transition area has been deleted as stated in the FEDERAL REGISTER and redefined to encompass the holding patterns at the 15 DME fixes north and south of the Gulkana VORTAC. A 700-foot transition area has been established 22 miles N and 18.5 miles S to protect the procedure turns and a 16.5 mile radius to encompass the arc transitions for the VOR approaches. The 700-foot transition area is of sufficient size to encompass the holding patterns at the navaids.

These amendments are proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Anchorage, Alaska, on April 24, 1974.

QUENTIN S. TAYLOR,
Acting Director, Alaskan Region.

[FR Doc.74-10416 Filed 5-6-74;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-EA-18]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the White Plains, N.Y., Control Zone (39 FR 436) and Transition Area (39 FR 612).

A review of the airspace requirements for the White Plains, N.Y., terminal area for compatibility with Terminal Instrument Procedures (TERPS) requires alteration of the control zone and transition area.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before June 6, 1974 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of White Plains, New York, proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations by deleting the description of the White Plains, N.Y. control zone and by substituting the following in lieu thereof:

Within a 5-mile radius of the center, 41°04'00" N., 73°42'33" W. of Westchester County Airport, White Plains, N.Y., extending clockwise from a 055° bearing to a 305° bearing from the airport; within a 6-mile radius of the center of the airport, extending clockwise from a 305° bearing to a 055° bearing from the airport; and within 2 miles each side of the extended centerline of Runway 16, extending from the southeast end of Runway 16 to 4 miles southeast of the southeast end of Runway 16.

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by deleting the description of the White Plains, N.Y. transition area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the center, 41°04'00" N., 73°42'33" W. of Westchester County Airport, White Plains, N.Y., extending clockwise from a 047° bearing to a 307° bearing from the airport, within a 10-mile radius of the center of the airport, extending clockwise from a 307° bearing to 047° bearing from the airport; within 6.5 miles northwest and 4.5 miles southeast of the Carmel, N.Y. VORTAC 245° and 065° radials, extending from 5.5 miles southwest to 11.5 miles northeast of the VORTAC; within 6.5 miles southwest and 4.5 miles northeast of the Westchester County Airport ILS localizer northwest course, extending from 5.5 miles southeast of the OM to 11.5 miles northwest of the OM; within 5 miles each side of the Westchester County Airport ILS localizer northwest course, extending from the 8.5-mile radius area and 10-mile radius area to 12 miles northwest of the OM; within 5 miles each side of the extended centerline of Runway 16, extending from the southeast end of Runway 16 to 13 miles southeast of the southeast end of Runway 16; within 5 miles each side of the Carmel, N.Y. VORTAC 206° radial, extending from the 8.5-mile radius area and 10-mile radius area to the Carmel, N.Y. VORTAC; and within 5 miles each side of the Carmel, N.Y. VORTAC 232° radial, extending from 4 miles southwest to 10 miles southwest of the Carmel, N.Y. VORTAC, that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at 41°31'00" N., 73°54'00" W., to 41°31'00" N., 73°30'00" W., to 41°25'00" N., 73°30'00" W., to 41°20'00" N., 73°44'00" W., to 41°18'00" N., 73°42'00" W., to 41°16'00" N., 73°45'00" W., to 41°20'00" N., 73°49'00" W., to 41°15'00" N., 73°59'30" W., to 41°00'00" N., 73°38'00" W., to 41°00'00" N., 73°54'00" W., to 41°08'10" N., 74°13'00" W., to 41°11'00" N., 74°09'00" W., to 41°12'00" N., 74°00'00" W., to 41°19'00" N., 74°00'00" W., to point of beginning.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on April 22, 1974.

MARTIN J. WHITE,
Acting Director, Eastern Region.

[FR Doc.74-10413 Filed 5-6-74;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-EA-26]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Poughkeepsie, N.Y., Control Zone (39 FR 419) and Transition Area (39 FR 572).

Due to the development of a new instrument procedure for Dutchess County Airport, Poughkeepsie, New York, addi-

tional airspace will be designated to protect aircraft utilizing the new procedure.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before June 6, 1974 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Poughkeepsie, New York, proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Poughkeepkeepsie, N.Y. control zone by adding the following:

* * * and within 3.5 miles each side of the Kingston, N.Y. VORTAC 050° radial, extending from the VORTAC to 10.5 miles northeast of the VORTAC.

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Poughkeepsie, N.Y. transition area by inserting after the phrase "10.5 miles northeast of the VORTAC;" the following:

* * * within 5 miles each side of the Kingston, N.Y. VORTAC 050° radial, extending from the VORTAC to 11.5 miles northeast of the VORTAC;

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on April 22, 1974.

MARTIN J. WHITE,
Acting Director, Eastern Region.

[FR Doc.74-10415 Filed 5-6-74;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-NW-09]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Boise, Idaho Transition Area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Operations, Procedures and Airspace Branch, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Washington, 98108. All communications received on or before June 6, 1974 will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Washington, 98108.

A review of the airspace requirements at Boise, Idaho disclosed that additional 1200′ Transition Area would permit greater flexibility and more efficient use of vector procedures in the control of arrivals and departures by Boise Approach Control.

In addition, the present description is being revised at this time to incorporate some editorial changes and to eliminate redundancy in the description.

In consideration of the foregoing, the FAA proposes the following airspace action:

In § 71.181 (39 FR 440) the description of the Boise, Idaho Transition Area is amended to read as follows:

BOISE, IDAHO

That airspace extending upward from 700 feet above the surface bounded by a line beginning at Latitude 43°56′00″ N., Longitude 116°33′00″ W., direct to Latitude 43°51′15″ N., Longitude 116°25′00″ W., thence via a 21.5 mile radius arc, centered on the Boise VORTAC, clockwise to Longitude 116°14′00″ W., direct Latitude 43°45′00″ N., Longitude, 116°14′00″ W., direct Latitude 43°31′00″ N., Longitude 115°52′00″ W., direct Latitude 43°20′00″ N., Longitude 115°58′00″ W., direct Latitude 43°25′00″ N., Longitude 116°25′00″ W., direct Latitude 43°42′00″ N., Longitude 116°57′00″ W., thence to point of beginning; that airspace extending upward from 1200 feet above the surface within a 35 mile radius arc from Boise VORTAC extending clockwise from V–253 to V–4N, within a 40-mile radius arc of Boise VORTAC extending clockwise from the southeast edge of V–113 to V–500, that airspace 8 miles each side of Boise VORTAC 269° radial extending from the 40-mile radius arc to 57 miles west of the VORTAC, within 8 miles northeast and 11 miles southwest of the Boise VORTAC 295° radial, extending from the 40-mile radius arc to 75 miles northwest of the VORTAC, that airspace northwest of Boise bounded on the northwest by the McCall VORTAC 295° radial, on the east by the west edge of V–253 on the southwest by V–4; that airspace southeast of Boise extending upward from 9000 feet MSL extending from the 35 mile arc bounded on the north by V–500, on the east by the southwest edge of V–293, on the south by the north edge of V–330 and on the southwest by the northeast edge of V–4; that airspace northeast of Boise extending upward from 11,500 feet MSL, bounded on the northeast by southwest edge of V–293, on the south by the north edge of V–500, on the southwest by the 35 mile radius arc and on the west by the east edge of V–253.

This amendment is proposed under authority of Section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1654(c)).

Issued in Seattle, Washington on April 24, 1974.

J. H. TANNER,
Acting Director, Northwest Region.

[FR Doc.74-10417 Filed 5-6-74;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-EA-20]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the New York, N.Y., Transition Area (39 FR 555).

As a result of a periodic review of the New York, N.Y., terminal airspace it has been determined that alteration of the transition area will be required to meet present criteria. The major alteration proposes a reduction in size of the 700-foot transition area south of JFK International Airport, to be replaced by a 1,200-foot transition area.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received on or before June 6, 1974 will be considered before action is taken on the proposed amendment. No. hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of New York, New York, proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by deleting the description of the New York, N.Y. transition area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the center 40°38'25'' N., 73°46'41'' W., of John F. Kennedy International Airport, New York, N.Y., extending clockwise from a 035° bearing to a 065° bearing from the airport; within an 8.5-mile radius of the center of the airport, extending clockwise from a 065° bearing to a 228° bearing from the airport; within a 9-mile radius of the center of the airport, extending clockwise from a 228° bearing to a 244° bearing from the airport; within a 14-mile radius of the center of the airport, extending clockwise from a 244° bearing to a 290° bearing from the airport; within a 9-mile radius of the center of the airport, extending clockwise from a 290° bearing to a 338° bearing from the airport; within a 10-mile radius of the center of the airport, extending clockwise from a 338° bearing to a 035° bearing from the airport; within 3 miles each side of the Canarsie, N.Y. VOR 210° radial, extending from the Canarsie, N.Y. VOR to 4 miles southwest of the VOR; within a 9-mile radius of the center, 40°46'36'' N., 73°52.24'' W., of LaGuardia Airport, New York, N.Y., extending clockwise from a 029° bearing to a 080° bearing from the airport; within a 10-mile radius of the center of the airport, extending clockwise from a 080° bearing to a 117° bearing from the airport; within a 9-mile radius of the center of the airport, extending clockwise from a 117° bearing to a 243° bearing from the airport; within a 10-mile radius of the center of the airport, extending clockwise from a 243° bearing to a 320° bearing from the airport; within an 11.5-mile radius of the center of the airport, extending clockwise from a 320° bearing to a 029° bearing from the airport; within 3.5 miles each side of the LaGuardia, N.Y. VOR 038° radial, extending from the LaGuardia, N.Y. VOR to 9 miles northeast of the VOR; within a 10-mile radius of the center, 40°50'57'' N., 74°03'47'' W., of Teterboro Airport, Teterboro, N.J., extending clockwise from a 047° bearing to a 077° bearing from the airport; within a 7.5-mile radius of the center of the airport, extending clockwise from a 077° bearing to a 241° bearing from the airport; within an 11-mile radius of the center of the airport, extending clockwise from a 241° bearing to a 253° bearing from the airport; within a 15-mile radius of the center of the airport, extending clockwise from a 253° bearing to a 047° bearing from the airport; within 9.5 miles northwest and 4.5 miles southeast of the Teterboro Airport ILS localizer southwest course, extending from the OM to 18.5 miles southwest of the OM; within a 9-mile radius of the center, 40°41'40'' N., 74°10'02'' W., of Newark International Airport, Newark, N.J.

Extending clockwise from a 011° bearing to a 071° bearing from the airport; within an 8.5-mile radius of the center of the airport, extending clockwise from a 071° bearing to a 123° bearing from the airport; within a 9-mile radius of the center of the airport, extending clockwise from a 123° bearing to a 150° bearing from the airport; within an 8.5-mile radius of the center of the airport, extending clockwise from a 150° bearing to a 232° bearing from the airport; within a 9.5-mile radius of the center of the airport, extending clockwise from a 232° bearing to a 255° bearing from the airport; within a 12-mile radius of the center of the airport, extending clockwise from a 255° bearing to a 011° bearing from the airport; within 2.5 miles each side of a 105° bearing from a point 40°45'24'' N., 74°30'48'' W., extending from the 12-mile radius area to 4 miles east of said point; within 5 miles each side of a 098° bearing from the Chatham, N.J. RBN, extending from the 12-mile radius area to 2 miles east of the Chatham, N.J. RBN; within a 10-mile radius of the center, 40°47'58'' N., 74°24'56'' W., of Morristown Municipal Airport, Morristown, N.J., extending clockwise from a 022° bearing to a 116° bearing from the airport within an 8.5-mile radius of the center of the airport, extending clockwise from a 116° bearing to a 116° bearing from the airport; within a 12-mile radius of the center of the airport, extending clockwise from a 225° bearing to a 264° bearing from the airport; within a 12.5-mile radius of the center of the airport, extending clockwise from a 264° bearing to a 335° bearing from the airport; within a 13.5-mile radius of the center of the airport, extending clockwise from a 335° bearing to a 022° bearing from the airport; within 6.5 miles northwest and 4.5 miles southeast of the Morristown Municipal Airport ILS localizer northeast course, extending from 5.5 miles southwest of the OM to 11.5 miles northeast of the OM; within 9.5 miles southeast and 4.5 miles northwest of the Morristown Municipal Airport ILS localizer northeast course, extending from the OM to 18.5 miles northeast of the OM; within 9.5 miles northwest and 4.5 miles southeast of a 204° bearing from the Chatham, N.J. RBN, extending from the Chatham, N.J. RBN to 18.5 miles southwest of the RBN; within 5 miles each side of the Solberg, N.J. VORTAC 067° radial, extending from the Solberg, N.J. VORTAC to 10.5 miles northeast of the VORTAC; within 5 miles each side of the Morristown Municipal Airport ILS localizer southwest course, extending from the localizer to 14.5 miles southwest of the localizer; within a 5.5-mile radius of the center, 40°31'30'' N., 74°35'52'' W., of Kupper Airport, Manville, N.J.

Extending clockwise from a 064° bearing to a 331° bearing from the airport; within an 8.5-mile radius of the center of the airport, extending clockwise from a 331° bearing to a 064° bearing from the airport; within 6.5 miles northeast and 4.5 miles southwest of the Solberg, N.J. VORTAC 298° radial and 118° radial, extending from 5.5 miles southeast to 11.5 miles northwest of the VORTAC; within a 7-mile radius of the center, 40°52'15'' N., 74°17'00'' W., of Caldwell-Wright Airport, Caldwell, N.J., extending clockwise from a 062° bearing to a 149° bearing from the airport; within a 9.5-mile radius of the center of the airport, extending clockwise from a 149° bearing to a 267° bearing from the airport; within a 14-mile radius of the center of the airport, extending clockwise from a 267° bearing to a 346° bearing from the airport; within a 10-mile radius of the center of the airport, extending clockwise from a 346° bearing to a 062° bearing from the airport; within 3.5 miles each side of a 276° bearing from a point 40°52'48'' N., 74°20'08'' W., extending from said point to 11.5 miles west of said point; within 5 miles each side of a 281° bearing from a point 40°52'48'' N., 74°20'08'' W., extending from said point to 13.5 miles west of said point; within 9.5 miles northwest and 4.5 miles southeast of a 054° bearing from the Paterson, N.J. RBN, extending from the RBN to 18.5 miles northeast of the RBN; within a 6-mile radius of the center, 40°41'28'' N., 74°32'08'' W., of Somerset Hills Airport, Basking Ridge, N.J., extending clockwise from a 035° bearing to a 162° bearing from the airport; within a 7-mile radius of the center of the airport, extending clockwise from a 162° bearing to a 217° bearing from the airport; within a 6-mile radius of the center of the airport, extending clockwise from a 217° bearing to a 287° bearing from the airport; within a 7.5-mile radius of the center of the airport, extending clockwise from a 287° bearing to a 035° bearing from the airport; within 8 miles northwest and 4.5 miles southeast of a 058° bearing and a 238° bearing from the Chatham, N.J. RBN, extending from 5.5 miles southwest of the RBN to 11.5 miles northeast of the RBN; within 5 miles each side of the Sparta, N.J. VORTAC 082° radial, extending from 23 miles east of the VORTAC to 38 miles east of the VORTAC; within an 8.5-mile radius of the center, 40°37'30'' N., 74°40'30'' W., of Somerset Airport, Somerville, N.J.

Extending clockwise from a 044° bearing to a 138° bearing from the airport; within a 6-mile radius of the center of the airport, extending clockwise from a 138° bearing to a 274° bearing from the airport; within an 11.5-mile radius of the center of the airport, extending clockwise from a 274° bearing to a 312° bearing from the airport; within a 10.5-mile radius of the center of the airport, extending clockwise from a 312° bearing to a 044° bearing from the airport, within 8 miles southeast and 4.5 miles northwest of the Solberg, N.J. VORTAC 050° and 230° radials, extending from 5.5 miles northeast of the VORTAC to 11.5 miles southwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at 41°19'00'' N., 74°00'00'' W., to 41°12'00'' N., 74°00'00'' W., to 41°11'00'' N., 74°09'00'' W., to 41°08'10'' N., 74°13'00'' W. thence northwesterly along the boundary of the State of New Jersey to 41°17'45'' N., 74°33'15'' W., to 41°19'00'' N., 74°33'00'' W., to the point of beginning; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at 40°-30'00'' N., 73°36'00'' W.; thence east along 40°30'00'' N. to the northwest edge of V-139, thence southwest along the northwest edge of V-139 to 40°12'55'' N., 73°19'00'' W.; to 40°14'15'' N., 73°30'30'' W., to 40°21'45'' N., 73°40'45'' W., to 40°16'35'' N., 73°47'30'' W., to 41°17'30'' N., 73°54'45'' W., to 40°17'00'' N., 73°58'00'' W., to 40°24'00'' N., 73°58'00'' W., to 40°29'00'' N., 74°16'00'' W., to 40°32'-00'' N., 74°16'00'' W., to 40°41'00'' N., 74°11'-45'' W., to 40°32'00'' N., 73°49'00'' W., to 40°-32'00'' N., 73°45'00'' W., to 40°33'00'' N., 73°41'00'' W., to 40°41'00'' N., 73°39'00'' W., to 40°55'00'' N., 73°50'00'' W., to 40°55'00'' N., 73°58'00'' W., to 41°00'00'' N., 73°54'00'' W., to 41°00'00'' N., 73°33'00'' W., to 40°50'-00'' N., 73°42'00'' W., to 40°41'00'' N., 73°33'-30'' W., to the point of beginning. The airspace within W-106 below 3,000 feet MSL is excluded.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 745; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on April 22, 1974.

MARTIN J. WHITE,
Acting Director, Eastern Region.

[FR Doc.74-10414 Filed 5-6-74;8:45 am]

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 74-WA-3]

TERMINAL CONTROL AREA AT ATLANTA, GEORGIA

Proposed Alteration and Expansion

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Atlanta, Ga., Terminal Control Area (TCA) by expanding the Atlanta TCA vertically to 12,500 feet MSL and horizontally to a 35-mile radius; adding east and west extensions to the 2500-foot area to accommodate parallel approaches; and deleting a portion of the surface area. Experience obtained under the proposed amendment may support later proposals to raise the upper limit of all Group I and Group II TCAs to 12,500 feet MSL.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before July 8, 1974 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons in the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

TCAs initially evolved from the 1968 Mid-Air Collision Study Program which indicated that the uncontrolled mix of VFR and IFR aircraft was a basic factor of terminal air traffic conflicts. TCAs are established to reduce the midair collision potential between large turbine-powered aircraft and unknown aircraft not operating within the air traffic control system. Air carriers account for much of the traffic at TCA locations and their involvement in a mid-air collision could be of catastrophic proportion.

There exists a potential for mid-air collision between turbine-powered aircraft being controlled by ATC and uncontrolled aircraft operating in the airspace between the floor of area positive control (18,000 feet MSL) and the tops of existing TCAs. After July 1, 1975, all aircraft operating in controlled airspace above 12,500 feet MSL will be required to have a transponder with a Mode 3/A 4096 Code capability and Mode C automatic altitude reporting capability. Further expansion of TCA airspace vertically to 12,500 feet would allow containment of jet aircraft within protected airspace during the transition into and out of the high density terminal areas.

On December 4, 1973, an FAA informal airspace meeting was held with representatives of the airspace user organizations in Atlanta to propose an expansion of TCA airspace vertically to 12,500 feet. The primary objection raised concerned a proposal for a 250-knot speed restriction within the expanded TCA. This restriction has been withdrawn.

It is therefore proposed to expand the Atlanta TCA by adding to the existing TCA a circular layer of airspace extending from 8,000 up to and including 12,500 feet MSL to a radius of 35-nautical miles from the Atlanta Airport.

The Atlanta TCA has been in effect since 1970 and has proven successful. However, during this time an additional east/west runway has been added to the Atlanta runway complex making it possible to conduct parallel ILS approaches. The present area is not large enough to procedurally contain all jet arrivals executing an ILS approach to runways 9R/27L while parallel approaches are in progress. A large number of jet aircraft being vectored for these approaches through necessity exit the TCA at the 12-mile boundary then reenter the airspace as they approach the airport.

By extending a portion of the 2500-foot area to the 20-mile radius circle, both east and west of the airport large turbine-powered aircraft being turned on to the "Low Side" of the parallel ILS approaches can be kept within the TCA. This procedure is required since vertical separation must be established prior to the lower aircraft intercepting the ILS.

In addition to the aforementioned changes, two other changes to the TCA are proposed. The geographical position of the William B. Hartsfield Atlanta International Airport has been recomputed due to the addition of an east/west runway. The east/west parallel runways were renumbered because of this expansion. These changes should be reflected in the official designation of the TCA.

Also, the extension of the surface area east of the Atlanta Airport was originally included in the TCA to accommodate large turbine-powered aircraft making an approach from the REX VOR. This procedure is not normally used by these aircraft and therefore the airspace contained in the extension should be made available to aircraft operating outside the TCA. This change is also included in this proposal.

In consideration of the foregoing, it is proposed to amend the Atlanta, Ga., TCA in § 71.401 of Part 71 of the Federal Aviation Regulations to read as follows:

ATLANTA, GA., TERMINAL CONTROL AREA

Primary Airport. Atlanta Airport (Lat. 33°38'31'' N., Long. 84°25'34'' W.)

BOUNDARIES

Area A. That airspace extending upward from the surface to and including 12,500 feet MSL within a 7-mile radius of the Atlanta Airport, excluding the Fulton County Control Zone and the airspace north of a line four miles north of and parallel to the extended centerline of Runways 8/26.

Area B. That airspace extending upward from 2,500 feet MSL to and including 12,500 feet MSL within a 12-mile radius of the Atlanta Airport, and that airspace between the 12-mile and 20-mile radii, bounded on the north by the 090°T(089°M)270°T(269°M) radials of the Rex VOR and on the south by the 091°T(090°M) and 271°T(270°M) radials of the Atlanta VORTAC, excluding Area A, the Fulton County Control Zone, and the airspace north of a line four miles north of and parallel to the extended centerline of Runways 8/26.

Area C. That airspace extending upward from 3,500 feet MSL to and including 12,500 feet MSL within a 20-mile radius of the Atlanta Airport, excluding Area A, Area B, and the airspace north of a line one mile south of and parallel to the 271°T(271°M) and 091°T(091°M) radials of the Fulton County VOR.

Area D. That airspace extending upward from 6,000 feet MSL to and including 12,500 feet MSL north of the Atlanta Airport bounded on the east by a 20-mile radius arc from the Atlanta Airport, on the south by a line one mile south of and parallel to the 271°T(271°M) and 091°T(091°M) radials of Fulton County VOR, on the west by a 20-mile radius arc from the Atlanta Airport, and on the north by the southern boundary of the area described as the Dobbins AFB Control Zone and the 260°T(259°M) radial of Norcross VOR east of the Dobbins AFB control zone.

Area E. That airspace extending upward from 8,000 feet MSL to and including 12,500 feet MSL within a 35-mile radius of the Atlanta Airport excluding Areas A, B, C, and D previously described.

This amendment is proposed under the authority of sections 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on April 30, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.74-10412 Filed 5-6-74;8:45 am]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[29 CFR Part 1602]

HIGHER EDUCATION STAFF INFORMATION REPORT EEO-6

Reporting and Recordkeeping Requirements; Notice of Hearing

Notice is hereby given pursuant to 44 U.S.C. 1508 and § 1602.3, Equal Employment Opportunity Commission Procedural Regulations, 29 CFR 1602.3, that the Equal Employment Opportunity Commission has authorized a public hearing to be held at 10 a.m., May 22, 1974, in the hearing room of the Equal Employment Opportunity Commission, 1800 G Street NW., Washington, D.C., room 1129, for the purpose of considering views regarding proposed reporting and recordkeeping requirements for institutions of higher education as set forth in §§ 1602.47-1602.55 and Higher Education Staff Information Report EEO-6.[1] The

[1] The proposed report EEO-6 and instructions are set forth in Appendix I immediately following the proposed regulations.

public hearing is held as required by section 709(c), 42 U.S.C. (Sup. II) 2000e-8(c), of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, and § 1602.2, Equal Employment Opportunity Commission Procedural Regulations, 29 CFR 1602.2.

The Equal Employment Opportunity Act of 1972 extended the Commission's jurisdiction to include the employment practices of educational institutions, both public and private, with 15 or more employees, except religious educational institutions with respect to the employment of individuals of a particular religion. The Act prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Section 709(c) of the Act authorizes the Commission to require employers, employment agencies, and labor organizations to preserve such records and reports as are necessary and appropriate for the enforcement of the Act.

Accordingly, the Commission proposes to amend Title 29, chapter XIV, part 1602 of the Code of Federal Regulations to establish report and recordkeeping regulations for institutions of higher education as set forth below.

Report EEO-6 is a joint report form which will service the employment information needs of this Commission, the Office of Civil Rights of the Department of Health, Education and Welfare (OCR), the Office of Federal Contract Compliance of the Department of Labor (OFCC), and the National Center for Educational Statistics of the Office of Education, Department of Health, Education, and Welfare (NCES), Report EEO-6 will replace Report EEO-1 now required by OFCC for institutions of higher education performing services as prime government contractors. Report EEO-6 will replace the staff portion of the Higher Education General Information Survey (O.E. Form 2300-3) of NCES. The Office of Civil Rights does not have a form requiring the information to be elicited by Report EEO-6. The Report EEO-6, therefore, will avoid unnecessary duplication of effort and will benefit the public and the agencies involved pursuant to the requirements of Chapter 35, Coordination of Federal Reporting Services, Title 44 of the United States Code 3501 et seq.

The regulations provide that all institutions having fifteen or more employees must file report EEO-6 annually. The term "institution of higher education" is defined. Such institutions are also required to retain the report forms filed for the three preceding years and all records which are necessary for the completion of the report. Personnel or employment records relating to hiring, promotion, tenure, and termination are required to be kept for a period of two years.

All persons who are interested are invited to participate in the public hearing. The procedure governing the hearing is set forth in §§ 1602.4–1602.6. Equal Employment Opportunity Commission Regulations, 29 CFR 1602.4–1602.6. Each person who wishes to participate should notify, in writing, the Director of Research, Equal Employment Opportunity Commission, Public Hearing-Personal, 1800 G Street NW., Washington, D.C. 20506, by May 17, 1974. Such notification should include the name, address, and telephone number of the person, agency, or organization wishing to participate, a brief general description of the evidence or argument to be presented, and an estimation of the time which will be required for such purpose. The Commission will notify the person, agency, or organization of the approximate time it will have for presentation and the approximate time during the public hearing at which such presentation may be given. A transcript will be made of the hearing and may be purchased by the public.

Persons planning to participate in this hearing and persons who are unable to attend the hearing or who wish to supplement in any way the presentation given at the hearing may submit pertinent written data, views, and argument to the Director of Research, Equal Employment Opportunity Commission, Proposed Regulation—Personal, 1800 G Street NW., Washington, D.C. 20506, no later than May 29, 1974. Each written submission should give the name and address of the person, agency, or organization responsible for it. Copies of all written submissions will be available for examination by interested persons at the Equal Employment Opportunity Commission Library, 1800 G Street NW., Washington, D.C., room 1145, between the hours of 9:30 a.m. to 5 p.m.

It is proposed to amend 29 CFR Part 1602 by adding new subparts O, P, and Q, consisting of new §§ 1602.47, 1602.48, 1602.49, 1602.50, 1602.51, 1602.52, 1602.53, 1602.54, and 1602.55, thereto to read as follows:

Subpart O—Recordkeeping for Institutions of Higher Education

Sec.
1602.47 Definition.
1602.48 Records to be made or kept.
1602.49 Preservation of records made or kept.

AUTHORITY: Sec. 709(c), 78 State. 265, 42 U.S.C. 2000e-8(c), 29 CFR 1602.3.

§ 1602.47 Definition.

Under this subpart, the term "institution of higher education" means an institutional system, college, university, community college, junior college, and any other educational institution which offers an associate degree, baccalaureate degree or higher degree or which offers a two year program of college level studies without degree. The term "college level studies" means a post secondary program which is wholly or principally creditable toward a baccalaureate degree or terminates in an associate degree.

§ 1602.48 Records to be made or kept.

Commencing September 1, 1974, every institution of higher education, whether public or private, with 15 or more employees, shall make or keep all records, and information therefrom, which are or would be necessary for the completion of Higher Education Staff Information Report EEO-6 whether or not it is required to file such a report under § 1602.50. The instructions for completion of Report EEO-6 are specifically incorporated herein by reference and have the same force and effect as other sections of this part. Such records, and the information therefrom, shall be retained at all times for a period of three years at the central administrative office of the institution of higher education, at the central administrative office of a separate campus or branch, or at an individual school which is the subject of the records and information, where more convenient. Such records, and the information therefrom, shall be made available if requested by the Commission or its representative under section 710 of Title VII and 29 U.S.C. 161. It is the responsibility of every institution of higher education to obtain from the Commission or its delegate the necessary instructions in order to comply with the requirements of this section.

§ 1602.49 Preservation of records made or kept.

(a) Any personnel or employment record (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, tenure, demotion, transfer, layoff, or termination, rates of pay or other terms of compensation, and selection for training) made or kept by an institution of higher eduction under § 1602.48 shall be preserved by such institution of higher education for a period of two years from the date of the making of the personnel action or record involved, whichever occurs later. In the case of the involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of termination. Where a charge of discrimination has been filed, or a civil action brought against an institution of higher education by the Commission or the Attorney General, the respondent shall preserve similarly at the central administrative office of the institution of higher education, at the central office of a separate campus or branch, or at the individual school which is the subject of the charge or action, where more convenient, all personnel records relevant to the charge or action until final disposition thereof. The term "personnel records relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; it would also include application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of "final disposition of the charge or the action" means the date of expiration of the statutory period within which a person claiming to be aggrieved

may bring an action in the United States District Court or, where an action is brought against an institution of higher education by a person claiming to be aggrieved, the Commission, or the Attorney General, the date on which such litigation is terminated.

(b) The requirements of paragraph (a) of this section shall not apply to application forms and other preemployment records of applicants for positions known to applicants to be of temporary or seasonal nature.

Subpart P—Higher Education Staff Information Report EEO–6

AUTHORITY: Sec. 709(c), 78 Stat. 265, 42 U.S.C. 2000e–8(c) 29 CFR 1602.3.

§ 1602.50 Requirement for filing and preserving copy of report.

On or before November 30, 1974, and annually thereafter, every public and private institution of higher education having fifteen (15) or more employees shall file with the Commission or its delegate executed copies of Higher Education Staff Information Report EEO–6 in conformity with the directions set forth in the form and accompanying instructions. Every institution of higher education shall retain at all times, for a period of three years a copy of the most recently filed Report EEO–6 at its central administrative office, at the central office of a separate campus or branch, or at an individual school which is the subject of the report, where more convenient. An institution of higher education shall make the same available if requested by the Commission or its representative under the authority of section 710 of the Act and 29 U.S.C. 161. It is the responsibility of the institutions above described in this section to obtain from the Commission or its delegate necessary supplies of the form.

§ 1602.51 Penalty for making of willfully false statements on report.

The making of willfully false statements on Report EEO–6 is a violation of 18 U.S.C. 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.52 Commission's remedy for failure to file report.

Any institution of higher education failing or refusing to keep records, in accordance with §§ 1602.48 or 1602.49, or failing or refusing to file Report EEO–6 when required to do so, in accordance with § 1602.50, may be compelled to keep records or to file by order of an United States District Court upon application of the Commission, or Attorney General in a case involving a public institution.

§ 1602.53 Exemption from reporting requirements.

If it is claimed that the preparation or filing of the report would create undue hardship, the institution of higher education may apply to the Commission for an exemption from the requirements set forth in this part by submitting to the Commission or its delegate a specific proposal for an alternative reporting system prior to date on which the report is due.

§ 1602.54 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the Higher Education Staff Report EEO–6, about the employment practices of private or public institutions of higher education whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of Title VII. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of Title VII and as otherwise prescribed by law.

Subpart Q—Records and Inquiries as to Race, Color, National Origin, or Sex

§ 1602.55 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts O, P and Q of this part, supersede any provisions of State or local law which may conflict with them.

(Sec. 709(c), 78 Stat. 265, 42 U.S.C. 2000e–8(c), 29 CFR 1602.3)

Signed at Washington, D.C., this 1st day of May, 1974.

JOHN H. POWELL, Jr.,
Chairman.

APPENDIX I—HIGHER EDUCATION STAFF INFORMATION EEO–6 FOR PUBLIC AND PRIVATE INSTITUTIONS

Federal law requires that the Equal Employment Opportunity Commission (EEOC) and the Office for Civil Rights (OCR) of the Department of Health, Education and Welfare (HEW) prescribe such records and reports as are necessary or appropriate for the enforcement of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, and for the enforcement of Executive Order 11246 by the Office of Federal Contract Compliance (OFCC). Accordingly this report is required by the OCR to carry out the purposes of Title VI of the Act, by EEOC to carry out the purposes of Title VII as amended by the Equal Employment Opportunity Act of 1972, and by OFCC to carry out purposes of Executive Order 11246.

This compliance reporting system is being implemented by the Higher Education Reporting Committee in a joint effort of EEOC, OCR, OFCC and the National Center for Educational Statistics of the Office of Education (HEW) for the collection of employment data of public and private institutions of higher education. The applicable laws, orders and regulations issued respectively by the EEOC, OCR, and OFCC pursuant to such laws are reprinted in section 10, Definitions. The basis for the requirement of these data by the Office of Education are also explained in that section of the Appendix.

1. RECORDKEEPING REQUIREMENTS

Institutions of higher education, institutional systems, colleges and universities, including community colleges and junior colleges, public and private, with 15 or more employees are required to maintain the necessary records to complete the Higher Education Staff Information Report EEO–6. Campuses or schools within an institution or a system which are separately administered such as a branch of a parent institution or one of the administratively-equal campuses of a multicampus institution must also maintain the necessary records to complete the EEO–6 form.

2. WHEN TO FILE

This annual report must be filed with the Equal Employment Opportunity Commission no later than November 30, 1974. Employment statistics should cover the payroll period ending on or about October 31, 1974.

3. WHERE TO FILE

Forward the completed reports in triplicate to the P.O. Box shown on the EEO–6 form. All requests for additional reporting forms should also be directed to the P.O. Box address.

4. HOW TO FILE

Report forms will be preaddressed and sent directly to the particular institution (system, campus, branch, school, etc.) required to complete and file a report. A report must be filed covering total employment data of the reporting unit. An institution, campus, branch, etc., that does not receive the EEO–6 form for filing should request it from the Higher Education Reporting Committee, 1800 G Street, N.W., Washington, D.C. 20506.

A branch campus of a parent institution or one of the administratively-equal campuses of multicampus institution will complete and file a separate report.

5. REQUESTS FOR INFORMATION AND SPECIAL PROCEDURES

An institution, institutional system, campus, branch, or school which claims that preparation or the filing of Report EEO–6 would create undue hardships may apply to the Commission for a special reporting procedure, submitting a written, alternative proposal for compiling and reporting the information. Only those special procedures approved in writing by the Commission are authorized. Such authorization will remain in effect for one reporting year. Direct all requests for special exemption including proposed special reporting procedures and any other pertinent information to: Higher Education Reporting Committee, EEO–6; Equal Employment Opportunity Commission, Attention: Office of Research, 1800 "G" Street, N.W., Washington, D.C. 20506.

6. INSTRUCTIONS FOR COMPLETING EEO–6

PART I—IDENTIFICATION

A. Institution, Campus or School: Enter the name and address information including zip code, only if the preprinted label is in error, it is a new institution, campus or branch, it is a new school or the reporting unit has been renamed, consolidated or reorganized.

B. Type: Indicate, by a check mark, the type of institution, whether a 4-year college or university, community college (2 years or

more), junior college, technical college or institute, or other.

C. Institution Covered is: Indicate, by a check mark, the institution covered by the report, whether an institutional system, a single-campus institution, etc., in accordance with the following definitions:

Institutional system. A complex of two or more institutions of higher education, each separately organized or independently complete, under the control or supervision of a single administrative body.

Single-campus Institution. A single campus (or single building or structure) with a single administrative body. (See definition of Multi-Campus Institution)

Branch Campus. A campus of an institution of higher education which is organized on a relatively permanent basis (i.e., has a relatively permanent administration), which offers an organized program or programs of academic work of at least 2 years (as opposed to courses), and which is located in a community different from that in which its parent institution is located. To be considered different from that of a parent institution, a branch shall be located beyond a reasonable commuting distance from the main campus of the parent institution.

Main Campus. In those institutions comprised of a main campus and one or more branch campuses, the main campus (sometimes called the parent institution) is usually the location of the core, primary, or most comprehensive program. Unless the institution-wide, or central-administrative office for such institutions is reported to be at a different location, the main campus is also the location of the central-administrative office.

Multi-Campus Institution. An organization bearing a close resemblance to an institutional sysem, but unequivocally designated as a single institution with either of two organizational structures, (1) an institution having two or more campuses responsible to a central administration (which central administration may or may not be located on one of the administratively-equal campuses) or (2) an institution having a main campus with one or more branch campuses attached to it.

Other. It is possible that a reporting unit may not fall within any of the above categories. Use "Other" in such cases and specify for future use by EEOC.

D. Federal Contract Information. If the institution is a Federal contractor it must answer this question and report the total amount of a prime contract with any agency of the Federal Government, Federally-assisted contract, or a subcontract at any tier under any prime Government contract amounting to more than $10,000. This information is required to meet the legal requirements of the OFCC as prescribed in 41 CFR 60–1.7 of their rules and regulations.

PART II—FULL-TIME STAFF STATISTICS—OCCUPATIONAL ACTIVITY

A. Total by Salary Class Intervals. This part will reflect total full-time employees by the primary occupational activity and salary class intervals shown in the stub of the matrix, by sex for each of the designated racial/national origin categories in columns a thru l.

Enter in the appropriate line and column the number of full-time employees who are considered by the institution to be working on a full-time basis only. These are the employees and faculty of the institution (reporting unit) whose current work assignments, regardless of title or job classification, require their services for a length of time defined by the institution as full-time employment in the particular activity. For purposes of this report, include persons who, although on sabbatical leave, are on the institution's payroll paid as full-time employees on the basis of their regular or customary functions. If there are no full-time employees in a category, enter "0" for the category.

NOTE: Salary for full-time instructional is defined as that which is considered by the institution (reporting unit) to be the salary, not including fringe benefits, paid by the institution whether the period of time of a basic contract is for a 9-10 months, 11–12 months or some other comparable length of time or salary schedule. Salary for other occupational activities is that which is considered by the institution as annual salary not including fringe benefits. Do not include employees whose services are paid by an outside contractor performing a function for the institution such as custodial, maintenance, or food service, security, etc., nor persons who volunteer or donate their services to the institutions.

Activity 1. *Executive, Administrative and Managerial.* Include individuals whose assignments require *primary* (and major) responsibility for management of the institution, or a customarily recognized department or subdivision thereof. Assignments may require the performance of work directly related to management policies or general business operations of the institution or the performance of functions in the administration of a department or subdivision thereof directly related to academic instruction. It is assumed that assignments in this category customarily and regularly require the incumbent to exercise discretion and independent judgment, and to direct the work of others. Include in this category supervisory personnel of the technical, clerical, craft, and custodial force. Deans and assistant deans who perform such functions on a full-time basis should be reported separately in Activity 2.

Activity 2. *Deans and Assistant Deans.* Include the deans and assistant deans in a full-time administrative capacity whose primary responsibility involves management functions of the institution, or a customarily recognized department or subdivision thereof, or whose assignments involve the requirements further defined above for the category "Executive, Administrative and Managerial". Do not include in this category deans and assistant deans who are considered by the institution as full-time instructional and who should be reported on Activity 3.

Activity 3. *Instructional.* Includes individuals whose specific assignments customarily are made for the purpose of instruction as a principal activity. Include deans and assistant deans who are considered by the institution as full-time instructional. Include also graduate teaching assistants and/or associates whose assignments by the institution are defined as full-time and the employer-employee relationship is clearly established or defined in accordance with the Fair Labor Standard Act of 1938, as amended. Personnel whose assignments are primarily associated with research projects as a principal activity will be reported as professional non-instructional in Activity 3 of the matrix.

Acitvity 4. *Professional non-instructional "other than Executive, etc., and Instructional."* Include individuals whose assignment require knowledge of an advanced type in a field of science or learning associated with research, business, health, guidance, etc., and which are not classified as administrative or instructional. Include persons whose principal activity is of a professional nature associated with original and creative work in an artistic field, or with organized research projects. Assignment in this category would require bachelor's, master's or doctoral degrees or their equivalent. Include full-time librarians and graduate research assistants whose research is not primarily for the purpose of fulfilling the requirements for an advanced degree but for whom the employer-employee relationship can be clearly established or defined.

Activity 5. *Clerical and Secretarial.* Include individuals whose assignments typically are associated with clerical activities and those which are specifically of a secretarial nature. Include assignments in which personnel who are responsible for internal and external communications, recording and retrieval of data (other than computer programmers) and/or information and other paper work required in an office, such as bookkeepers, stenographers, clerk typists, office-machine operators, statistical clerks, payroll clerks, etc. Include also sales clerks such as those employed full-time in the bookstore, and library clerks who are not recognized as librarians.

Activity 6. *Technical and Paraprofessionals.* Include individuals whose assignments require specialized knowledge or skills which may be acquired through experience or academic work such as is offered in many technical institutes, junior colleges or through equivalent on-the-job training. Include computer programmers and operators, draftsmen, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses, dietitians, photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic-physical sciences), and similar occupations not properly classifiable in other occupational-activity categories but which are institutionally defined as technical assignments. Include also personnel who may lack the usual educational requirements but who, due to some special skill, experience or need of the institution, hold positions and perform functions generally held by professionals only and therefore are classified as paraprofessionals.

Activity 7. *Crafts and Trades Including Maintenance.* Include individuals whose assignments typically require special manual skills and a thorough and comprehensive knowledge of the process involved in the work, acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Include mechanics and repairmen, electricians, stationary engineers, skilled machinists, carpenters, compositors and type-setters, etc.

Activity 8. *Service Workers.* Include individuals whose assignments require limited degrees of previously acquired skills and knowledge and in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of personnel and the student body or which contribute to the upkeep and care of buildings, facilities or grounds of the institutional property. Include chauffeurs, laundry and dry cleaning operatives, cafeteria and restaurant workers, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundskeepers, refuse collectors, construction laborers, etc.

B. Additional Information. I. *Persons reported in activity 1 with academic rank and tenure.* Report in line 1 the number of full-time staff members included in Activity 1 of Part II who, although the principal activity is in the capacity of executive, administrator, or manager, also hold an academic rank and have tenure status within the institution.

2. *Full-time persons paid from non-institution's budget sources.* Report in line 2 the number of persons on the institution's payroll, employed full-time, who are paid in full or in part from funds that are not a part of the general operating fund budget by the institution regardless of the source of the funds. The funds may be from government agencies or private foundations for programs

involving public services; research; capital improvements; administration of student-aid programs for grants, work aid, and loans; and other miscellaneous services. DO NOT include any person who is paid from other than the institution's payroll for services rendered in such programs.

PART III—FULL-TIME FACULTY BY RANK AND TENURE

Tenured. Report by race/national origin the number of deans and assistant deans, and for each of the academic ranks shown in lines 1 through 7 the total full-time instructional persons who have tenure status within the institution.

Non-tenured. Report by race/national origin the number of deans and assistant deans, and for each of the academic ranks shown in lines 1 through 7 the total full-time instructional persons who are nontenured.

NOTE: In reporting the number of deans and assistant deans and other persons with academic rank and tenure, use the institution's criteria or requirements for either even though the definitions used by the institution may be different from those considered to be national or local standards used for such purposes. No faculty member should be reported more than once in Part III and the sum must equal the total instructional personnel reported in Part II.

PART IV—OTHER EMPLOYMENT DATA

A. *Staff Totals. Part-time.* Report in lines 1 through 7 the number of employees in their respective categories who work for a length of time in a day, week, etc., defined by the institution as part-time employment. Do Not include temporary, part-time employees such as those hired to help at registration time or to work in the bookstore for a day or two at the start of the quarter; persons who are not in the institution's payroll; nor persons who volunteer or donate their services to the institution on a part-time basis. Report the instructional staff working part-time by tenured and nontenured separately in each category.

Do not report full-time employees engaged in more than one program function involving two or more activities as part-time for each activity. They should be reported as full-time in the activity considered by the institution to the be the employee's principal activity, or the more critical one from the standpoint of assignment or work performed if the person is engaged in two separate activities for equal amounts of time or in three or more separate activities for which the time is divided equally.

New hires. Report in lines 9 through 15 the number of full-time employees in the respective categories who were hired between January 1 and September 30 of the report year. There are persons who were hired for the first time or after a break in service for full-time employment. Do Not include as new hires persons who have returned from sabbatical leave.

Report the instructional staff newly hired for full-time employment separately for tenured and non tenured.

B. *Additional information.* Report in line 1 the number of persons in the capacity of executive, administrator, manager or professional non instructional included in items 1 and 4 respectively who are employed on a part-time basis and also hold academic rank and tenure. Exclude persons employed full-time but working only part of the time in a program function involving any of the job activities. Report in line 2 the number of persons in the capacity of executive, administrator, manager or professional non instructional included in items 9 and 12 who were newly hired for full-time employment between January 1 and September 30 of the reporting year and who hold academic rank and tenure. These are persons who were hired for the first time or after a break in service. Do Not include persons who have returned from sabbatical leave during the reporting year.

7. RACE/NATIONAL ORIGIN IDENTIFICATION

You may acquire the race/national origin information necessary for this section either by visual survey of the work force, or from post-employment records as to the identity of employees. Eliciting information on the race or national origin of an employee by direct inquiry is not encouraged. An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging.

Where records are maintained, it is recommended that they be kept separately from the employee's basic-personnel file or other records available to those responsible for personnel decisions.

Since visual surveys are permitted, the fact that the race or national origin identity is not present on employment records is not an excuse for failure to provide the data. Moreover, the fact that employees may be located at different addresses does not provide an acceptable reason for failure to comply with the reporting requirements. In such cases, it is recommended that visual surveys be conducted for the employer by persons such as supervisors who are responsible for the work of the employees or to whom the employees report for instructions or otherwise.

Conducting visual surveys and keeping post-employment records of the race or national origin of employees is legal in all jurisdictions and under all Federal and State laws. State laws prohibiting inquiries and recordkeeping as to race, etc., relate only to applicants for jobs, not to employees.

The concept of race as used by the Equal Employment Opportunity Commission does not denote clearcut-scientific definitions of anthropological origins. For the purposes of this report, any employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/national origin category. For example, "Spanish Surnamed," while not a race identification, is included as a separate ethnic category because of the employment discrimination often encountered by this group. For this reason do not include Spanish Surnamed under either "white" or "black".

The designated race/national origin categories will be used as follows:

a. White should include persons of Indo-European descent, including Pakistani and East Indian.

b. Black should include persons of black African descent as well as those of the black race identified as Jamaican, Trinidadian, and West Indian.

c. Spanish Surnamed should include all persons of Mexican, Puerto Rican, Cuban, Latin American, or Spanish descent including all persons whose native language, cultural heritage, and/or ancestry are rooted in Spain or Latin America.

d. Asian American should include persons of Japanese, Chinese, Korean, or Filipino descent or whose appearance reveal Oriental, Polynesian origins.

e. American Indian should include persons who identify themselves or are known as such by virtue of tribal association or consider themselves native Americans.

f. Other should include Aleuts, Eskimos, Malayans, Thais, and others not covered by the specific categories on the form.

While the word "American" is not intended to denote citizenship, for purposes of this report noncitizens employed by institutions of higher education will be reported under "Other".

8. RECORDKEEPING REQUIREMENTS

The EEO–6 report requires the combining of some specific employment data to complete the form. Separate institutional or campus-employment data by sex and race/national origin identification in those job activities should be maintained on site in such form as is required in the EEO–6 and should be available upon request to representatives of Federal agencies. Retain copies of submitted EEO–6 forms for a period of 3 years.

9. CERTIFICATION

Enter the telephone number (include area code and extension, if any), name, title, and signature of the person who is responsible for the report and can answer questions about it.

10. DEFINITIONS

a. "EEOC" refers to the Equal Employment Opportunity Commission established under Title VII of the Civil Rights Act of 1964.

b. "OCR" refers to the Office of Civil Rights, Department of Health, Education and Welfare.

c. "OE" refers to the Office of Education, Department of Health, Education and Welfare.

d. "OFCC" refers to the Office of Federal Contract Compliance of the U.S. Department of Labor.

e. Higher Education Reporting Committee refers to an interagency committee representing EEOC, OCR, OE and the OFCC for the purpose of sponsoring the EEO–6 jointly and preventing any duplication of requirements by these agencies for employment statistics from institutions of higher education.

f. "Institution of Higher Education" refers to an institutional system, college, university, community college, junior college, and any other educational institution which offers an associate degree, baccalaureate degree or higher degree or which offers a two year program of college level studies without degree. The term "college level studies" means a post secondary program which is wholly or principally creditable toward a baccalaureate degree or terminates in an associate degree.

g. "Employee" refers to a person employed by a institution of higher education. This term shall not include any person elected to public office in a State or political subdivision of a State by the qualified voters thereof, or any person appointed by such officer to be on such officer's personal staff, or an appointee at the policy-making level, or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. However, this exemption shall not include employees subject to the civil service laws of a State government, government agency, or political subdivision.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

HIGHER EDUCATION STAFF INFORMATION (EEO-6)

Public/Private Institutions and Campuses

FORM APPROVED:

TO:

INSTITUTION *(Check one)*:
☐ PUBLIC
☐ PRIVATE *(Non-Public)*

INSTRUCTIONS: Complete this form in triplicate. The original and first copy are to be mailed to _____. Keep the remaining copy for your files. Complete Section IA if your address is different from preaddressed label above.

I. IDENTIFICATION

A. INSTITUTION/CAMPUS OR SCHOOL

1. NAME

2. STREET AND NO/POST OFFICE BOX	3. CITY/TOWN	4. COUNTY	5. STATE/ZIP CODE

B. TYPE

	1. 4 YEAR COLLEGE		2. UNIVERSITY		3. JUNIOR COLLEGE		4. TECHNICAL COLLEGE OR INSTITUTE
	5. COMMUNITY COLLEGE *(2 years or more)*		6. OTHER *(Specify)*				

C. REPORT COVERS

	1. AN INSTUTIONAL SYSTEM		2. SINGLE CAMPUS INSTITUTION		3. A BRANCH CAMPUS OF A PARENT INSTITUTION *(Give name below)*
	4. A MAIN CAMPUS *(Parent institution)* WITH ONE OR MORE BRANCH CAMPUSES AND/OR OTHER CAMPUSES				5. ONE OF THE ADMINISTRATIVELY EQUAL CAMPUSES OF A MULTICAMPUS INSTITUTION *(Give name below)*
	6. OTHER *(Specify)*				7. NAME *(Only if Items 4 or 5 are checked)*

D. FEDERAL CONTRACT INFORMATION

The institution and/or any of its administratively equal units (1) Has a prime contract with any agency of the Federal Government, a Federally assisted contract, or a subcontract at any tier under any prime Government contract, amounting to more than $10,000 (2) Serves as a depositary of federal government funds (3) Serves as an issuing and paying agency of US Savings Bonds/Notes (4) Holds a federal government bill of lading in any amount, if yes give amount.

$ _____

II. FULL TIME STAFF STATISTICS - OCCUPATIONAL ACTIVITY

(Use Institution's definition of Full-Time Employment)

A. TOTALS

PRIMARY OCCUPATIONAL ACTIVITY BY SALARY CLASS INTERVALS	MALE						FEMALE						OVERALL TOTALS *(Sum of Columns A thru L)*
	WHITE A	BLACK B	SPANISH SURNAMED AMER C	ASIAN AMER D	AMER INDIAN E	OTHER F	WHITE G	BLACK H	SPANISH SURNAMED AMER I	ASIAN AMER J	AMER INDIAN K	OTHER L	M
1. EXECUTIVE/ADMINISTRATIVE/MANAGERIAL													
BELOW $ 7,500													
$ 7,500 - $ 9,999													
$10,000 - $12,999													
$13,000 - $15,999													
$16,000 - $18,999													
$19,000 - $24,999													
$25,000-$29,999													
$30,000 AND OVER													
TOTAL													

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II. OCCUPATIONAL ACTIVITY (Con't)

PRIMARY OCCUPATIONAL ACTIVITY BY SALARY CLASS INTERVALS	A. TOTALS												OVERALL TOTALS (Sum of Columns A thru L)
	MALE						FEMALE						
	WHITE A	BLACK B	SPANISH SUR-NAMED AMER C	ASIAN AMER D	AMER INDIAN E	OTHER F	WHITE G	BLACK H	SPANISH SUR-NAMED AMER I	ASIAN AMER J	AMER INDIAN K	OTHER L	M
2. DEANS/ASST DEANS *(In full-time administrative capacity)*													
BELOW $ 7,500													
$ 7,500 - $ 9,999													
$10,000 - $12,999													
$13,000 - $15,999													
$16,000 - $18,999													
$19,000 - $24,999													
$25,000 - $29,999													
$30,000 AND ABOVE													
TOTAL													
3. INSTRUCTIONAL													
BELOW $ 7,500													
$ 7,500 - $ 9,999													
$10,000 - $12,999													
$13,000 - $15,999													
$16,000 - $18,999													
$19,000 - $24,999													
$25,000 - $29,999													
$30,000 AND ABOVE													
TOTAL													
4. PROFESSIONAL NON INSTRUCTIONAL													
BELOW $ 7,500													
$ 7,500 - $ 9,999													
$10,000 - $12,999													
$13,000 - $15,999													
$16,000 - $18,999													
$19,000 - $24,999													
$25,000 - $29,999													
$30,000 AND ABOVE													
TOTAL													
5. CLERICAL/ SECRETARIAL													
BELOW $ 5,000													
$ 5,000 - $ 7,499													
$ 7,500 - $ 9,999													
$10,000 - $12,999													
$13,000 - $15,999													
$16,000 AND OVER													
TOTAL													
6. TECHNICAL/ PARAPROFESSIONAL													
BELOW $ 5,000													
$ 5,000 - $ 6,999													
$ 7,000 - $ 9,999													
$10,000 - $12,999													
$13,000 - $15,999													
$16,000 AND OVER													
TOTAL													

II. OCCUPATIONAL ACTIVITY (Con't)

A. TOTALS

PRIMARY OCCUPATIONAL ACTIVITY BY SALARY CLASS INTERVALS	MALE						FEMALE						OVERALL TOTALS (Sum of Columns A thru L)
	A WHITE	B BLACK	C SPANISH SUR-NAMED AMER	D ASIAN AMER	E AMER INDIAN	F OTHER	G WHITE	H BLACK	I SPANISH SUR-NAMED AMER	J ASIAN AMER	K AMER INDIAN	L OTHER	M
7. CRAFTS/TRADES (Includes maintenance)													
BELOW $ 5,000													
$ 5,000 - $ 7,499													
$ 7,500 - $ 9,999													
$10,000 - $12,999													
$13,000 - $15,999													
$16,000 AND ABOVE													
TOTAL													
8. SERVICE WORKERS													
BELOW $ 3,000													
$ 3,000 - $ 4,999													
$ 5,000 - $ 7,499													
$ 7,500 - $ 9,999													
$10,000 AND ABOVE													
TOTAL													
9. TOTAL FULL TIME													

B. ADDITIONAL INFORMATION

1. PERSONS REPORTED IN Sec IIA 1 WITH ACADEMIC RANK OR TENURE													
2. FULL TIME STAFF PAID IN FULL OR IN PART FROM NON INST. BUDGET SOURCES													

III. FULL TIME FACULTY BY RANK AND TENURE

FACULTY (Count only once)	TOTALS: MALE						FEMALE						OVERALL TOTALS (Sum of Columns A thru L)
	A WHITE	B BLACK	C SPANISH SUR-NAMED AMER	D ASIAN AMER	E AMER INDIAN	F OTHER	G WHITE	H BLACK	I SPANISH SUR-NAMED AMER	J ASIAN AMER	K AMER INDIAN	L OTHER	M
TENURED													
1. DEANS/ASST DEANS													
2. PROFESSORS													
3. ASSOC. PROFESSORS													
4. ASST. PROFESSORS													
5. INSTRUCTORS													
6. LECTURERS													
7. OTHER FACULTY													
8. TOTAL													
NON TENURED													
9. DEANS/ASST. DEANS													
10. PROFESSORS													
11. ASSOC. PROFESSORS													
12. ASST. PROFESSORS													
13. INSTRUCTORS													
14. LECTURERS													
15. OTHER FACULTY													
16. TOTAL (Lines 8 & 16 to equal Sec IIA3)													

PAGE 4 OF 4 PAGES

IV. OTHER EMPLOYMENT DATA

A. TOTALS

PERSONNEL	MALE						FEMALE						OVERALL TOTALS (Sum of Columns A thru L)
	A WHITE	B BLACK	C SPANISH SUR. NAMED AMER	D ASIAN AMER	E AMER INDIAN	F OTHER	G WHITE	H BLACK	I SPANISH SUR. NAMED AMER	J ASIAN AMER	K AMER INDIAN	L OTHER	M
PART TIME													
1. EXECUTIVE/ADMINISTRATIVE/MANAGERIAL													
INSTRUCTIONAL													
2. TENURED													
3. NON TENURED													
4. PROFESSIONAL NON INSTRUCTIONAL													
5. TECHNICAL													
6. CLERICAL/SECRETARIAL													
7. SERVICE WORKERS													
8. TOTALS													
NEW HIRES (*Full time staff hired between 1 July 74 and Sep 30, 1974*)													
9. EXECUTIVE/ADMINISTRATIVE/MANAGERIAL													
INSTRUCTIONAL													
10. TENURED													
11. NON TENURED													
12. PROFESSIONAL NON INSTRUCTIONAL													
13. TECHNICAL													
14. CLERICAL/SECRETARIAL													
15. SERVICE WORKERS													
16. TOTALS													

B. ADDITIONAL INFORMATION

1. NON INSTRUCTIONAL PART-TIME REPORTED IN SEC *IV A 1 & 4* WITH ACADEMIC RANK AND TENURE													
2. NON INSTRUCTIONAL NEW HIRES REPORTED IN SEC *IV A 9 & 12* WITH ACADEMIC RANK AND TENURE													

REMARKS

CERTIFICATION: I certify that the information given in this report is correct and true to the best of my knowledge and was prepared in accordance with accompanying instructions. *(Willfully false statements on this report are punishable by law, U.S. Code, Title 18, Sec 1001)*

DATE	TELEPHONE NO. *(Include area code)*	TYPED NAME/TITLE OF PERSON PREPARING/CERTIFYING REPORT	SIGNATURE

[FR Doc.74-10345 Filed 5-6-74;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

[Public Notice 419]

PROPOSED LAW OF THE SEA TREATY

Notice of Availability and Public Meeting Regarding Draft Environmental Impact Statement

Pursuant to section 102 of the National Environmental Policy Act of 1969, the Department of State, with extensive support from other concerned Federal agencies, has prepared a Draft Environmental Impact Statement with respect to a proposed treaty on the Law of the Sea. (See 39 FR 3689, January 29, 1974.)

Copies of the Draft Environmental Impact Statement may be obtained by writing to Mr. John Norton Moore, Chairman, NSC Interagency Task Force on the Law of the Sea, Room 4321, Department of State, Washington, D.C. 20520, or to the Office of Environmental Affairs, Room 7822, Department of State, Washington, D.C. 20520. Comments on the Statement may be submitted to Mr. John Norton Moore at the above address.

Notice is hereby given that a public meeting on this Draft Statement will be conducted by the Department of State on Monday, June 10, 1974, at 10 a.m., in the East Auditorium, Department of State, 2201 C Street, NW., Washington, D.C. Persons desiring to submit comments on this statement at the public meeting are encouraged to do so and are requested to notify the Office of the Chairman, NSC Interagency Task Force on the Law of the Sea, Department of State, of their plans to attend (telephone: 202–632–9098).

For the Secrctary of State.

Dated: May 1, 1974.

[SEAL] CHRISTIAN A. HERTER, Jr.,
Special Assistant to the Secretary of State for Environmental Affairs.

[FR Doc.74–10466 Filed 5–6–74;8:45 am]

[Public Notice CM–137]

STUDY GROUP 1 OF THE U.S. NATIONAL COMMITTEE FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Notice of Meeting

The Department of State announces that Study Group 1 of the U.S. CCITT National Committee will meet on May 29, 1974 at 10 a.m. in room 502 of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. This Study Group deals with U.S. Government regulatory aspects of international telegraph and telephone operations and tariffs and, with respect to the meeting announced herein, will deal particularly with tariff principles for the lease of telecommunication circuits.

The agenda of the May 29 meeting will include:

a. Completion and finalization of U.S. positions for an international meeting of CCITT Study Group III scheduled for June 10–14, 1974 insofar as such action may not have been accomplished in a preparatory meeting scheduled to take place May 8, 1974, and

b. Review of documents relating to the foregoing conference received after May 8.

Members of the general public who desire to attend the meeting on May 29 will be admitted up to the limit of the capacity of the meeting room.

Dated: April 29, 1974.

RICHARD T. BLACK,
Chairman,
U.S. National Committee.

[FR Doc.74–10385 Filed 5–6–74;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

GRANTING OF RELIEF

Notice is hereby given that pursuant to 18 U.S.C., section 925(c), the following named persons have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to my satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

Adams, James W., 804 N. 41st, Lawton, Oklahoma, convicted on June 5, 1953, in the United States District Court for the Western District of Oklahoma.

Allbritton, William R., 257 Old Mill Lane, Dallas, Texas, convicted on June 11, 1953, in the District Court, Dallas County, Texas.

Anthony, Otis F., 1502 North Dodge, North Platte, Nebraska, convicted on September 25, 1970, in the United States District Court, District of Nebraska.

Armstrong, Roger E., 740 S. Everett Road, Harrisville, Michigan, convicted on June 24, 1969, in the Wayne County Circuit Court, Michigan.

Barrowman, Jr., Robert D., 108 Julia Street, Bay City, Michigan, convicted on June 7, 1954, in the Circuit Court for Bay County, Michigan.

Bennett, Walter A., P.O. Box 244, Norway, Maine, convicted on May 16, 1967, in the Oxford County Superior Court, Maine.

Brooks, Larry L., 9003—10th NE., Everett, Washington, convicted on October 29, 1958, and on April 3, 1962, in the Superior Court, County of King, Washington.

Bundrum, Michael Virgil, Route 2, Box 246, Jacksonville, Alabama, convicted on April 20, 1971, in the Circuit Court of Cherokee County, Alabama.

Callender, Sr., Gerald L., 4975 Wakefield N.E., Comstock Park, Michigan, convicted on July 23, 1968, in the Circuit Court, Kent County, Michigan.

Carroll, Arthur B., 1418 Edison Avenue, La Junta, Colorado, convicted on December 31, 1947, by General Court-Martial, Headquarters, Tinker Air Force Base, Oklahoma.

Collins, Walter Wells, 894 Kings Court, N.E., Atlanta, Georgia, convicted on June 24, 1966, in the Circuit Court, Broward County, Florida.

Cook, Guy R., 3115 Brisbane Street, Walla Walla, Washington, convicted on September 16, 1970, in the Superior Court, Clark County, Washington.

Daniels, Steven D., 2020 Whitewing, McAllen, Texas, convicted on November 1, 1971, in the 92nd District Court, Hidalgo County, Texas.

El-Quhir, Zafir Iben, 236 W 114th Street, Apartment 5B, New York, New York, convicted on June 9, 1965, in the Queens Supreme Court, Queens, New York.

Fallon, John E., 39 Hudson Street, Somerville, Massachusetts, convicted on November 2, 1960, in the Middlesex Superior Court, Massachusetts.

Farlee, John F., 2323 Bellwood Drive #12, Grand Island, Nebraska, convicted on April 10, 1970, in the District Court of Hall County, Nebraska.

Fish, Marshall E., Box 4, West Peru, Maine, convicted on November 12, 1942, in the Superior Court, Oxford County, Maine.

Gabbert, John M., 1302 Hyman Lane, Austin, Texas, convicted on July 7, 1969, in the 174th District Court of Harris County, Texas.

Gantt, Joe B., P.O. Box 117, Sunnyside, Florida, convicted on March 10, 1969, in the United States District Court, Northern District of Alabama.

Garner, David Gene, 4709 Tecumseh Street, Apt. 104, College Park, Maryland, convicted on January 25, 1967, in the Circuit Court, Prince George's County, Maryland.

Green, Jr., Solomon, 8772 Bessemore Street, Detroit, Michigan, convicted on February 7, 1958, in the Recorders Court, Detroit, Michigan.

Greenlaw, Donald F., R.F.D. #2, Farmington, Maine, convicted on July 10, 1967, in the Superior Court, Kennebec County, Augusta, Maine.

Helton, Charlie, Route #3, Pineville, Kentucky, convicted on May 5, 1948, in the Bell County Circuit Court, Kentucky, and on November 14, 1950, and April 5, 1955, in the United States District Court at London, Kentucky.

Hornick, Jr., Paul, 1409 Mary Drive, Johnstown, Pennsylvania, convicted on December 19, 1973, in the Court of Common Pleas, Cambria County, Pennsylvania.

Hudson, Jr., Douglas D., 329 Brentwood Road, Charlottesville, Virginia, convicted on November 30, 1970, in the Circuit Court, Albemarle County, Virginia.

Jackson, Eddie, 18441 Prest Street, Detroit, Michigan, convicted on July 20, 1949, in the Kent County, Michigan, Circuit Court.

Jacobs, Sr., Thomas Allen, 513 S.E. Lane Street, Roseburg, Oregon, convicted on January 13, 1964, in the Circuit Court, Macon County, Missouri.

Johnson, Robert L., 2818 E. Princess Ann Road, Norfolk, Virginia, convicted on April 25, 1961, in the Circuit Court, Norfolk, Virginia.

Kitteaux, Benjamin C., Box #175, Rosebud, South Dakota, convicted on July 3, 1968, in the Circuit Court, Tenth Judicial Circuit, Tripp County, South Dakota.

Leadingham, Ronald L., 2106 Jackson Avenue, Portsmouth, Ohio, convicted on November 29, 1971, in the Delaware County, Ohio, Court of Common Pleas.

Leipheimer, Ronald A., 226 East Cooper Street, Slippery Rock, Pennsylvania, convicted on October 8, 1970, in the Court of Common Pleas of Butler County, Pennsylvania.

McLaughlin, Jr., Joseph R., 748 Lake Edward Drive, Virginia Beach, Virginia, convicted on April 21, 1960, in the Circuit Court, Norfolk, Virginia.

Malcome, Gerald Wayne, Rural Route 8, Upper Springbay Road, East Peoria, Illinois, convicted on January 30, 1967, in the United States District Court, Southern Judicial District of Illinois.

Markwell, Ervin, R.R. #2, Hillsboro, Kentucky, convicted on September 24, 1957, in the United States District Court, Eastern District of Kentucky, and on November 14, 1964, and June 5, 1967, in the Fleming County Circuit Court, Kentucky.

Mauk, George O., P.O. Box 107, Wilkinson, West Virginia, convicted on October 19, 1960, in the United States District Court for the Southern District of West Virginia.

Middleswart, William Max, 210 W. 19th Street, Kearney, Nebraska, convicted on July 23, 1971, in the District Court, Dawson County, Nebraska.

Moreno, Jr., Benancio, 4907½ Rusk, Houston, Texas, convicted on May 14, 1970, in the 184th District Court, Harris County, Texas.

Munoz, Raymond G., 233 East Young Street, San Antonio, Texas, convicted on June 24, 1943, in the District Court of Bexar, County, Texas.

Northcutt, Jack G., 2296 East 14th Place, Yuma, Arizona, convicted on August 7, 1959, by the Military Training Center, ATC, Lackland AFB, Texas.

Peregoy, Harvey E., Route 1, Box 205 D, Troy, Virginia, convicted on February 13, 1969, in the Circuit Court of Albemarle County, Commonwealth of Virginia.

Quinn, Ivin F., Route 2, Ferrum, Virginia, convicted on May 6, 1952; May 9, 1957; and June 21, 1960, in the United States District Court, Western District of Virginia.

Rodgers, George A., 3015 S. Liddesdale, Detroit, Michigan, convicted on January 26, 1927, in the Circuit Court, Wyandotte County, Kansas City, Missouri, and on September 13, 1963, in the United States District Court, Eastern District of Michigan.

Savoy, Larry M., 108 Pool Street, Apt. C, Biddeford, Maine, convicted on March 23, 1967, in the Cumberland County Superior Court, Maine, and on April 17, 1967, in the York County Superior Court, Maine.

Scott, William P., 2303 Bamboo Street, Apt. 92, Mesquite, Texas, convicted on July 22, 1966, in the United States District Court, Middle District of Georgia.

Smith, David Lester, Box 116 B, R.R. #1, Lake Park, Iowa, convicted on September 1, 1971, in the District Court of the State of Iowa in and for Dickinson County.

Stevens, Leo A., 2822 West 28th Avenue, Apt. 209, Denver, Colorado, convicted on December 22, 1959, in the 20th District Court, Barton County, Kansas.

Thompson, Lester R., 66 Fern Street, Bangor, Maine, convicted on May 6, 1971, in the Aroostook County Superior Court, Houlton, Maine.

Trosson, Floyd A., 818 A Michigan Avenue, Sheboygan, Wisconsin, convicted on March 31, 1965, in the Sheboygan County Court, Wisconsin.

Victor, Walter J., 2391 Goodson, Hamtramck, Michigan, convicted on April 25, 1958, in the Detroit Recorder's Court, Detroit, Michigan.

Vinesky, John W., 2522 Vance Avenue, Wheeling, West Virginia, convicted on May 26, 1956; July 10, 1964; and June 21, 1967, in the Intermediate Court of Ohio County, West Virginia.

Walter, Eric L., 2801½ James Street, Boise, Idaho, convicted on February 14, 1972, in the Fourth Judicial District of Idaho, County of Ada.

Webster, Eugene M., R.D. #3, Whitman Road, Penn Yan, New York, convicted on March 3, 1950, and October 7, 1953, in the County Court of Monroe County, Rochester, New York.

Weese, David D., P.O. Box 271, Anson, Maine, convicted on September 12, 1972, in the Superior Court, Somerset County, Maine.

Wilson, Frank E., 408 Cedar Lane, Mt. Pleasant, Iowa, convicted on December 21, 1970, in the District Court, Henry County, Iowa.

Wilson, Sam, 2048 Van Cleave Street, Dallas, Texas, convicted on February 17, 1969, and on November 5, 1971, in the Criminal District Court No. 4, Dallas County, Texas.

Signed at Washington, D.C. this 24th day of April 1974.

[SEAL] REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc.74-10424 Filed 5-6-74;8:45 am]

Office of the Secretary

[Dept. Circular Public Debt Series No. 5-74]

TREASURY NOTES OF SERIES I-1976

Invitation for Tenders

I. *Invitation for tenders.* 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders at a price not less than 99.51 percent of their face value for $2,000,000,000, or thereabouts, of notes of the United States, designated Treasury Notes of Series I-1976. The interest rate for the notes will be publicly announced by the Secretary of the Treasury on May 3, 1974. An additional amount of the notes may be allotted by the Secretary of the Treasury to Government accounts and Federal Reserve Banks at the average price of accepted tenders in exchange for Treasury notes and bonds maturing May 15, 1974. Tenders will be received up to 1:30 p.m., Eastern Daylight Savings time, Wednesday, May 8, 1974, under competitive and noncompetitive bidding, as set forth in Section III hereof. The 7¼ percent Treasury Notes of Series D-1974 and 4¼ percent treasury bonds of 1974, maturing May 15, 1974, will be accepted at par in payment, in whole or in part, to the extent tenders are allocated by the Treasury.

II. *Description of notes.* 1. The notes will be dated May 15, 1974, and will bear interest from that date, payable on a semiannual basis on December 31, 1974, and thereafter on June 30 and December 31 in each year until the principal amount becomes payable. They will mature June 30, 1976, and will not be subject to call for redemption prior t maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The subject to call for redemption prior to notes are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of $10,000, $100,000 and $1,000,000. Provision will be made for the interchange of notes of different denominations and of coupon and registered notes, and for the transfer of registered notes, under rules and regulations prescribed by the Secretary of the Treasury.

5. The notes will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing United States notes.

III. *Tenders and Allotments.* 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to the closing hour, 1:30 p.m., Eastern Daylight Saving time, Wednesday, May 8, 1974. Each tender must state the face amount of notes bid for, which must be $10,000 or a multiple thereof, and the price offered, except that in the case of noncompetitive tenders the term "noncompetitive" should be used in lieu of a price. In the case of competitive tenders, the price must be expressed on the basis of 100, with two decimals, e.g., 100.00. Tenders at a price less than 99.51 will not be accepted. Fractions may not be used. Noncompetitive tenders from any one bidder may not exceed $500,000.

2. Commercial banks, which for this purpose are defined as banks accepting demand deposits, may submit tenders for account of customers provided the names of the customers are set forth in such tenders. Others than commercial banks will not be permitted to submit tenders except for their own account. Tenders will be received without deposit from banking institutions for their own account, federally-insured savings and loan associations,

States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, international organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, and Government accounts. Tenders from others must be accompanied by payment (in cash or the securities referred to in Section I which will be accepted at par) of 5 percent of the face amounts of notes applied for.

3. Immediately after the closing hour tenders will be opened, following which public announcement will be made by the Department of the Treasury of the amount and price range of accepted bids. Those submitting tenders will be advised of the acceptance or rejection thereof. In considering the acceptance of tenders, those at the highest prices will be accepted to the extent required to attain the amount offered. Tenders at the lowest accepted price will be prorated if necessary. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders, in whole or in part, including the right to accept less than $2,000,000,000 of tenders, and his action in any such respect shall be final. Subject to these reservations, noncompetitive tenders for $500,000 or less without stated price from any one bidder will be accepted in full at the average price[1] (in two decimals) of accepted competitive tenders.

4. All bidders are required to agree not to purchase or sell, or to make any agreements with respect to the purchase or sale or other disposition of any notes of this issue at a specific rate or price, until after 1:30 p.m., Eastern Daylight Saving time, Wednesday, May 8, 1974.

5. Commercial banks in submitting tenders will be required to certify that they have no beneficial interest in any of the tenders they enter for the account of their customers, and that their customers have no beneficial interest in the banks' tenders for their own account.

IV. *Payment.* 1. Settlement for accepted tenders in accordance with the bids must be made or completed on or before May 15, 1974, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226, in cash, securities referred to in Section I (interest coupons dated May 15, 1974, should be detached) or other funds immediately available by that date. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. In every case where full payment is not completed, the payment with the tender up to 5 percent of the amount of notes allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. When payment is made with securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities submitted and the amount payable on the notes allotted.

V. *Assignment of Registered Securities.* 1. Registered securities tendered as deposits and in payment for notes allotted hereunder are not required to be assigned if the notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. Specific instructions for the issuance and delivery of the notes, signed by the owner or his authorized representative, must accompany the securities presented. Otherwise, the securities should be assigned by the registered payees or assignees thereof in accordance with the general regulations governing United States securities, as hereinafter set forth. Notes to be registered in names and forms different from those in the inscriptions or assignments of the securities presented should be assigned to "The Secretary of the Treasury for Treasury Notes of Series I–1976 in the name of (name and taxpayer identifying number)." If notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon Treasury Notes of Series I–1976 to be delivered to _____." Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

VI. *General Provisions.* 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid tenders allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

[SEAL] GEORGE P. SHULTZ,
Secretary of the Treasury.

[FR Doc.74–10544 Filed 5–3–74;12:01 pm]

[Dept. Circular Public Debt Series No. 6–74]

TREASURY NOTES OF SERIES C–1978

Invitation for Tenders

I. *Invitation for Tenders.* 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders at a price not less than 99.01 percent of their face value for $1,750,000,000, or thereabouts, of notes of the United States, designated Treasury Notes of Series C–1978. The interest rate for the notes will be publicly announced by the Secretary of the Treasury on May 3, 1974. An additional amount of the notes may be allotted by the Secretary of the Treasury to Government accounts and Federal Reserve Banks at the average price of accepted tenders in exchange for Treasury notes and bonds maturing May 15, 1974. Tenders will be received up to 1:30 p.m., Eastern Daylight Saving Time, Tuesday, May 7, 1974, under competitive and noncompetitive bidding, as set forth in Section III hereof. The 7¼ percent Treasury Notes of Series D–1974 and 4¼ percent Treasury Bonds of 1974, maturing May 15, 1974, will be accepted at par in payment, in whole or in part, to the extent tenders are allotted by the Treasury.

II. *Description of Notes.* 1. The notes will be dated May 15, 1974, and will bear interest from that date, payable on a semiannual basis on August 15, 1974, and thereafter on February 15 and August 15 in each year until the principal amount becomes payable. They will mature August 15, 1978, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of $10,000, $100,000 and $1,000,000. Provisions will be made for the interchange of notes of different denominations and of coupon and registered notes, and for the transfer of registered notes, under rules and regulations prescribed by the Secretary of the Treasury.

5. The notes will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing United States notes.

III. *Tenders and Allotments.* 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to the closing hour, 1:30 p.m., Eastern Daylight Saving Time, Tuesday, May 7, 1974. Each tender must state the face amount of notes bid for, which must be $10,000 or a multiple thereof, and the price offered, except that in the case of noncompetitive tenders the term "noncompetitive" should be used in lieu of a price. In the case of competitive tenders, the price must be expressed on the basis of 100, with two decimals, e.g., 100.00. Tenders at a price less than 99.01 will not be accepted. Fractions may not be used. Noncompetitive tenders from any one bidder may not exceed $500,000.

[1] Average price may be at, or more or less than 100.00.

2. Commercial banks, which for this purpose are defined as banks accepting demand deposits, may submit tenders for account of customers provided the names of the customers are set forth in such tenders. Others than commercial banks will not be permitted to submit tenders except for their own account. Tenders will be received without deposit from banking institutions for their own account, Federally-insured savings and loan associations, States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, internatonal organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, and Government accounts. Tenders from others must be accompanied by payment (in cash or the securities referred to in Section I which will be accepted at par) of 5 percent of the face amount of notes applied for.

3. Immediately after the closing hour tenders will be opened, following which public announcement will be made by the Department of the Treasury of the amount and price range of accepted bids. Those submitting tenders will be advised of the acceptance or rejection thereof. In considering the acceptance of tenders, those at the highest prices will be accepted to the extent required to attain the amount offered. Tenders at the lowest accepted price will be prorated if necessary. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders, in whole or in part, including the right to accept less than $1,750,000,000 of tenders, and his action in any such respect shall be final. Subject to these reservations, noncompetitive tenders for $500,000 or less without stated price from any one bidder will be accepted in full at the average price[1] (in two decimals) of accepted competitive tenders.

4. All bidders are required to agree not to purchase or sell, or to make any agreements with respect to the purchase or sale or other disposition of any notes of this issue at a specific rate or price, until after 1:30 p.m., Eastern Daylight Saving time, Tuesday, May 7, 1974.

5. Commercial banks in submitting tenders will be required to certify that they have no beneficial interest in any of the tenders they enter for the account of their customers, and that their customers have no beneficial interest in the banks' tenders for their own account.

IV. *Payment.* 1. Settlement for accepted tenders in accordance with the bids must be made or completed on or before May 15, 1974, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226, in cash, securities referred to in Section I (interest coupons dated May 15, 1974, should be detached) or other funds immediately available by that date. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. In every case where full payment is not completed, the payment with the tender up to 5 percent of the amount of notes allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. When payment is made with securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities submitted and the amount payable on the notes allotted.

V. *Assignment of registered securities.* 1. Registered securities tendered as deposits and in payment for notes allotted hereunder are not required to be assigned if the notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. Specific instructions for the issuance and delivery of the notes, signed by the owner or his authorized representative, must accompany the securities presented. Otherwise, the securities should be assigned by the the registered payees or assignees thereof in accordance with the general regulations governing United States securities, as hereafter set forth. Notes to be registered in names and forms different from those in the inscriptions or assignments of the securities presented should be assigned to "The Secretary of the Treasury for Treasury Notes of Series C–1978 in the name of (name and taxpayer identifying number)." If notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon Treasury Notes of Series C–1978 to be delivered to _____ _____." Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

VI. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid tenders allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

[SEAL] GEORGE P. SHULTZ,
Secretary of the Treasury.

[FR Doc.74-10545 Filed 5-3-74;12:02 pm]

[1] Average price may be at, or more or less than $100.00.

[Dept. Circular Public Debt Series—No. 7-74]

8½ PERCENT TREASURY BONDS OF 1994–99

Invitation for Tenders

I. *Invitation for tenders.* 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders at a price not less than 93.80 percent of their face value for $300,000,000, or thereabouts, of bonds of the United States, designated 8½ percent Treasury Bonds of 1994–99. An additional amount of the bonds may be allotted by the Secretary of the Treasury to Government accounts and Federal Reserve Banks in exchange for Treasury securities maturing May 15, 1974. Tenders on a competitive or noncompetitive basis will be received up to 2:00 p.m., Eastern Daylight Saving time, Wednesday, May 8, 1974. The price for the bonds will be established as set forth in Section III hereof. The 7¼ percent Treasury Notes of Series D–1974 and 4¼ percent Treasury Bonds of 1974 maturing May 15, 1974, will be accepted at par in payment, in whole or in part, to the extent tenders are allotted by the Treasury.

II. *Description of bonds.* 1. The bonds will be dated May 15, 1974, and will bear interest from that date at the rate of 8½ percent per annum, payable semiannually on November 15, 1974, and thereafter on May 15 and November 15 in each year until the principal amount becomes payable. They will mature May 15, 1999, but may be redeemed at the option of the United States on and after May 15, 1994, in whole or in part, at par and accrued interest on any interest day or days, on 4 months' notice of redemption given in such manner as the Secretary of the Treasury shall prescribe. In case of partial redemption, the bonds to be redeemed will be determiend by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice, interest on the bonds called for redemption shall cease.

2. The income derived from the bonds is subject to all taxes imposed under the Internal Revenue Code of 1954. The bonds are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The bonds will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer bonds with interest coupons attached, and bonds registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000. Provision will be made for the interchange of bonds of different denominations and of coupon and registered bonds, and for the transfer of registered bonds, under rules and regulations prescribed by the Secretary of the Treasury.

5. The bonds will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing United States bonds.

III. *Tenders and allotments.* 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to the closing hour, 2:00 p.m., Eastern Daylight Saving time, Wednesday, May 8, 1974. Each tender must state the face amount of bonds bid for, which must be $1,000 or a multiple thereof, and the price offered except that in the case of noncompetitive tenders the term "noncompetitive" should be used in lieu of a price. In the case of competitive tenders, the price must be expressed on the basis of 100, with two decimals in a multiple of .05, e.g., 100.10, 100.05, 100.00, 99.95, etc. Tenders at a price less than 93.80 will not be accepted. Noncompetitive tenders from any one bidder may not exceed $250,000. Fractions may not be used.

2. Commercial banks, which for this purpose are defined as banks accepting demand deposits, may submit tenders for account of customers provided the names of the customers are set forth in such tenders. Others than commercial banks will not be permitted to submit tenders except for their own account. Tenders will be received without deposit from banking institutions for their own account, Federally-insured savings and loan associations, States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, international organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, and Government accounts. Tenders from others must be accompanied by payment (in cash or the securities referred to in Section I which will be accepted at par) of 5 percent of the face amount of bonds applied for.

3. In considering the acceptance of tenders, those at the highest prices will be accepted in full to the extent required to attain the amount offered; provided, however, that tenders at the lowest of such accepted prices will be prorated if necessary. All tenders so accepted will be allotted at the price of the lowest accepted tender. Those submitting tenders will be advised of the acceptance, and awarded price, or the rejection of their bids. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders, in whole or in part, including the right to accept less than $300,000,000 of tenders, and his action in any such respect shall be final. Subject to these reservations noncompetitive tenders for $250,000 or less will be accepted in full at the same price as accepted competitive tenders. The price may be 100.00, or more or less than 100.00.

4. All bidders are required to agree not to purchase or to sell, or to make any agreements with respect to the purchase or sale or other disposition of any bonds of this issue at a specific rate or price, until after 2 p.m., Eastern Daylight Saving time, Wednesday, May 8, 1974.

5. Commercial banks in submitting tenders will be required to certify that they have no beneficial interest in any of the tenders they enter for the account of their customers, and that their customers have no beneficial interest in the banks' tenders for their own account.

IV. *Payment.* 1. Settlement for accepted tenders at the price established by the auction must be made or completed on or before May 15, 1974, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226, in cash, securities referred to in Section I (interest coupons dated May 15, 1974, should be detached) or other funds immediately available by that date. Payment will not be deemed to have been completed where registered bonds are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. In every case where full payment is not completed, the payment with the tender up to 5 percent of the amount of bonds allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. When payment is made with securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities submitted and the amount payable on the bonds allotted.

V. *Assignment of registered securities.* 1. Registered securities tendered as deposits and in payment for bonds allotted hereunder are not required to be assigned if the bonds are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. Specific instructions for the issuance and delivery of the bonds, signed by the owner or his authorized representative, must accompany the securities presented. Otherwise, the securities should be assigned by the registered payees or assignees thereof in accordance with the general regulations governing United States securities, as hereinafter set forth. Bonds to be registered in names and forms different from those in the inscriptions or assignments of the securities presented should be assigned to "The Secretary of the Treasury for 8½ percent Treasury Bonds of 1994–99 in the name of (name and taxpayer identifying number)." If bonds in coupon form are desired, the assignment should be to "The Secretary of the Treasury for 8½ percent coupon Treasury Bonds of 1994–99 to be delivered to ____ ----------." Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

VI. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of bonds on full-paid tenders allotted, and they may issue interim receipts pending delivery of the definitive bonds.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

GEORGE P. SHULTZ,
Secretary of the Treasury.

[FR Doc. 74–10543 Filed 5–3–74;12:02 pm]

[Supp. to Department Circular
Public Debt Series No. 6–74]

8¾ PERCENT TREASURY NOTES OF SERIES C–1978

Redesignation of Interest Rate

MAY 3, 1974.

In the matter of 8¾ percent Treasury notes of Series C–1978; dated and bearing interest from May 15, 1974, due August 15, 1978.

Pursuant to the provision in Sec. I of Department Circular—Public Debt Series—No. 6–74, dated May 2, 1974, the Secretary of the Treasury announced on May 3, 1974, that the interest rate on the notes described in the circular will be 8¾ percent per annum. Accordingly, the notes are hereby redesignated 8¾ percent Treasury Notes of Series C–1978. Interest on the notes will be payable at the rate of 8¾ percent per annum.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc.74–10610 Filed 5–3–74;4:14 pm]

[Supp. to Dept. Circular
Public Debt Series No. 5–74]

8¾ PERCENT TREASURY NOTES OF SERIES I–1976

Redesignation of Interest Rate

MAY 3, 1974.

In the matter of 8¾ percent Treasury Notes of Series I–1976, dated and bearing interest from May 15, 1974, due June 30, 1976.

Pursuant to the provision in Sec. I of Department Circular—Public Debt Series—No. 5–74, dated May 2, 1974, the Secretary of the Treasury announced on May 3, 1974, that the interest rate on the notes described in the circular will be 8¾ percent per annum. Accordingly, the notes are hereby redesignated 8¾ percent Treasury Notes of Series I–1976. Interest on the notes will be payable at the rate of 8¾ percent per annum.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc.74–10609 Filed 5–3–74;4:14pm]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SYSTEMS MANAGEMENT SCHOOL BOARD OF VISITORS

Notice of Meeting

The meeting of the Board of Visitors of the Defense Systems Management School will be held in the Commandant's Conference Room, Building 202, at Fort Belvoir, Virginia, May 21–22, 1974. Presentation schedule follows: Tuesday (May 21)—9 a.m. to 5 p.m.; Wednesday (May 22)—9 a.m. to 10:30 a.m. The agenda will include reports on educational program activities and curriculum changes, the discussion of educational policies and methods, and a review of pertinent aspects of school facilities and plans. The meetings are open to the public with limitations on space available for observers requiring allocation on a first-come—first-served basis. Persons desiring to attend should call the school (664–1314) to reserve space as far in advance as possible.

Dated: May 1, 1974.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

[FR Doc.74–10383 Filed 5–6–74;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[R 3557, R 4584 & S 5808]

CALIFORNIA

Notice of Proposed Classification of National Resource Lands for Disposal Under the Recreation and Public Purposes Act

1. Notice is hereby given of a proposal to classify the following described national resource lands for title transfer for recreation purposes under the Recreation and Public Purposes Act, 43 U.S.C. 869. This proposed classification is made pursuant to petitions for classification filed by the State of California and on the motion of the Bureau of Land Management for the purpose of adding lands to the Anza-Borrego Desert State Park.

SAN BERNARDINO MERIDIAN, CALIFORNIA

R 3557:
T. 8 S., R. 4 E.,
Sec. 14, All;
Sec. 22, All;
Sec. 24, All;
Sec. 26, All;
Sec. 36, All.
T. 8 S., R. 5 E.,
Sec. 26, All;
Sec. 28, All;
Sec. 30, Lots 1, 2, 3, 4 and E½W½, E½;
Sec. 32, Lots 1, 2, 3, 4 and N½S½, N½;
Sec. 34, Lots 1, 2, 3, 4, and N½S½, N½.
Containing 6,419.35 acres.

R 4584:
T. 8 S., R. 4 E.,
Sec. 34, All.
T. 8 S., R. 5 E.,
Sec. 22, All;
Sec. 36, Lots 3, 4 and N½SW¼.
T. 15 S., R. 8 E.,
Sec. 19, Lots 37 thru 50, Lots 52 thru 69, Lots 71 thru 80;
Sec. 20, N½NE¼, SE¼, E½SW¼, SW¼ SW¼.
T. 16 S., R. 8 E.,
Sec. 27, SW¼NE¼, N½SE¼, E½NW¼.
Containing 2,516.70 acres.

S 5808:
T. 8 S., R. 4 E.,
Sec. 10, All;
Sec. 12, All;
Sec. 18, Lots 1, 2, 3, 4 and E½W½, E½;
Sec. 20, All;
Sec. 28, All;
Sec. 30, Lots 1, 2, 3, 4 and E½W½, E½;
Sec. 32, All.
T. 8 S., R. 5 E.,
Sec. 8, S½;
Sec. 18, Lots 1, 2, 3, 4 and E½W½, E½;
Sec. 20, All;
Sec. 24, All.
Containing 6,316.86 acres.

BUREAU MOTION CLASSIFICATION

T. 7 S., R. 3 E.,
Sec. 36, N½NE¼.
T. 7 S., R. 4 E.,
Sec. 28, All;
Sec. 32, All;
Sec. 34, All;
Sec. 36, All.
T. 8 S., R. 4 E.,
Sec. 2, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 4, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 8, Lots 3, 4, 5, SW¼SW¼;
Sec. 16, NE¼NE¼, S½N½, S½.
T. 8 S., R. 5 E.,
Sec. 4, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 6, Lots 1, 2, 3, 4, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, N½;
Sec. 10, All;
Sec. 14, All.
Containing 7467.45 acres.

The area listed above aggregates 22,720.36 acres in Riverside and San Diego Counties, California.

2. This proposal has been discussed with other Federal agencies, state and local governmental officials, and other interested parties. Information derived from field examinations, comments and other sources indicates that these lands meet the criterion of 43 CFR 2430.4(c), which authorizes classification of lands for sale or lease under the Recreation and Public Purposes Act where they are chiefly valuable for public purposes. The lands are physically suitable and adaptable for public recreation purposes as part of the Anza-Borrego Desert State Park. The dedication of these lands to development and management for such use will be assured by provisions that will be included in the patent.

3. The disposal of 7,467.45 acres of national resource lands on the Bureau's motion is proposed because under an appropriate plan of management the State of California can assure multiple public recreation benefits consistent with the programs of the Park. These lands when separated from the lands under the petition-applications constitute a residual Bureau holding and in this instance would lead to ineffective and less efficient management of their resources values. They are considered suitable for recreation uses that can best be managed as part of the Anza Borrego Desert State Park program.

4. Classification under the Act will segregate the lands from all appropriations, including locations under the mining laws, except the form of disposal for which the lands are classified.

5. Bureau motion classification, R 06032, dated November 24, 1964, which classified the following described land for disposal by public sale (R.S. 2455) is hereby revoked:

T. 7 S., R. 3 E., S.B.M.,
Sec. 36, N½NE¼.

6. This proposal relates to the classification of the lands. When the classification becomes the final order of the Secretary, the applicant will be required to file an application or assure in writing that an application will be filed in accordance with 43 CFR 2741.3 and 2741.6 for the lands classified on the Bureau's motion. Adjudication on the merits of the subject petition-applications, including a determination on the adequacy of the plan of development and management will then be taken.

7. Information concerning the lands, including the land report and environmental records, is available for inspection and study at the Bureau of Land Management Riverside District Office. Interested parties may submit comments, suggestions or objections to the proposed classification on or before June 7, 1974, to the Riverside District Manager, Bureau of Land Management, 1414 University Avenue, Riverside, California 92507.

Dated: April 30, 1974.

DELMAR D. VAIL,
For the State Director.

[FR Doc.74–10376 Filed 5–6–74;8:45 am]

COLORADO

Craig District; Redelegation of Authority To Area Managers

Under authority of Bureau Order 701, dated July 23, 1964, and as amended April 26, 1966, the Area Managers administering the Kremmling and White River Resource Areas of the Craig District, Colorado are authorized to act on the following matters:

Within his area of responsibility in accordance with existing policies and regulations of the Department, and under direct supervision of the Craig District Manager, he may exercise the functions of the Bureau Director on the matters specified below subject to the limitations of Bureau Order 701, Part III.

AUTHORITY IN SPECIFIC MATTERS

SEC. 3.3 Fiscal affairs. The Area Manager may take action on:

(d) Trespass: Determine liability and issue notice on grazing trespass; recommend as to acceptance of settlement offer made.

SEC. 3.7 Range management. The Area Manager may take all action on:

(a) (1) Within grazing districts, the issuance of licenses and permits to graze or trail livestock.

(2) Permits or cooperative agreements to construct and maintain range improvements and determine the value of such improvements.

(3) Expenditure of funds appropriated by Congress contributed by individuals, associations, advisory boards, or others

for the construction, purchase or maintenance of range improvements.

(b) Outside grazing districts, the issuance of grazing leases.

(d) Soil and moisture conservation; control of halogeton glomeratus.

SEC. 3.8 Forest Management. The Area Manager may take all action on:

(a) Disposition of forest products including sales of timber not exceeding 250 mbf.

SEC. 3.9 Land use. The Area Manager may take all action on:

(g) Disposition of materials other than forest products, not exceeding $100.00 in value.

The District Manager may at any time temporarily reserve, restrict, or withhold any portion of the above delegated authority through use of Form 1213–1 District Office Authority and Responsibility Guide.

This order will become effective on May 20, 1974.

Dated: April 29, 1974.

MARVIN W. PEARSON,
District Manager.

[FR Doc.74–10436 Filed 5–6–74;8:45 am]

[New Mexico 19878, 19879, 19880, 19881, 19883, 19884, 19885, 19886, 19887, 19889]

NEW MEXICO

Notice of Applications

APRIL 30, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Southern Union Gathering Company has applied for ten 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 32 N., R. 10 W.,
Sec. 18, Lot 17;
Sec. 19, Lots 8, 9, 10;
Sec. 20, Lots 6, 7, 8;
Sec. 21, Lots 6, 7;
Sec. 22, Lots 3, 6, 7;
Sec. 31, Lots 15, 16, 17, 18.
T. 32 N., R. 11 W.,
Sec. 13, S½SW¼, SW¼SE¼;
Sec. 14, SE¼SE¼;
Sec. 22, N½NE¼;
Sec. 23, NW¼NW¼;
Sec. 24, N½NE¼, SE¼NE¼;
Sec. 31, SE¼SE¼;
Sec. 33, N½S½, SW¼SW¼;
Sec. 34, NW¼SW¼.

These pipelines will convey natural gas across 5.817 miles of national resource lands in San Juan County, New Mexico.

The purpose of this notice is to allow the public an opportunity to comment upon the filing of the above ten 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.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74–10451 Filed 5–6–74;8:45 am]

[New Mexico 20114, NM 20171, NM 20175, NM 20185 and NM 20254]

NEW MEXICO

Notice of Applications

APRIL 30, 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 five 4½ inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 25 N., R. 11 W.,
Sec. 8, N½SW¼.
T. 27 N., R. 6 W.,
Sec. 15, NW¼SW¼.
T. 27 N., R. 7 W.,
Sec. 9, NW¼NW¼.
T. 27 N., R. 9 W.,
Sec. 14, SW¼SE¼.
T. 29 N., R. 10 W.,
Sec. 7, Lot 18;
Sec. 18, Lot 5.

These pipelines will convey natural gas across 0.488 miles of national resource land 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 five 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.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 74–10452 Filed 5–6–74;8:45 am]

National Park Service

HISTORIC AMERICAN BUILDINGS SURVEY ADVISORY BOARD

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Historic American Buildings Survey Advisory Board will be held at Lyndhurst, a property of the National Trust for Historic Preservation, at Tarrytown, New York, May 16 and 17, 1974.

The Historic American Buildings Survey Advisory Board was established by the Secretary of the Interior on November 17, 1933, and sanctioned by Act of Congress August 21, 1935, to render advice on matters related to the task of preserving records of the historic architectural monuments of the United States.

Members of the Advisory Board are:

Mr. D. O. Davies, New Castle, Pennsylvania
Dr. Richard W. Hale, Jr., Boston, Massachusetts
Mr. John D. Henderson, San Diego, California
Mrs. Victorine Du Pont Homsey, Wilmington, Delaware
Dr. Barclay G. Jones, Ithaca, New York
Mr. William Bodley Lane, Portland, Oregon
Dr. L. Quincy Mumford, Washington, D.C.
Prof. F. Blair Reeves, Gainsville, Florida
Miss Barbara Wriston, Chicago, Illinois

Matters to be discussed at the meeting include the following:

(1) HABS reports on 1973 staff activities.
(2) Summer field projects.
(3) Publications.
(4) Records.
(5) Proposed center for the preservation of original architectural documents.

The meeting will be open to the public. Any person may file with the Board a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact John C. Poppeliers, Division of Historic and Architectural Surveys, Office of Archeology and Historic Preservation, National Park Service, Department of the Interior, Washington, D.C. 20240 (202–523–5566).

Minutes of the meeting will be available for public inspection four weeks after the meeting at the above address.

Dated: April 25, 1974.

ROBERT M. LANDAU,
Liaison Officer, Advisory Commissions, National Park Service.

[FR Doc.74–10433 Filed 5–6–74;8:45 am]

LAKE MEAD NATIONAL RECREATION AREA, NEVADA

Concurrent Legislative Jurisdiction Accepted

Notice is hereby given that a Certificate of Consent of State of Nevada to Acquisition of Concurrent Legislative Jurisdiction by the United States was executed by the Nevada Tax Commission on February 11, 1974, and countersigned by the Governor. Said certificate granted the earlier request of the Department of the Interior to acquire such jurisdiction over lands of the Lake Mead National Recreation Area in the State of Nevada.

Accordingly, further notice is given that the United States has accepted the concurrent legislative jurisdiction granted by the above-mentioned "consent" effective as of February 11, 1974, under authority of the Act of February 1, 1940 (54 Stat. 19, as amended; 40 U.S.C. 255). The lands within the State of Nevada over which such jurisdiction has been accepted are depicted on Drawing No. NRA-LM 2291–A, dated July, 1966, which drawing is on file in the administrative offices of the Lake Mead National Recreation Area.

This acquisition of jurisdiction will enable the National Park Service to assume a more positive role in matters of public health and safety and to otherwise administer the area more effectively.

Done at the City of Washington, D.C., this the 22d day of April 1974.

RUSSELL E. DICKENSON,
Acting Director, National Park Service.

[FR Doc.74–10430 Filed 5–6–74;8:45 am]

MAMMOTH CAVE NATIONAL PARK

Notice of Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Miss Green River Boat Concessions, Inc., authorizing it to provide concession facilities and services for the public at Mammoth Cave National Park for a period of five (5) years from January 1, 1975, through December 31, 1979.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the human environment, and that it is not a major Federal action under the National Environmental Policy Act and the guidelines of the Council on Environmental Quality. The environmental assessment may be reviewed in the Southeast Regional Office, 3401 Whipple Avenue, Atlanta, Georgia 30344.

The foregoing concessioner has performed its obligations under the expiring permit to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new contract or permit. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted on or before June 6, 1974.

Interested parties should contact the Assistant Director, Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requriements of the proposed contract.

Dated: May 1, 1974.

JOHN E. COOK,
Acting Director,
National Park Service.

[FR Doc.74-10435 Filed 5-6-74;8:45 am]

NATIONAL CAPITAL MEMORIAL ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Advisory Committee will be held at 1:30 p.m. on Monday, May 13, 1974, in Room 234 at the National Capital Parks Headquarters, 1100 Ohio Drive, SW., Washington, D.C.

The committee was established for the purpose of preparing and recommending to the Secretary broad criteria, guidelines, and policies for memoralizing persons and events on Federal lands in the National Capital region (as defined in the National Capital Planning Act of 1952, as amended) through the media of monuments, memorials, and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary with respect to site location on Federal land in the National Capital region and to serve as an information focal point for those seeking to erect memorials on Federal land in the National Capital region.

The members of the committee are as follows:

Mr. Ronald H. Walker (Chairman)
Director, National Park Service
Washington, D.C.

Mr. George M. White
Architect of the Capitol
Washington, D.C.

General Mark W. Clark
Chairman, American Battle Monuments Commission
Washington, D.C.

Mr. J. Carter Brown
Chairman, Fine Arts Commission
Washington, D.C.

Mr. William H. Press
Chairman, National Capital Planning Commission
Washington, D.C.

Honorable Walter E. Washington
Mayor-Commissioner of the District of Columbia
Washington, D.C.

Mr. Larry F. Roush
Commissioner, Public Buildings Service
Washington, D.C.

The purpose of this meeting is to prepare criteria and guidelines and policies for memorializing persons and events on Federal lands in the National Capital region. Also, discuss the flying of State flags around the Washington Monument or its vicinity.

The meeting will be open to the public. Any person may file with the committee a written statement concerning the matters to be discussed. Persons who wish to file a written statement or who want further information concerning the meeting may contact Richard L. Stanton, Assistant Director, Cooperative Activities, National Capital Parks, at area code 202-426-6715. Minutes of the meeting will be available for public inspection two weeks after the meeting at the Office of National Capital Parks, Room 208, 1100 Ohio Drive, SW., Washington, D.C.

Dated April 25, 1974.

ROBERT M. LANDAU,
Liaison Officer,
Advisory Commissions.

[FR Doc.74-10432 Filed 5-6-74;8:45 am]

WESTERN REGIONAL ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Western Regional Advisory Committee will be held between Saturday, May 18, and Tuesday, May 21. The Committee will inspect the Colorado River from Glen Canyon National Recreation Area to Phantom Ranch, Grand Canyon National Park.

The purpose of the Committee is to provide for the free exchange of ideas between the National Park Service and the public, and to facilitate the solicitation of advice or counsel from members of the public in problems and programs pertinent to the Western Region of the National Park Service.

The members of the Committee are as follows:

Mr. Ben Avery, Phoenix, Arizona
Dr. Bernard L. Fontana, Tucson, Arizona
Mr. Lewis S. Eaton, Fresno, California
Mr. James R. Hooper, Crescent City, California
Mr. Jack H. Walston, Los Angeles, California
Mr. Todd Watkins, Bishop, California
Mr. David W. Ballie, Jr., Lihue, Kauai, Hawaii
Mr. Ed Fike, Las Vegas, Nevada
Mrs. Jean E. Ford, Las Vegas, Nevada

The purpose of this field inspection is to familiarize the Committee with National Park Service management of the Colorado River. Transportation facilities will not be available for the public, but they are welcome to participate by providing their own transportation in accordance with existing National Park Service management policy and requirements for floating the Colorado River.

A meeting will be held at a future date to discuss any problems and programs pertinent to Colorado River management.

Persons wishing further information concerning the field inspection may contact Executive Assistant to the Regional Director, Ray C. Foust, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone 415-556-1486.

Dated: April 25, 1974.

ROBERT M. LANDAU,
Liaison Officer, Advisory Commissions, National Park Service.

[FR Doc.74-10434 Filed 5-6-74;8:45 am]

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, and Corrections

By the notice in the FEDERAL REGISTER of February 19, 1974, Part II, there was published a list of the properties included in the National Register of Historic Places. This list has been amended by a notice in the FEDERAL REGISTER of March 5 (pp. 8357-8362) and April 2 (pp. 12042-12046). Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470.

The following properties have been added to the National Register since April 2, 1974:

Alabama

Colbert County

**Barton Hall.*

Hale County

Greensboro, *Magnolia Grove*, west end of Main Street.
Prairieville, **St. Andrew's Church*.

Montgomery County

Montgomery, **Yancey, William Lowndes, Law Office*, Adams and Perry Streets.

Arkansas

Nevada County

Prescott vicinity, *Prairie De Ann Battlefield*, northwest of Prescott bounded roughly by county line, U.S. 30 and line about 1 mile north of intersection with Arkansas 19 (3–22–74).

Pulaski County

Little Rock, *Hanger, Frederick, House*, 1010 Scott Street (3–15–74).

California

Los Angeles County

Los Angeles, *Watts Station*, 1686 East 103d Street (3–15–74).
Pasadena, *Neighborhood Church*, northwest corner Pasadena Avenue and California Boulevard (4–9–74).

Modoc County

Canby vicinity, *Core Site*, about 5 miles southeast of Canby in the Modoc National Forest (4–8–74).

Colorado

Jefferson County

Evergreen, *Hiwan Homestead*, Meadow Drive (4–9–74).

Delaware

New Castle County

New Castle, **Stonum*, Ninth and Washington Streets.

District of Columbia

Washington

**Aqueduct*, MacArthur Boulevard.
**Ashburton House (St. John's Church Parish House)*, 1525 H Street NW.
800 Block of F Street NW., 800–818 F Street and 527 9th Street NW. (4–2–74).
Howard Theatre, 620 T Street NW. (2–15–74).
National Academy of Sciences, 2101 Constitution Avenue NW. (3–15–74).
**U.S. Soldiers' and Airmen's Home*, Rock Creek Church Road NW.

Georgia

Bibb County

Macon, *McCrary, DeWitt, House*, 320 Hydrolia Street (3–22–74).

Lumpkin County

**Calhoun Mine.*

Walker County

Rossville, **Ross, John, House*, Lake Avenue and Spring Street.

Guam

Yigo vicinity, *Pagat Site*, S of Yigo.

Illinois

Morgan County

Jacksonville, *Beecher Hall, Illinois College*, Illinois College campus (4–8–74).

Ogle County

Polo, *Barber, Henry D., House*, 410 West Mason (3–28–74).

Indiana

Franklin County

Brookville, *Franklin County Seminary*, 412 Fifth Street (3–28–74).

Marion County

Indianapolis, *City Market*, 222 East Market Street (3–27–74).

Iowa

Ida County

Ida Grove, *Ida County Courthouse*, 401 Moorehead Street (3–15–74).

Scott County

Davenport, *LeClaire, Antoine, House*, 630 East Seventh Street (3–22–74).

Kentucky

Jefferson County

Louisville, *West Main Street Historic District*, 600–800 blocks of West Main Street (3–22–74).

Maine

Waldo County

Frankfort vicinity, *Mount Waldo Granite Works*, south of Frankfort on U.S. 1–A (3–15–74).

Maryland

Anne Arundel County

Annapolis, **Stewart, Peggy, House*, 207 Hanover Street.

Baltimore (independent city)

St. John's Protestant Episcopal Church, 3009 Greenmount Avenue (3–27–74).

Prince Georges County

Oxon Hill, *St. John's Church*, 9801 Livingston Road (4–8–74).

Washington County

Fort Frederick, **Fort Frederick State Park.*
Samples Manor, **Kennedy Farm—John Brown headquarters*, Chestnut Grove Road.

Massachusetts

Essex County

Newburyport, **Cushing, Caleb, House*, 98 High Street.
Salem, **Story, Joseph, House*, 26 Winter Street.

Suffolk County

Boston, **Sumner, Charles, House*, 20 Hancock Street.

Mississippi

Amite County

Liberty, *Amite County Courthouse*, Main Street (4–9–74).

Nebraska

Douglas County

Omaha, *Fort Omaha Historic District*, 30th Street between Fort Street and Laurel Avenue (3–27–74).

New Jersey

Mercer County

Hightstown, *Sloan, Samuel, House*, 238 South Main Street (3–28–74).

New York

New York County

New York, *Fort Jay*, Governor's Island (3–27–74).
New York, **Scott, General Winfield, House*, 24 West 12th Street.

Washington County

Schuylerville vicinity, *DeRidder Homestead*, East of Schuylerville off New York 29 on County Road 116 (3–22–74).

Westchester County

Purchase, *Reid Hall, Manhattanville College (Ophir Hall)*, Manhattanville College campus, Purchase Street (3–22–74).

North Carolina

Carteret County

Beaufort, *Old Burying Ground*, bounded by Ann, Craven, and Broad Streets (4–8–74).

Chowan County

**Hayes Plantation.*

Davie County

**Helper, Hinton Rowan, House.*

Ohio

Cuyahoga County

Cleveland, *Prospect Avenue Row House Group*, 3645–3657 Prospect Avenue (3–27–74).

Franklin County

Columbus, *Ohio Stadium*, 404 West 17th Avenue (3–22–74).

Licking County

Utica vicinity, *Melick Mound*, south of North Fork Licking River (3–27–74).

Williams County

Nettle Lake vicinity, *Nettle Lake Mound Group*, northwest of Nettle Lake (3–27–74).

Oklahoma

Seminole County

Seminole vicinity, *Mekasukey Academy*, southwest of Seminole (3–28–74).

Oregon

Coos County

Bandon, *Coquille River Light*, Bullard's Beach State Park (3–22–74).

Pennsylvania

Allegheny County

Pittsburgh, *Smithfield Street Bridge*, Smithfield Street at the Monongahela River (3–21–74).

South Carolina

Beaufort County

St. Helena Island, *Indian Hill Site*, on St. Helena Island (3–22–74).

Charleston County

Charleston, **Hibernian Hall*, 105 Meeting Street.
Charleston, **Rhett, Robert Barnwell, House*, 6 Thomas Street.
Charleston, **Rutledge, Governor John, House*, 116 Broad Street.

Tennessee

Williamson County

Franklin, **Masonic Hall*, South Second Avenue.

Texas

Dallas County

Dallas, *Swiss Avenue Historic District*, Swiss Avenue between Fitzhugh and La Vista (3–28–74).

Grimes County

Anderson, *Anderson Historic District* (3–15–74).

Hill County

Lake Whitney Estates vicinity, *Pictograph Cave*, northwest of Lake Whitney Estates (3–13–74).

Vermont

Franklin County

Highgate Falls vicinity, *Douglass & Jarvis Patent Parabolic Truss Iron Bridge*, junction of State Aid Route 2 and the Missisquoi River (3–21–74).

Orange County

Brookfield, *Brookfield Village Historic District* (3–28–74).

Washington

Jefferson County

Port Townsend vicinity, *Fort Worden Historic District*, north of Port Townsend (3–15–74).

Pierce County

Tacoma, *Union Passenger Station*, 1713 Pacific Avenue (3–15–74).

Wisconsin

Taylor County

Jump River, *Jump River Town Hall*, south of Wisconsin 73 (3–28–74).

Winnebago County

Neenah, *Grand Loggery*, Doty Park, Lincoln Street (3–22–74).

The following are corrections to previous listings in the FEDERAL REGISTER:

Alabama

Marengo County

Demopolis, **Gaineswood*, 805 South Cedar Street (1–5–72).

Mobile County

Mobile, **City Hall*, 111 South Royal Street (12–3–69).

Florida

Sumter County

Bushnell vicinity, **Dade Battlefield Historic Memorial*, 1 mile west of Bushnell and 0.6 mile west of U.S. 301 (4–14–72).

Georgia

Baldwin County

Milledgeville, **Former Governor's Mansion*, 120 South Clark Street (5–13–70).

Bibb County

Macon, **Johnston-Hay House*, 934 Georgia Avenue (5–27–71).

Macon, **Raines-Carmichael House*, 1183 Georgia Avenue (6–21–71).

Chatham County

Savannah, **Scarborough, William, House*, 41 West Broad Street (6–22–70).

Floyd County

Rome, **Chieftains (Major Ridge House)*, 80 Chatillon Road (4–7–71).

Fulton County

Atlanta, **State Capitol*, Capitol Square (5–13–70).

Gordon County

Calhoun vicinity, **New Echota*, north of Calhoun on Georgia 225 (5–13–70).

Muscogee County

Columbus, **Octagon House*, 527 First Avenue (7–29–69).

Thomas County

Thomasville, **Scarborough House (C. W. Lapham House)*, 626 North Dawson Street (8–12–70).

Troup County

LaGrange, **Bellevue*, 204 Ben Hill Street (11–7–72).

Wilkes County

Washington, **Toombs, Robert, House*, 326 East Robert Toombs Avenue (4–11–72).

Washington, **Tupper-Barnett House*, 101 West Robert Toombs Avenue (4–11–72).

Illinois

Cook County

Chicago, *Monadnock Block*, 53 West Jackson Boulevard (11–20–70).

Monroe County (also in Randolph County)

Prairie du Rocher, *French Colonial Historic District*, along Mississippi River from Old Maeystown Creek at Beagles Island southeast to Kaskaskia Island (4–3–74).

Indiana

Tippecanoe County

Lafayette vicinity, *Indiana State Soldiers Home Historic District*, north of Lafayette off Indiana 43 (1–2–74).

Louisiana

Orleans Parish

New Orleans, *Rabassa, Jean Louis, House (McDonogh No. 18 School Annex)*, 1125 St. Ann Street (2–15–74).

Maine

Aroostook County

Fort Kent vicinity, **Fort Kent State Memorial*, southwest of Fort Kent off Maine 11 (10–1–69).

Kennebec County

Augusta, **Fort Western*, Bowman Street (12–2–69).

Michigan

Kent County

Grand Rapids, *Pike, Abram W., House (Grand Rapids Art Museum)*, 230 Fulton Street, East (7–8–70).

Mississippi

Harrison County

Biloxi, *Beauvoir (Jefferson Davis Shrine)*, 200 West Beach Boulevard (9–3–71).

North Carolina

Cumberland County

Fayetteville, **Market House*, Market Square (9–15–70).

Orange County

Chapel Hill, **Playmakers Theatre (Smith Hall)*, Cameron Avenue, University of North Carolina (6–24–71).

Wake County

Raleigh, **State Capitol Building*, Capitol Square, bounded by Wilmington, Edenton, Salisbury, and Morgan Streets (2–26–70).

Pennsylvania

Philadelphia County

Philadelphia, *Christ Church Burying Ground*, Fifth and Arch Street (6–24–71).

South Carolina

Charleston County

Charleston, **The Exchange and Provost*, East Bay and Broad Streets (12–17–69).

Charleston, **Stuart, Colonel John, House*, 104–106 Tradd Street (10–22–70).

Mt. Pleasant vicinity, **Snee Farm*, about 6 miles northeast of Mount Pleasant off U.S. 17 (4–13–73).

Greenwood County

Ninety Six vicinity, **Old Ninety Six and Star Fort*, south of Ninety Six between South Carolina 248 and 27 (12–3–69).

Richland County

Columbia, **First Baptist Church*, 1306 Hampton Street (1–25–71).

Vermont

Bennington County

North Bennington, *Park-McCullough House*, southwest corner of West and Park Streets (10–26–72).

Virginia

Clarke County

Boyce vicinity, **Saratoga*, southeast of intersection of Routes 723 and 617 (2–26–70).

Hanover County

Hanover, **Hanover County Courthouse*, east side of Route 301 at intersection Routes 1006 and 301 (10–1–69).

Historic properties which are either (1) eligible for nomination to the National Register of Historic Places, or (2) nominated but not yet listed are entitled to protection under Executive Order 11593. Before an agency of the Federal government may undertake any project which may have an effect on such a property, the Advisory Council on Historic preservation shall be given an opportunity to comment on the proposal. Authorization for such comments are in section 1(3) and section 2(b) of Executive Order 11593.

The Secretary of the Interior has determined that the following properties may be eligible for inclusion in the National Register of Historic Places and are therefore entitled to protection under section 1(3) and section 2(b) of Executive Order 11593 and other applicable Federal legislation. All determinations of eligibility are made under the Secretary of the Interior's authorities in sections 2(b) and 3(f) of Executive Order 11593. This list is not complete. As required by Executive Order 11593, an agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion in the National Register.

Alabama

Dallas County

Selma, *Gill House*, 1109 Selma Avenue.

Madison County

Huntsville, *Lee House*, Red Stone Arsenal.

Alaska

Northwestern District

Little Diomede Island, *Iyapana, John, House.*

Arizona

Cochise County

Sierra Vista, *Garden Canyon Petroglyphs*, Garden Canyon Road.

Yuma County

Yuma, *Southern Pacific Depot.*

California

Imperial County

Glamis vicinity, *Chocolate Mountain Archeological District.*

Modoc County

Canby vicinity, *Cuppy Cave*, near Pitt River in Modoc National Forest.

Sonoma County

Dry Creek-Warm Springs Valley Archeological District.
Santa Rosa, *Santa Rosa Post Office.*

Colorado

Denver County

Denver, *Eisenhower Memorial Chapel,* Building No. 27, Reeves Street, on Lowry AFB.

Connecticut

Hartford County

Hartford, *Church of the Good Shepherd and Parish House,* intersection of Wyllys Street and Van Block Avenue.

Hartford County

Hartford, *Colt Factory Housing,* Huyshope Avenue between Sequassen and Wechasset Streets.
Hartford, *Colt Factory Housing ("Potsdam Village"),* Curcombe Street between Hendrickxsen Avenue and Locust Street.
Hartford, *Colt Park,* bounded by Wethersfield Avenue, Stonington Street, Wawarme, Curcombe and Marseek Streets, and by Huyshope and Van Block Avenues.
Hartford, *Colt, Colonel Samuel, Armory, and related factory buildings,* Van Dyke Avenue.
Hartford, *Flat-iron Building (Motto Building),* intersection of Congress Street and Maple Avenue.
Hartford, *Houses on both sides of Congress Street.*
Hartford, *Houses on Charter Oak Place.*
Hartford, *Houses on Wethersfield Avenue,* between Morris and Wyllys Streets, particularly No. 97, No. 81, No. 65.

Middlesex County

Middletown, *Mather-Douglas-Santangelo House,* 11 South Main Street.

New London County

New London, *Thames Shipyard,* west bank of Thames River north of the U.S. Coast Guard Academy.

Delaware

Suffolk County

Lewes, *The Delaware Breakwater.*
Lewes, *The Harbor of Refuge Breakwater.*

District of Columbia, Wash.

Riggs Bank, 800 17th Street NW.

Florida

Hillsborough County

Tampa, *Federal Building, U.S. Courthouse, Downtown Postal Station,* 601 Florida Avenue.
Tampa, *Firehouse No. 10,* Ybor City.

Georgia

Chatham County

Archeological Site, North end of Skidway Island.

Clay County

Archeological Site WGC-73, downstream from Walter F. George Dam.

Heard County

Philpott Homesite and Cemetery, on bluff above Chattahoochee River where Grayson Trail leads into river on lots Nos. 45, 46, 213.

Stewart County

Rood Mounds.

Sumter County

Americus, *Aboriginal Chert Quarry,* Souther Field.

Hawaii

Moanaloa Valley.

Idaho

Ada County

Boise, *Ada Theater,* 700 Main Street.
Boise, *Alexanders,* 826 Main Street.
Boise, *Falks Department Store,* 100 North Eighth Street.
Boise, *Idaho Building,* 216 North Eighth Street.
Boise, *Idanha Hotel,* 928 Main Street.
Boise, *Simplot Building (Boise City National Bank),* 805 Idaho Street.
Boise, *Union Building,* 712½ Idaho Street.

Illinois

Cook County

Chicago, *Delaware Building,* 155 North Dearborn.
Chicago, *McCarthy Building (Landfield Building),* northeast corner of Dearborn and Washington.
Chicago, *Methodist Book Concern* (later Stop and Shop Warehouse), 12 West Washington.
Chicago, *Ogden Building,* 130 West Lake Street.
Chicago, *Oliver Building,* 159 North Dearborn Street.
Chicago, *Springer Block* (Bay, State and Kranz Buildings), 126–46 North State.
Chicago, *Unity Building,* 127 North Dearborn Street.

De Kalb County

De Kalb, *Haish Barbed Wire Factory,* corner of Sixth and Lincoln Streets.

Illinois

Lake County

Fort Sheridan, *Water Tower, Building 49,* Leonard Wood Avenue.

Indiana

Monroe County

Bloomington, *Carnegie Library.*

Kansas

Geary County

Junction City vicinity, *Main Post Area, Fort Riley, Kansas,* 4 miles northeast of Junction City.

Kentucky

Carter County

Grayson vicinity, *The Van Kitchen Home,* 7 miles south on Kentucky 7, southeast on Rosedale Road.

Estill County

Fitchburg Iron Furnace, Kentucky 975, in Daniel Boone National Forest.

Jefferson County

Louisville, *Old Louisville Historic District,* bounded on North by Broadway; on the west by Seventh and the Louisville/Nashville Railroad tracks; on the east by Interstate 65 and Brook Street; on the south by Eastern Parkway and Gaulbert Avenue.

Maryland

Frederick County

Fort Detrick, *Nallin Farm House* (Fort Detrick Building 1652).

Harford County

Aberdeen, *Gunpowder Meeting House* (Building Number E-5715), Magnolia Road.
Aberdeen, *Presbury House (Quiet Lodge)* (Building Number E-4730), Austin and Parrish Roads.

St. Marys County

Saint Inigoes, *Manor House,* Naval Electronic Systems Test and Evaluation Facility.

Michigan

Livingston County

Fenton, *Fenton Downtown Historic District,* east and west sides of Leroy Street in two blocks bounded by Ellen on the south and Silver Lake on the north, north side of Caroline Street and east side of River Street.

Missouri

Jackson County

Kansas City, *Folly's (Standard) Theater,* 12th and Central Streets.

Montana

Lewis and Clark County

Marysville, *Marysville Historic District.*

Park County

Mammouth, *Chapel at Fort Yellowstone,* Yellowstone National Park.

Nebraska

Madison County

Norfolk, *Federal Building (U.S. Post Office and Courthouse),* corner of Fourth Street and Madison Avenue.

Nevada

Nye County

The Emigrant's Trail, approximately 75 miles northwest of Las Vegas on U.S. 95.

Storey County (also in Washoe County)

Derby Diversion Dam, on the Truckee River 19 miles east of Sparks, Nev., along Interstate 80.

New Hampshire

Grafton County

Bedell Covered Bridge.

New Jersey

Warren County (also in Sussex County)

Old Mine Road Historic District.

New York

Bronx County

New York, *North Brothers Island Light Station,* in center of East River.

Greene County

New York, *Hudson City Light Station,* in center of Hudson River.

Richmond County

New York, *Romer Shoal Light Station,* located in lower bay area of New York Harbor.

Suffolk County

New York, *Fire Island Light Station,* U.S. Coast Guard Station.
New York, *Race Rock Light Station,* located south of Fishers Island, 10 miles north of Orient Point.

Ulster County

New York, *Rondout North Dike Light,* center of Hudson River at junction of Rondout Creek and Hudson River, 1 mile west of Port Ewen.

Westchester County

White Plains, *Westchester County Courthouse Complex,* corner of Main and Court Streets.

North Carolina

Brunswick County

Southport, *Fort Johnston,* Moore Street.

Cumberland County

Fayetteville, *Veterans Administration Hospital Confederate Breastworks*, 23 Ramsey Street.

Jones County

Trenton, *Trenton Historic District*, north side of Trent Street at Weber Street; south to the northeast corner of Weber and Jones Streets; one block east along Jones Street; then south along the cemetery; west along cemetery to Lake View Street; along Lake View Street to Market Street; then west along Market Street 100 yards south of the southern boundary of Brock Mill Pond; west along said line to a point 100 yards west of the western boundary of Brock Mill Pond; north along Pollock Street extended to Jones Street; then east to King Street; along Trent Street to beginning.

New Hanover County

Wilmington, *Market Street Mansions District*, both sides of Market Street between 17th and 18th Streets.

Wilmington, *Wilmington Historic District*, from Cape Fear River; east along Hornet Street to Eighth Street; along Grace Street to Ninth Street; along Ninth Street to Dock Street; along Dock Street to Eighth Street to Castle Street; along Castle Street to Wright Street, then west to Cape Fear River.

Ohio

Clermont County

Neville vicinity, *Maynard House*, 2 miles east of Neville.

Pickaway County

Williamsport vicinity, *The Shack*, 5.5 miles northwest of Williamsport.

Oregon

Coos County

Charleston, *Cape Arago Light Station*.

Curry County

Port Orford, *Cape Blanco Light Station*.

Douglas County

Winchester Bay, *Umpqua River Light House*.

Klamath County

Crater Lake National Park, *Crater Lake Lodge*.

Lane County

Roosevelt Beach, *Heceta Head Light House*.

Lincoln County

Agate Beach, *Yaquina Head Lighthouse*.

Tillamook County

Tillamook, *Cape Meares Lighthouse*.

Pennsylvania

Brumbaugh Homestead, Raystown Lake Project.

Adams County

Gettysburg, *Barlow's Knoll*, adjacent to Gettysburg National Military Park.

Allegheny County

Bruceton, *Experimental Mine*, U.S. Bureau of Mines, off Cochran Mill Road.

Pittsburgh, *Maine Building (A) U.S. Bureau of Mines*, Pittsburgh Experiment Station, 4800 Forbes Avenue.

Clinton County

Lockhaven, *Apsley House*, 302 East Church Street.

Lockhaven, *Harvey, Judge, House*, 29 North Jay Street.

Lockhaven, *McCormick, Robert, House*, 234 East Church Street.

Lockhaven, *Mussina, Lyons, House*, 23 North Jay Street.

Cumberland County

Carlisle, *Hessian Guardhouse Museum*, corner of Guardhouse and Garrison Lanes.

Mercer County

Greenville vicinity, *Kidd's Mills Historical Area* (Shenago River Lake), 5 miles south of Greenville, Pa., via Pennsylvania 58 and Township Road 653.

Northampton County

Dorneyville, *King George Inn and two other stone houses*, intersection of Hamilton and Cedar Crest Blvds.

Westmoreland County

Blairsville/Torrance vicinity, *Western Division-Pennsylvania Canal* (Conemauth River Lake), Ligonier Line of Pennsylvania Canal.

Tennessee

Gibson County

Milan, *Browning House*, Line "Z," Milan Army Ammunition Plant.

Texas

Bexar County

Fort Sam Houston, *Pershing House*, Quarters No. 6, Staff Post Road.

Fort Sam Houston, *Post Chapel*, Building 2200, Wilson Street.

Vermont

Windsor County

Windsor, *Post Office Building*.

Washington

Clark County

Vancouver, *Officers Row*, Fort Vancouver Barracks.

Kittitas County

CleElum vicinity, *Salmon la Sac Guard Station*, 18 miles north of CleElum on County Highway 9235.

Pierce County

Fort Lewis Military Reservation, *Wilkes, Captain, July 4, 1841, Celebration Site*.

West Virginia

Cabell County

Huntington, *Old Bank Building*, 1208 Third Avenue.

Wood County

Parkersburg, *Wood County Courthouse*.

Wisconsin

Door County

Chambers Island, *Chambers Island Lighthouse Dwelling*, northern tip Chambers Island in Green Bay, Lake Michigan.

Wyoming

Goshen County

Torrington, *Union Pacific Depot*.

Puerto Rico

Mona Island, *Sardinero Site and ball courts*.

ERNEST A. CONNALLY,
Associate Director,
Professional Services.

[FR Doc.74-10114 Filed 5-6-74;8:45 am]

Office of the Secretary

[INT DES 74-48]

PROPOSED BACK BAY WILDERNESS AREA, VIRGINIA

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the Department of the Interior has prepared a draft environmental statement for the Proposed Back Bay Wilderness Area, Virginia, and invites written comments on or before June 21, 1974.

The proposal recommends that 1,950 acres of the Back Bay National Wildlife Refuge, located in the City of Virginia Beach, Virginia, be included in the National Wilderness Preservation System.

Copies of the draft statement are available for inspection at the following locations:

Bureau of Sport Fisheries and Wildlife
John W. McCormack P.O. and Courthouse
Boston, Massachusetts 02109

Headquarters
Back Bay National Wildlife Refuge
Box 6128
Virginia Beach, Virginia 23456

Bureau of Sport Fisheries and Wildlife
Office of Environmental Coordination
Department of the Interior
Room 2246
18th and "C" Streets, NW.
Washington, D.C. 20240

Single copies may be obtained by writing the Chief, Office of Environmental Coordination, Bureau of Sport Fisheries and Wildlife, Department of the Interior, Washington, D.C. 20240. Comments concerning the proposed action should also be addressed to the Chief, Office of Environmental Coordination. Please refer to the statement number above.

Dated: April 29, 1974.

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

[FR Doc.74-10421 Filed 5-6-74;8:45 am]

[INT DES 74-52]

PROPOSED UL BEND WILDERNESS AREA, MONTANA

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the Department of the Interior has prepared a draft environmental statement for the Proposed UL Bend Wilderness Area, located in Montana, and invites written comments on or before June 21, 1974.

The proposal recommends that 20,893 acres of the UL Bend National Wildlife Refuge, located in south Phillips County, Montana, be included in the National Wilderness Preservation System.

Copies of the draft statement are available for inspection at the following locations:

Bureau of Sport Fisheries and Wildlife
10597 West Sixth Avenue
Denver, Colorado 80215

Headquarters
UL Bend National Wildlife Refuge
Box J
Malta, Montana 59538

Bureau of Sport Fisheries and Wildlife
Office of Environmental Coordination
Department of the Interior
Room 2246
18th and "C" Streets, NW.
Washington, D.C. 20240

Single copies may be obtained by writing the Chief, Office of Environmental Coordination, Bureau of Sport Fisheries and Wildlife, Department of the Interior, Washington, D.C. 20240. Comments concerning the proposed action should also be addressed to the Chief, Office of Environmental Coordination. Please refer to the statement number above.

Dated: May 1, 1974.

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

[FR Doc.74-10422 Filed 5-6-74;8:45 am]

[INT DES 74-51]

HUNTINGTON CANYON GENERATING STATION, UTAH—PROPOSED CONSTRUCTION OF SECOND UNIT AND 345-KV TRANSMISSION LINE

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, and the Bureau of Land Management and Bureau of Reclamation, Department of the Interior, have prepared a draft environmental statement concerning the proposed addition of a 430-MW generating unit to the Utah Power and Light Company's Huntington Canyon Station in Emery County, Utah, and construction of a 345-kV, 75-mile-long transmission line from the station to Sigurd, Utah. The Department of the Interior is the lead agency for preparation and clearance of the environmental statement.

Written comments on the draft environmental statement may be submitted to the Regional Director, Bureau of Reclamation, P.O. Box 11568, Salt Lake City, Utah 84111, within 45 days of this notice. Copies of the draft environmental statement are available for inspection at the following locations:

Office of Communications, Room 7220, Department of the Interior, Washington, D.C. 20240, Telephone (202) 343-9247.
Office of Assistant to the Commissioner—Ecology, Room 7622, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, Telephone (202) 343-4991.
Division of Engineering Support, Technical Services and Publications Branch, Bureau of Reclamation, E&R Center, Denver Federal Center, Denver, Colorado 80225, Telephone (303) 234-3007.
Office of the Regional Director, Bureau of Reclamation, 125 South State Street, Salt Lake City, Utah 84111, Telephone (801) 524-5409.

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation or the Regional Director.

Dated: May 1, 1974.

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

[FR Doc.74-10423 Filed 5-6-74;8:45 am]

[INT DES 74-50]

PALMETTO BEND PROJECT, TEXAS

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement on an authorized water supply project for the purpose of furnishing a dependable municipal and industrial water supply to the Jackson-Calhoun Counties area located on the Gulf Coast in south Texas. In addition, the project will provide associated recreational, fish, and wildlife facilities to the surrounding area. Written comments may be submitted to the Regional Director (address below) within 45 days of this notice.

Copies are available for inspection at the following locations:

Office of Assistant to the Commissioner—Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, Telephone (202) 343-4991.
Division of Engineering Support, Technical Services and Publications Branch, E&R Center, Denver Federal Center, Denver, Colorado 80225, Telephone (303) 234-3022.
Office of the Regional Director, Bureau of Reclamation, Herring Plaza Box H-4377, Amarillo, Texas 79101, Telephone (806) 376-2401.

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation or the Regional Director.

Dated: April 30, 1974.

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

[FR Doc.74-10377 Filed 5-6-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

TEXAS CANE SUGAR PRODUCING AREA

Hearing on Proportionate Shares for 1975-Crop

Notice is hereby given that the Secretary of Agriculture, acting pursuant to the Sugar Act of 1948, as amended, will conduct a public hearing to receive the views and recommendations of interested persons on the need for establishing proportionate shares for the 1975 sugarcane crop in the Texas Cane Sugar Producing Area. The hearing will be conducted in Room 3734, South Building, U.S. Department of Agriculture, Washington, D.C., beginning at 10 a.m. on May 24, 1974.

In accordance with the provisions of paragraph (1), subsection (b) of section 302 of the Sugar Act of 1948, as amended (7 U.S.C. 1132(b)) the Secretary must determine for each crop year whether the production of sugar from any crop of sugarcane in the area will, in the absence of proportionate shares, be greater than the quantity needed to enable the area to meet its quota and provide a normal carryover inventory, as estimated by the Secretary for such area for the calendar year during which the larger part of the sugar from such crop normally would be marketed. Such determination may be made only after due notice and opportunity for an informal public hearing.

Views and recommendations are desired on (a) the need for establishing proportionate shares and, (b) if acreage restrictions are recommended, on all phases of a proportionate share program. Recommendations may be presented orally at the hearing, preferably supported in writing by an original and two copies of the oral statement. Views and recommendations may also be submitted in writing, in triplicate, at the hearing or may be mailed to the Director, Sugar Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, postmarked not later than June 7, 1974.

All written submissions made pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk, Room 112-A, Administration Building, U.S. Department of Agriculture, Washington, D.C. (7 CFR 1.27 (b)).

Signed at Washington, D.C., on April 30, 1974.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.74-10401 Filed 5-6-74;8:45 am]

Food and Nutrition Service

NATIONAL SCHOOL LUNCH PROGRAM, SCHOOL BREAKFAST PROGRAM, SPECIAL MILK PROGRAM AND COMMODITY ONLY SCHOOLS

Income Poverty Guidelines for Determining Eligibility for Free and Reduced Price Meals and Free Milk

Pursuant to section 9 of the National School Lunch Act, as amended (42 U.S.C. 1758) and section 4(e) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(e)), the income poverty guidelines for determining eligibility for free and reduced-price meals in the National School Lunch Program, School Breakfast Program, and commodity only schools during fiscal year 1975 are prescribed by the Secretary in the following tables.

Under the legislation, schools are required to serve free meals to all children from families whose income is at or below the applicable family size income level in the Secretary's guidelines. Each State educational agency is required to prescribe income guidelines for both free and reduced-price meals, by family size, for use by schools in the State. The State

guidelines may not be less than the applicable family size income level prescribed by the Secretary, and may not exceed the Secretary's guidelines by more than 25 percent, in the case of free meals, or 50 percent, in the case of reduced-price meals.

Section 3 of the Child Nutrition Act of 1966 as amended (42 U.S.C. 1772), requires that children who qualify for free lunches under these guidelines shall also be eligible for free milk.

For the convenience of State educational agencies, the tables also show the Secretary's income poverty guidelines when increased by 25 percent and when increased by 50 percent. The increased figures represent the maximum levels to be prescribed by State educational agencies in determining eligibility for free meals and free milk, and reduced-price meals, respectively. The Secretary's guidelines remain the minimum level for free meals and free milk; all children at or below such levels shall be served a free meal and free milk.

The Island of Guam has been included in the same guidelines as those used for Hawaii due to their comparable costs of living.

Income poverty guidelines, fiscal year 1975

Family size	Secretary's guidelines, fiscal year 1975	Guideline levels when increased by— 25 percent	50 percent
48 States, District of Columbia, and Territories Except Guam			
1	$2,330	$2,910	$3,500
2	3,060	3,830	4,600
3	3,790	4,740	5,690
4	4,510	5,640	6,760
5	5,180	6,480	7,770
6	5,850	7,310	8,780
7	6,450	8,060	9,680
8	7,050	8,810	10,580
9	7,610	9,510	11,420
10	8,150	10,190	12,230
11	8,690	10,860	13,040
12	9,230	11,530	13,850
Each additional family member	540	670	810
Alaska			
1	$2,750	$3,440	$4,130
2	3,610	4,520	5,420
3	4,470	5,590	6,710
4	5,330	6,660	8,000
5	6,120	7,650	9,180
6	6,900	8,630	10,360
7	7,620	9,530	11,430
8	8,330	10,410	12,500
9	8,970	11,210	13,460
10	9,610	12,010	14,420
11	10,250	12,810	15,380
12	10,890	13,610	16,340
Each additional family member	640	800	960
Hawaii and Guam			
1	$2,610	$3,260	$3,920
2	3,430	4,290	5,150
3	4,250	5,310	6,380
4	5,060	6,330	7,590
5	5,810	7,260	8,720
6	6,550	8,190	9,830
7	7,230	9,040	10,850
8	7,910	9,890	11,870
9	8,530	10,660	12,800
10	9,140	11,430	13,720
11	9,750	12,190	14,630
12	10,360	12,950	15,540
Each additional family member	610	760	910

The Secretary's income poverty guidelines are based on the previous year's poverty level adjusted for the year-to-year change in the Consumer Price Index. This procedure is consistent with the basic procedure used by the Bureau of the Census in updating its latest statistics on poverty levels.

"Income," as the term is used in this notice, is similar to that defined in the Bureau of the Census report, "Characteristics of the Low-Income Population: 1971," Consumer Income, Current Population Reports, series P–60. No. 86, December 1972. "Income" means income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. It includes the following:

(1) Monetary compensation for services, including wages, salary, commission, or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds, income from estates or trust, or net rental income; (6) public assistance or welfare payments; (7) unemployment compensations; (8) Government civilian employee or military retirement or pensions or veterans' payments; (9) private pensions or annuities; (10) alimony or child support payments; (11) regular contributions from persons not living in the household; (12) net royalties; and (13) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts, and other resources which would be available to pay the price of a child's meal.

"Income" as the term is used in this notice, does not include payments to volunteers under the Domestic Volunteer Service Act of 1973, Public Law 93–113 (87 Stat. 409); nor does the term include income used for the following special hardship conditions which could not be reasonably anticipated or controlled by the household:

(1) Unusually high medical expenses; (2) shelter costs in excess of 30 percent of income as defined herein; (3) special education expenses due to the mental or physical condition of a child; and (4) disaster or casualty losses.

In applying guidelines, school food authorities may consider both the income of the family during the past 12 months and the family's current rate of income to determine which is the better indicator of the need for free and reduced-price meals.

Effective date. This notice shall be effective July 1, 1974.

Dated: May 1, 1974.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.74–10320 Filed 5–6–74;8:45 am]

Forest Service

CARSON NATIONAL FOREST TIERRA AMARILLA GRAZING ADVISORY BOARD

Notice of Meeting

A special meeting of the Tierra Amarilla Grazing Advisory Board will be held at the Ghost Ranch Conference Center, Abiquiu, New Mexico, on Friday, May 31, 1974, at 10 a.m.

Phil Reynolds, President of the Tierra Amarilla Grazing Advisory Board, has requested this meeting to hear an appeal by David E. Archuleta of Cebolla, New Mexico, concerning an increase in numbers of livestock on the Canjilon Grazing Allotment.

The meeting will be open to the public. Persons who wish to attend should notify W. R. Snyder, Forest Supervisor, Carson National Forest, P.O. Box 558, Taos, New Mexico, phone (505) 758–2237. Written statements may be filed with the board before or after the meeting.

Dated: April 29, 1974.

R. KENT KENNEDY,
Acting Forest Supervisor.

[FR Doc.74–10374 Filed 5–6–74;8:45 am]

TAOS SKI VALLEY EXPANSION

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture has prepared a draft environmental statement for a Proposed Taos Ski Valley Expansion, Carson National Forest, USDA–FS–DES(Adm)R3–74–02.

The environmental statement considers probable environmental effects of the expansion proposal.

The draft environmental statement was filed with CEQ on April 30, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Rm. 3230
14th & Independence Ave., SW
Washington, D.C. 20250

USDA, Forest Service
Southwestern Region
517 Gold Avenue, SW
Albuquerque, New Mexico 87102

Carson National Forest
Cruz Alta Road
Taos, New Mexico 87571

Single copies are available upon request to the Forest Supervisor, Carson National Forest, P.O. Box 558, Taos, New Mexico 87571; and the Regional Forester, Southwestern Region, 517 Gold SW., Albuquerque, New Mexico 87102. Copies are also available from the Colorado Plateau Environmental Advisory Council, P.O. Box 1389, Flagstaff, Arizona 86001. Please refer to the name and number of the environmental statement when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, State, and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to the Forest Supervisor, Carson National Forest, P.O. Box 558, Taos, New Mexico 87571. Comments must be received within 60 days from the date of this notice in order to be considered in the preparation of the final environmental statement.

W. L. EVANS,
Acting Regional Forester, R3.

[FR Doc.74-10373 Filed 5-6-74;8:45 am]

OREGON DUNES NATIONAL RECREATION AREA ADVISORY COUNCIL

Notice of Meeting

The Oregon Dunes National Recreation Area Advisory Council will meet on Wednesday, May 29th, at 10 a.m. in Florence, Oregon. This meeting will be held in the Coho Room of the Pier Point Inn.

The purpose of the meeting is to discuss wilderness suitability in the NRA, to review the Status Report of Oregon Dunes planning and to honor requests of Norm Hansen and Don Laskey who want to talk with the Advisory Council.

The meeting will be open to the public. Persons who wish to attend should notify Pamela Wilson, P.O. Box 1148, Corvallis, Oregon 97330. The telephone number is 503-752-4211, extension 502. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation. Any member of the public who wishes to speak must be recognized by the council chairman. The council chairman will decide the time when public participation will take place.

F. DALE ROBERTSON,
Forest Supervisor.

APRIL 29, 1974.

[FR Doc.74-10419 Filed 5-6-74;8:45 am]

SAWTOOTH NATIONAL RECREATION AREA

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement of the General Management Plan for the Sawtooth National Recreation Area, Sawtooth National Forest, Idaho. The Forest Service report number is USDA-FS-DES (Adm) R4-74-8.

The enviornmental statement identifies and evaluates the environmental effects of the proposed general management plan. The proposed general management plan sets forth the allocation of land to recreation development and resource uses and activities; establishes objectives; document management direction, decisions, and necessary coordination between recreational and resource uses; and provides for the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values within the unit as prescribed in the legislation establishing the Sawtooth National Recreation Area (Pub. L. 92-400).

This draft environmental statement was transmitted to CEQ on April 26, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. & Independence Ave., SW.
Washington, D.C. 20250

Regional Planning Office
USDA, Forest Service
Federal Building, Room 4403
324-25th Street
Ogden, Utah 84401

Forest Supervisor
Sawtooth National Forest
1525 Addison Avenue East
Twin Falls, Idaho 83301

Area Ranger (Superintendent)
Sawtooth National Recreation Area
P.O. Box 438
Ketchum, Idaho 83340

A limited number of single copies are available upon request to Forest Supervisor Edwin A. Fournier, Sawtooth National Forest, 1525 Addison Aveune East, Twin Falls, Idaho 83301.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor, Sawtooth National Forest, 1525 Addison Avenue East, Twin Falls, Idaho 83301. Comments must be received by July 31, 1974, in order to be considered in the preparation of the final environmental statement.

Dated: April 26, 1974.

VERN HAMRE,
Regional Forester.

[FR Doc.74-10420 Filed 5-6-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FAP 3B2871]

CELANESE PLASTICS CO.

Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 3B2871) has been filed by Celanese Plastics Co., P.O. Box 1000, Summit, NJ 07901, proposing that the food additive regulations be amended to provide for safe use of polyoxymethylene copolymer and terpolymer produced by using trioxane, ethylene oxide, and butanediol-diglycidyl ether as reactants and calcium ricinoleate, cyanoguanidine, 2-hydroxy-4-methoxy benzophenone, 2,2'-methylenebis - (4 - methyl-6-*tert*-butylphenol) N,N' - distearoylethylenediamine, and tetrakis (methylene (3,3-di-*tert*-butyl-hydroxyhydrocinnamate)) methane as optional adjuvant substances in articles intended to contact food.

Dated: April 29, 1974.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.74-10429 Filed 5-6-74;8:45 am]

Office of the Secretary

CONSUMER ADVISORY COUNCIL

Notice of Meeting

Pursuant to Pub. L. 92-463 of October 6, 1972, notice is hereby given that there will be a public meeting of the Consumer Advisory Council to the Office of Consumer Affairs, U.S. Department of Health, Education, and Welfare, which will commence at 10 a.m. on May 13 in Room 5104, New Executive Office Building, 17th and H Streets NW., Washington, D.C. 20506 and continue on the morning of May 14 in the same location.

The Consumer Advisory Council was established under section 5 of Executive Order No. 11583 issued February 24, 1971, to advise the Director of the Office of Consumer Affairs with respect to policy matters relating to consumer interests, the effectiveness of Federal programs and operation which affect the interests of consumers, problems of primary importance to consumers and ways in which unmet consumer needs can appropriately be met through Federal Government action.

The meeting is open to the public with the number of persons admitted subject to reasonable limitation according to space available. The agenda will include discussions of the consumers interest in agriculture programs, energy conservation, population issues, complaint handling mechanisms and the consumers rights to privacy.

Signed in Washington, D.C. this 1st day of May, 1974.

VIRGINIA H. KNAUER,
Director, Office of Consumer Affairs and Executive Secretary, Consumer Advisory Council.

[FR Doc.74-10381 Filed 5-6-74;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 26366; Order 74–5–9]

BUD ANTLE, INC.

Order Denying Petition for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 2nd Day of May 1974.

Specific commodity rates filed by Alitalia-Linee Aeree Italiane-S.p.A., Japan Air Lines Company, Ltd., Pan American World Airways, Inc., The Flying Tiger Line, Inc., Trans World Airlines, Inc.

By Order 74–3–15 (March 5, 1974) the Board dismissed the complaint of Bud Antle, Inc. (Antle) against increased westbound transpacific rates for specific commodity Item No. 0007 (Fruits and/or Vegetables, N.E.S. when tendered by the shipper wholly in Type 3 container(s)). The rates were filed by the member carriers of the International Air Transport Association (IATA) to implement a Board-approved IATA agreement involving increases in worldwide passenger fares and cargo rates to compensate for escalating fuel prices.

Antle has now submitted a petition for reconsideration of the Board's previous action, generally contending that the Boards' dismissal of the complaint did not adequately dispose of Antle's arguments.

Answers in opposition to the petition have been received from Pan American World Airways, Inc., and The Flying Tiger Line, Inc. The respondents variously assert that Antles' petition is nothing more than a recitation of its previous arguments, which the Board has adequately treated in dismissing Antle's initial complaint; that there was adequate notice of the proposed increases; that the increases fully comply with the formula adopted by the carriers, and explained by the Board in its order of approval; that the record provides sufficient and complete cost justification for the increases; and that Antle has provided no documented economic analysis, but relies solely on its own unsupported conclusions.

Upon full consideration of the petition, the answers, and all other relevant matters, the Board finds that Antle has presented no new facts or arguments which have not already been dealt with in Order 74–3–15 dismissing Antle's initial complaint. In these circumstances Antle's petition raises no new issue, and accordingly will be denied. Antle's arguments hinge on the contention that the formula of a fixed amount (four percent of the 45-kilogram general cargo rate between the U.S. West Coast and each foreign point) in the approved fuel-based rate increase in fact represents an increase of 28 percent in the low specific commodity rates used by Antle, and as such is an undue burden on Antle. The Board now has before it for consideration an IATA agreement which would establish an overall North/Central Pacific cargo rate structure, including rates for fresh produce, through December 31, 1974. Order 74–4–32 (April 4, 1974) established procedural dates for the receipt of carrier justification, comments from interested persons, and responses pertaining to this agreement, and we believe these procedures afford Antle ample opportunity to comment on the appropriate level of rates for these commodities.[3]

Accordingly, it is ordered, That:

The petition of Bud Antle, Inc. for reconsideration of Order 74–3–15 be and hereby is denied.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74–10455 Filed 5–6–74;8:45 am]

[Docket No. 25594; Order 74–5–7]

PAN AMERICAN WORLD AIRWAYS, INC. ET AL.

Exemption of Air Carriers for Military Transportation; Order on Petitions for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 1st day of May 1974.

By ER–839, adopted March 8, 1974, the Board amended Part 288 of its Economic Regulations (14 CFR Part 288) by providing a fuel surcharge of 5.15 percent[1] to the existing interim final minimum rates[2] applicable to certain foreign and overseas air transportation services performed for the Department of Defense (DOD) effective on and after January 22, 1974. Since the surcharge rate adopted was revised from the 4.5 percent originally proposed by EDR–263, January 22, 1974, the Board provided for the filing of petitions for reconsideration.

Petitions requesting reconsideration were filed by Pan American World Airways, Inc. (Pan Am), Trans World Airlines, Inc. (TWA), World Airways, Inc. (World) and the DOD, and an answer in support of Pan Am's petition was filed by Seaboard World Airlines, Inc. (Seaboard).

Pan Am's petition notes that although the 5.15 percent surcharge was based upon commercial fuel prices in effect on January 1, 1974, it was not effective until January 22, 1974, and argues that the Board's failure to make the surcharge effective retroactively deprives the carriers of revenues to which they would otherwise be entitled. Pan Am would, therefore, determine the amount of the surcharge on the basis of the carriers' average January fuel cost per gallon. According to the carrier, adjusting the calculations in ER–839 to reflect only Pan Am's average fuel cost for January produces a 5.44 percent surcharge rather than the 5.15 percent adopted. Seaboard has answered in support of the Pan Am petition, and in addition requests that the surcharge be increased to 5.49 percent to reflect its average experienced January, 1974 commercial fuel costs for MAC operations.

The TWA petition asserts that while the Board has purported to act on the basis of January 1, 1974 prices, such fuel prices are subject to retroactive adjustment, and that, as a result of such adjustments, the fuel prices used for TWA in ER–839 are understated.[3]

World in its petition renews its request for a monthly review of fuel price data, and retroactive adjustment of the surcharge to reflect the most recent fuel prices.[4] Additionally, World points out that in amending section 288.7 of Part 288 to provide for the fuel surcharge, reference was made only to regular turbojet and DC–8F–61–63 aircraft, and not of B–747 aircraft which are common rated with the DC–8–63. World requests amendment of section 288.7 to specifically include the B–747, and thus eliminate any uncertainty as to the applicability of the surcharge to such aircraft. Finally, World requests a separate surcharge of .29 percent to be applicable to MAC operations performed with B–727 equipment on Pacific Inter-island routes.

The DOD's petition indicates that although the Department does not object to the adoption of the 5.15 percent surcharge prospectively from the date ER–839 was issued, it does object to making the revised 5.15 percent surcharge effective from the date the notice of rule making was issued. In the Department's view, a revision of the amount of the surcharge back to the date of the notice is a repudiation of the principle of prospective application of interim final rates set forth in ER–819, adopted August 28, 1973, as modified in EDR–262, adopted January 15, 1974.

Upon consideration of the petitions and answer, we are not persuaded to alter our conclusions in ER–839.

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[3] We would expect Antle's comments to present a detailed economics analysis of the actual impact of the rates in question, including accurate estimates of the percentage of selling, price represented by transportation cost, the proportion of Antle's total business which is actually affected by these commodity rates, and a comparison of traffic volume before and after the approved rate increases.

[1] Related to increased costs for commercial fuel incurred by the MAC carriers in the performance of long-range service for DOD.

[2] As established in ER–819, adopted August 28, 1973.

[3] The TWA petition also states that the use of a price of 11.3 cents per gallon for military fuel in EDR–263 understates the impact on the carriers of the cost of military-supplied fuel since the prevailing price for fuel obtained from the Navy is 16.3 cents per gallon. The calculations in EDR–263 were based solely upon commercial fuel prices with military-supplied fuel prices held constant. See fn. 2 to the Appendix to EDR–263. The military prices were held constant because since the adoption of ER–819, foreign and overseas MAC rates have included an automatic adjustment factor for changes in the price of fuel purchased by the carriers from military sources.

[4] By EDR–265, the Board gave notice that it proposed to amend Part 288 by adopting a procedure for monthly fuel surcharge adjustments to reflect changes in commercial fuel prices. For this reason, we find this aspect of World's petition moot.

In general, the TWA and Pan Am petitions contend that the increased fuel surcharge rate adopted is still inadequate in that it fails to take into consideration fuel price increases subsequent to January 1. In our view, the need for prompt administrative action during this period of extreme volatility in commercial fuel prices, a major cost element in air transportation, coupled with our desire to minimize retroactive rate adjustments, requires that the fuel surcharge be based upon fuel prices in effect at a particular point in time and that it involve the minimum amount of retroactive adjustment. Under the Pan Am proposal to use average prices, it would be impossible to close the rate without at least two months of retroactivity. TWA's proposal to reflect retroactive price increases made by suppliers involves even longer retroactive periods. These proposals would, in our judgment, severely complicate administration of the surcharge and would be inconsistent with the objective of achieving prompt rate finality.

The Department of Defense, on the other hand, objects to making the revised surcharge effective from the date the notice of rule making was issued as a repudiation of the principle of prospective application of interim final rates. We do not agree. EDR-263 which originally proposed the fuel surcharge explicity stated our intention that the final rates adopted would be effective prospectively from January 22, 1974. Thus, DOD has been on notice from the date we originally instituted this proceeding of our intention to make the final rates effective from the date of the notice, and accordingly we find no basis for their objection to the retroactive application of the surcharge rate finally adopted.

As for World's proposed surcharge for Pacific inter-island service, we do not believe that the relatively small rate impact of commercial fuel cost increases incurred by World as of January 1, 1974, in the inter-island MAC operations, administratively warrants or economically requires a surcharge at this time. We will, however, continue to monitor commerical fuel price developments, and should prices continue their significant upward trend, are prepared to take timely action if warranted.[5]

Accordingly, it is ordered, That:

The petitions for reconsideration of ER-839, effective January 22, 1974, with respect to amendment of Part 288 (14 CFR Part 288) to provide a surcharge of 5.15 percent to the existing interim final minimum rates applicable to certain foreign and overseas transportation perform for the Department of Defense be and they hereby are denied.

This order will be published in the FEDERAL REGISTER.

[5] We take note of World's request for an amendment of § 288.7 to specifically mention the B-747. Since sec. 288.7 provides that the rates for B-747 aircraft are common-rated with DC-8-63 rates, we interpret ER-839 as also applicable to the B-747.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-10456 Filed 5-6-74;8:45 am]

[Docket No. 25281; Order 74-4-138]

TRANSPORTES AEREOS NACIONALES, S.A.

Statement of Tentative Findings and Conclusions and Order To Show Cause

Correction

In FR Doc. 74-9928 appearing at page 15155 of the issue for Wednesday, May 1, 1974, in the middle of the first column of page 15156, the paragraph beginning "We do not suggest * * *" should appear as the second paragraph of footnote 4.

COMMISSION ON CIVIL RIGHTS

TENNESSEE STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Tennessee State Advisory Committee (SAC) to this Commission will convene at 4:00 p.m. on May 17, 1974, at the Holiday Inn, 401 West Six Street, Chattanooga, Tennessee 37408.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Southern Regional Office of the Commission, Room 362, Citizens Trust Bank Building, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303.

The purpose of this meeting shall be to formulate plans for a proposed project on employment problems in the State of Tennessee.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., April 30, 1974.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.74-10464 Filed 5-6-74;8:45 am]

WEST VIRGINIA STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the West Virginia State Advisory Committee (SAC) to this Commission will convene on May 10, 1974, at 6 p.m. at the Summers County Courthouse, Ballengee Street, Hinton, West Virginia 25951. These sessions shall be open to the public.

Closed or executive SAC sessions may be held at such time and place as deemed necessary to discuss matters which may tend to defame, degrade, or incriminate individuals. Such sessions will not be open to the public.

The purpose of this meeting shall be to collect information concerning legal developments constituting a denial of the equal protection of the laws under the Constitution because of race, color, religion, sex, national origin or in the administration of justice which affects persons residing in the State of West Virginia with special emphasis on the conditions in West Virginia penal institutions as they relate to the civil rights of inmates; to appraise denial of the equal protection of the laws under the Constitution because of race, color, religion, sex, national origin, or in the administration of justice as these pertain to West Virginia penal institutions as they relate to the civil rights of inmates; and to disseminate information with respect to denials of equal protection of the laws because of race, color, religion, sex, national origin, or in the administration of justice with respect to West Virginia penal institutions; and to related areas.

These meetings will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., April 30, 1974.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.74-10465 Filed 5-6-74;8:45 am]

COST OF LIVING COUNCIL

[Cost of Living Council Order 51]

DIRECTOR, COST OF LIVING COUNCIL

Delegation of Authority

Pursuant to the authority vested in me as Chairman of the Cost of Living Council by Executive Order No. 11781, May 1, 1974 (herein referred to as the Order), it is hereby ordered as follows:

1. There is delegated to the Director of the Cost of Living Council all of the authorities delegated to the Chairman of the Cost of Living Council by the Order.

2. Significant policy decisions shall be made by the Director after consultation with the Chairman of the Cost of Living Council or the Cost of Living Council as appropriate.

3. The Director of the Cost of Living Council is authorized to redelegate any or all of the authorities set out in such Order that he deems necessary for the orderly and efficient exercise of the authority delegated to him.

4. All Cost of Living Council delegations in effect on April 30, 1974 are continued in effect to the extent necessary to carry out the provisions of Executive Order 11781, except that the Director may modify or supersede such delegations as he deems necessary.

5. This delegation shall be effective as of May 1, 1974.

GEORGE P. SCHULTZ,
Chairman, Cost of Living Council.

[FR Doc.74-10578 Filed 5-3-74;3:45 pm]

FOOD INDUSTRY WAGE AND SALARY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that the Food Industry Wage and Salary Committee, established under the authority of section 212(f) of the Economic Stabilization Act, as amended, section 4(a)(iv) of Executive Order 11695, and Cost of Living Council Order No. 14, will meet on Thursday, May 9, 1974. The meeting will be open to the public on a first-come, first-served basis at 10 a.m., in Conference Room 8202, 2025 M Street, N.W., Washington, D.C.

The agenda will consist of a discussion of policy questions involving food industry wage matters, and if circumstances permit, of food industry wage cases pending before the Cost of Living Council.

The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

Issued in Washington, D.C., on May 3, 1974.

HENRY H. PERRITT, Jr.,
Executive Secretary,
Cost of Living Council.

[FR Doc.74-10580 Filed 5-3-74;3:48 pm]

[Phase IV Price Notice 1974-6]

PRICE PROCEDURES AND REMEDIES

Availability After April 30, 1974

The purpose of this notice is to explain the availability of price procedures and remedies under the Economic Stabilization Program after April 30, 1974.

Under Executive Order 11781, May 1, 1974, the Council is authorized for the period May 1, 1974, through June 30, 1974, to continue to act on matters relating to prices charged prior to May 1, 1974. The Council accordingly will continue to process (1) requests for exceptions from regulations and orders; (2) requests for reconsideration of adverse actions; (3) requests for interpretations and rulings; and (4) cases concerning violations or apparent violations. The Council may also amend its regulations to accomplish its authorized functions.

Firms may therefore continue after April 30, 1974, to submit requests for exceptions, etc., in those cases where a Council decision is necessary to resolve questions which involve prices charged prior to May 1, 1974, and which remain significant after the expiration of continuing price stabilization authority under the Economic Stabilization Act. The Council will, in addition, continue to pursue and resolve compliance matters through appropriate administrative and legal channels.

All requests for exceptions, reconsiderations, interpretations and rulings are to be submitted in the customary manner.

Reports due after April 30, 1974, are to continue to be submitted to the IRS. Compliance matters will continue to be conducted primarily by the IRS. Firms should consult the amendment to the CLC-22 instructions issued on May 3, 1974, for information concerning preparation of final reports and the cut-off date for final reports.

Issued in Washington, D.C. on May 3, 1974.

JAMES W. MCLANE,
Deputy Director,
Cost of Living Council.

[FR Doc.74-10579 Filed 5-3-74;3:45 pm]

ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL IMPACT STATEMENTS

Availability of EPA Comments

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of April 1, 1974 and April 15, 1974.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix V.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this reviewing period. The listing will include the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix V.

Appendix IV contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in Appendix V.

Appendix V contains a listing of the names and addresses of the sources for copies of EPA comments listed in Appendices I, III, and IV.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Inquiries Branch, Office of Public Affairs, Environmental Protection Agency, Washington, D.C. 20460. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency or from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151.

Dated: April 30, 1974.

ROBERT C. BARTLETT,
Acting Director,
Office of Federal Activities.

APPENDIX I.—*Draft environmental impact statements for which comments were issued between Apr. 1, 1974, and Apr. 15, 1974*

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Agriculture:			
D-AFS-60095-MT	Montana Libby Face Multiple Use Plan, Montana	LO-1	I
D-AFS-61221-WV	Eagle Lake and Associated Recreation Developments, West Virginia.	LO-2	D
D-AFS-61225-OO	Management Plan for Cohutta Mountains, Chattahoochee National Forest in Tennessee and Cherokee National Forest in Georgia.	LO-1	E
D-AFS-65061-UT	American Fork Canyon-Provo Peak Planning Unit, Utah.	LO-1	I
D-AFS-65067-MT	Bitterroot North Planning Unit, Stevensville District, Montana.	LO-1	I
D-AFS-65068-ID	Salmon River Wilderness and Idaho Wilderness, Idaho	LO-1	K
D-AFS-65077-OR	Elgin Planning Unit, Umatillia National Forest, Oregon	ER-2	K
D-AFS-65084-VA	Big Levels Management Unit, George Washington National Forest, Va.	LO-1	D
D-AFS-65086-ID	Elk City Planning Unit, Idaho	3	K
D-AFS-65091-AK	Chugach National Forest, Westside Timber Sale, Alaska	LO-1	K
D-AFS-65092-VA	Cave Mountain Lake Unit Management Plan, Virginia	LO-1	D
D-AFS-60096-MT	Multiple Use Planning Unit, Morr-Baldy, Mont	LO-1	I
Atomic Energy Commission:			
D-AEC-00101-SC	Additional High Level Waste Facility, Savannah River Plant, South Carolina.	ER-2	A
D-AEC-00102-ID	New Waste Calcining Facility, National Reactor Test Station, Idaho.	LO-2	A
D-AEC-00103-ID	HTGR Fuels Reprocessing Facility, National Reactor Test Station, Idaho.	ER-2	A
D-AEC-00104-TN	Radioactive Waste Facilities, Oak Ridge National Laboratory, Tenn.	ER-2	A
D-AEC-00105-TN	HTGR Fuel Refabrication Plant, Oak Ridge National Laboratory, Tenn.	ER-2	A
D-AEC-06122-NC	General Atomic Fuel Fabrication Facility, North Carolina.	ER-2	A
Department of Commerce:			
D-EDA-03048-HI	Proposed Expansion of Foreign Trade, Subzone 9A, Hiri Oil Refineries, Hawaii.	ER-2	J
D-EDA-03049-HI	Honolulu Harbor, Terminal Annex of Foreign Trade, Subzone 9A, Hawaii.	ER-2	J

APPENDIX I.—*Draft environmental impact statements for which comments were issued between Apr. 1, 1974, and Apr. 15, 1974*—Continued

Identifying No.	Title	General nature of comments	Source for copies of comments
Corps of Engineers:			
D-COE-07083-WI	Columbia Generating Station, Portage, Wis.	ER-2	F
D-COE-30075-SC	Hunting Island Beach, Beaufort County, S.C.	LO-2	E
D-COE-35113-WI	Maintenance and Dredging, Dredging Disposal for Manitowoc and Two Rivers, Wis.	LO-2	F
D-COE-34108-WA	Little Goose Lock and Dam on Snake River, Wash.	LO-1	K
D-COE-32494-NJ	Coastal Inlets and Beaches from Barnegat Inlet to Longport, N.J.	LO-2	C
Department of Defense:			
D-USA-10041-AK	Malemute Zone Drop and Short Field Assault Landing Strip, Anchorage, Alaska.	LO-1	K
Department of Interior:			
D-NPS-61223-OO	Death Valley National Monument, California and Nevada.	LO-2	J
D-BIA-60097-CA	Resolution of Title to the Chemehuevi Shoreline, San Bernardino County, Calif.	LO-1	J
DR-DOI-67007-OO	Outer Continental Shelf, Hard Mineral Mining, Operating and Leasing Regulations.	ER-2	A
D-SFW-61215-NB	Fort Niobrara Wilderness Area, Nebr.	LO-2	H
D-SFW-61224-FL	Lake Woodruff Wilderness, Volusia and Lake Counties, Fla.	LO-1	E
D-NPS-61223-OO	Proposed Wilderness, Death Valley, N. Mex., Calif., and Nev.	LO-2	J
D-BPA-08018-WA	Raver Tacoma 500 kV Transmission Line, Washington.	LO-2	K
Interstate Commerce Commission:			
D-ICC-99081-OO	Docket No. 8705, Passenger Fares Between Pennsylvania and New Jersey.	ER-1	D
National Aeronautics and Space Administration:			
D-NAS-24056-MD	Granting of Easement for Sewer Outfall, Greenbelt, Md.	ER-2	D
Department of Transportation:			
D-FAA-51834-IA	Waterloo Municipal Airport, Waterloo, Iowa	ER-2	H
D-FAA-51838-GA	Washington County Airport, Sandersville and Tennille, Ga.	LO-2	E
D-FHW-42157-CA	San Bernardino National Forest Highway FH-68, Georgia St., Route 38, San Bernardino County, Calif.	LO-1	J
D-FHW-42158-CA	South Fork Road, Mile Post 527, Six Rivers National Forest, Del Norte County, Calif.	LO-1	J
D-FHW-42159-CA	I-210, Foothill Freeway, Los Angeles, Calif.	ER-2	J
D-FHW-42164-TN	Sequatchie, Van Buren, and Warren Counties, Route 8, Tenn.	LO-1	E
D-FHW-42166-NC	Chatham-Randolph Counties, US-421, Siler City to Staley, N.C.	LO-1	E
D-FHW-42179-FL	Lake County, Fla., State Road 46	LO-1	E
D-FHW-42188-SD	F-030-4, Beadle County, S. Dak.	LO-1	I
D-FHW-42149-CT	Relocation Route 7, Danby to Norwalk, Conn.	ER-2	B
D-FHW-42173-TX	I-635, Mesquite, at South Mesquite Creek, Tex.	LO-1	G

ERRATA.—The following alterations are made for the EPA FEDERAL REGISTER listings of draft impact statements received for which comments were issued between Mar. 16, 1974, and Mar. 31, 1974:

Under Department of Agriculture, the title to statement "D-AFS-65075-ID" is changed to read: "Soldier Mountain Ski Area Expansion, Sawtooth National Forest, Idaho."

Under Corps of Engineers, the general nature of comments categorization for "D-COE-39088-VA: Marina Facilities, Busch Properties, Inc., James River, Virginia" is changed from "LO-1" to read "ER-2".

APPENDIX II—DEFINITION OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of Objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient Information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III—*Final environmental impact statements for which comments were issued between Apr. 1, 1974, and Apr. 15, 1974*

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Agriculture:			
F-AFS-61226-TN	Gee Creek Eastern Wilderness, Cherokee National Forest, Polk County, Tenn.	Even though EPA did not have an opportunity to review the draft statement, the agency agreed that the proposed project would preserve the present high quality environment of the area.	E
Corps of Engineers:			
F-COE-32312-LA	Atchafalaya River and Bayous, Chene, Boeuf, and Black, La.	EPA believes that there are significant interrelationships between the proposed project and the Atchafalaya Floodway Center Channel project. EPA recommended that the project be developed in consonance with the Atchafalaya Floodway Center Channel study, which is now in progress.	G
F-COE-35051-NY	Maintenance and dredging, Buttermilk Channel, New York, N.Y.	EPA generally agreed with the project as proposed. However, EPA made several recommendations for consideration by the COE for this project and future maintenance and dredging projects.	C
Department of Housing and Urban Development:			
F-HUD-85012-IA	City-University I, Urban Renewal Project, Iowa City, Iowa.	EPA expressed environmental reservations on the proposed project. The two major reservations concerned lack of sufficient data on the proposed parking garages related to air quality impacts and the potential for unacceptable noise exposure levels at the proposed residential site unless adequate attenuation measures are provided.	H
Department of Interior:			
F-BIA-67002-MT	Crow Ceded Area Coal Lease, Montana.	EPA generally agreed with the project as proposed and was generally satisfied with the responses to our comments on the draft statement.	I
F-IBR-07069-SD	Oahe Unit, Initial Stage, South Dakota.	Based on review of the final environmental statement, EPA has serious environmental concerns with portions of this project. Significant and continuing violations of water quality standards will likely occur at the Huron, S. Dak., drinking water supply on the James River. A workable water quality management plan has not been developed for the James River that will permit the desired stream uses to be maintained. Downstream water supplies on the James River proposed for this project will be similarly affected. The project may require channelization of the James River. Irrigation return flows from the Garrison project may have to be routed through the James River. Wetlands losses will be severe, and it is not clear that the planned mitigation areas will replace what is lost. EPA believes that substantial information is needed in the water quality area, and project alternatives should be considered. EPA also believes that these critical environmental issues should be resolved before decision is made to proceed with major project features, although it may be possible to proceed with the OAHE pumping plant if it is determined that the design of this facility would not be altered by subsequent resolution of environmental issues.	I
Department of Transportation:			
F-FAA-51325-KY	Madison Airport, Richmond, Ky.	EPA agreed with the project as proposed.	E
F-FHW-41674-FL	Duval County, SR	EPA generally agreed with the project as proposed. EPA recommended, however, that contractual documents contain adequate assurance that proposed precautions, such as use of silt checks, are properly used.	E
F-FHW-42206-CA	Widening of Pomona Freeway, Montebello, Monterey Park, Rosemead, South El Monte, and County of Los Angeles, Calif.	EPA had no significant objections to the proposed project. However, EPA recommended that the noise analysis be improved.	J
Department of Defense:			
F-UAF-11043-CO	Air Force Accounting Facility, Lowery Air Force Base, Denver, Colo.	EPA encouraged DOD to extend the period of decision on the project in order to fully evaluate comments of EPA and the local residents. EPA recommended that more consideration be given to alternatives including pursuing mass transit and considering an alternative site on other Federal lands.	I

APPENDIX IV.—*Regulations, legislation and other Federal agency actions for which comments were issued between Apr. 1, 1974, and Apr. 15, 1974*

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Commerce:			
R-NOA-90003-00----	15 CFR Part 921—National Oceanic and Atmospheric Administration, Estuarine Sanctuary Grants—Application and Selection Criteria Procedures.	In EPA's view, the guidelines were too vague and too restrictive to be consistent with the broad-based objective of the Coastal Zone Management Act. EPA suggested modifications to several sections of the proposed guidelines in an effort to strengthen them from an environmental point of view.	A
Department of Transportation:			
R-FHW-42185-00----	23 CFR Part 476—Interstate Highway System—Substitution of Mass Transit Projects.	The regulations were found to provide a commendable flexibility in the options which State and local governments may exercise, and EPA intends to recommend segments of the Interstate System of highways which, for air quality purposes, may be candidates for substitution.	A

APPENDIX V—SOURCE FOR COPIES OF EPA COMMENTS

A. Director, Office of Public Affairs, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

B. Director of Public Affairs, Region I, Room 2303, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

C. Director of Public Affairs, Region II, Environmental Protection Agency, Room 847, 26 Federal Plaza, New York, New York 10007.

D. Director of Public Affairs, Region III, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

E. Director of Public Affairs, Region IV, Environmental Protection Agency, Suite 300, 1421 Peachtree Street, N.E., Atlanta, Georgia 30309.

F. Director of Public Affairs, Region V, Environmental Protection Agency, 1 N. Wacker Drive, Chicago, Illinois 60606.

G. Director of Public Affairs, Region VI, Environmental Protection Agency, 1600 Patterson Street, Dallas, Texas 75201.

H. Director of Public Affairs, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.

I. Director of Public Affairs, Region VIII, Environmental Protection Agency, Lincoln Tower, Room 916, 1860 Lincoln Street, Denver, Colorado 80203.

J. Director of Public Affairs, Region IX, Environmental Protection Agency, 100 California Street, San Francisco, California 94111.

K. Director of Public Affairs, Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

[FR Doc.74-10315 Filed 5-6-74;8:45 am]

ENVIRONMENTAL IMPACT STATEMENTS

Statement of Policy

Section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91-190, 42 U.S.C. 4321 et seq.) (hereafter "NEPA"), implemented by Executive Order 11514 (35 FR 4247) and the Council on Environmental Quality Guidelines of August 1, 1973 (38 FR 20550), requires that Federal agencies prepare detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The objective of NEPA is to build into the agency decision making process an appropriate and careful consideration of all environmental aspects of proposed actions.

The Federal Courts of Appeals have held that the Agency need not prepare environmental impact statements for its environmentally protective activities. Environmental Defense Fund, Inc. v. EPA, 489 F.2d 1247, 1256-57 (D.C. Cir. 1973); Essex Chemical Corp. v. Ruckelshaus, 486 F.2d 427, 431 (D.C. Cir. 1973); Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375, 384-85 (D.C. Cir. 1973); Anaconda Co. v. Ruckelshaus, 482 F.2d 1301, 1305-06 (10th Cir. 1973); Buckeye Power, Inc. v. EPA, 481 F.2d 162, 174 (6th Cir. 1973); Duquesne Light Co. v. EPA, 481 F.2d 1, 9 (3d Cir. 1973); International Harvester Co. v. Ruckelshaus, 478 F.2d 615, 650 n. 130 (D.C. Cir. 1973); Appalachian Power Co. v. EPA, 477 F.2d 495, 508 (4th Cir. 1973); Getty Oil v. Ruckelshaus, 467 F.2d 349, 359 (3d Cir. 1972), cert. denied, 409 U.S. 1127 (1973).

Despite this judicial agreement that section 102(2)(C) of NEPA is not applicable to the Agency's environmental regulatory activities, the Agency has been urged to prepare environmental impact statements. H.R. Rep. No. 93-520, 93d Cong., 1st Sess. 18-19 (1973). In addition, Title III of Public Law 92-135, the 1974 Appropriations Act for Agriculture, Environmental and Consumer Protection Programs, appropriated $5,000,000 for the preparation of environmental impact statements by the Environmental Protection Agency.

The Agency believes that preparation of environmental statements will have beneficial effects for certain of its major regulatory actions. Accordingly, the Environmental Protection Agency has decided that, while it is not legally bound to do so by section 102(2)(C) of NEPA, it will voluntarily prepare environmental impact statements in connection with the major regulatory actions listed in section 1 of the following statement of policy. The voluntary preparation of impact statements in no way legally subjects the Agency to NEPA's requirements.

This statement of policy is not intended to authorize the Agency in its regulatory decision making to take into account factors, such as economic and social considerations, when and to the extent that such factors are not permitted to be considered by the authorizing legislation.

Section 1 lists the most significant substantive actions the Agency will be taking in the future. As the Agency's resources expand, as it gains program experience, and as the Agency obtains new responsibilities under future legislation, the list may be revised.

No actions under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (hereafter "FWPCA") have been included in the list, since section 511(c) of the FWPCA specifies that environmental impact statements be prepared only in connection with grants for the construction of publicly owned waste treatment plants and in connection with issuance of discharge permits to new sources. Preparation of impact statements in connection with the Federal funding of publicly owned treatment works will continue to be governed by existing Agency regulations. 40 CFR Part 6. An amendment to 40 CFR Part 6 for preparation of impact statements in connection with issuance of discharge permits to new sources will be published shortly.

In recognition of statutory and court-ordered deadlines and the need for immediate pollution abatement, section 3 provides for an orderly introduction of the environmental impact statement process. Section 3 specifies that impact statements must be prepared in connection with standards, regulations, and criteria listed in section 1 proposed after October 15, 1974. Section 3 further requires that impact statements must be prepared in connection with ocean dumping site designations proposed after October 15, 1974, and in connection with any pesticide cancellation hearing, where notice of cancellation under section 6(b)(1) (7 U.S.C. 136d(b)(1)) or notice of hearing under section 6(b)(2) (7 U.S.C. 136d(b)(2)) is published after October 15, 1974.

The Agency is presently informing the public of the environmental effects of its major regulatory actions through its environmental explanations procedure (38 FR 15653). Since the preparation of environmental impact statements will accomplish the same goal in more detail, the environmental explanations procedure will be repealed as of October 15, 1974.

The statement of policy is as follows:

PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

Sec.
1. Applicability.
2. Procedures.
3. Effective Date.
4. Repeal of Environmental Explanations.

SECTION 1. *Applicability.* The Environmental Protection Agency shall prepare environmental impact statements in connection with the following listed actions.

(a) *Clean Air Act* (42 U.S.C. 1857 et seq.)—

(1) National ambient air quality standards under section 109.

(2) Regulations prescribing substantive criteria with major significance for the preparation, adoption, and submittal of implementation plans by States under section 110.

(3) New source performance standards under section 111.

(4) National emission standards for hazardous air pollutants under section 112.

(5) Motor vehicle emission standards under section 202, excluding light duty vehicle standards.

(6) Regulations controlling the composition of fuel or fuel additives under section 211(c).

(b) *Noise Control Act* (42 U.S.C. 4901 et seq.)—

(1) New product noise emission standards under section 6.

(2) Railroad noise emission standards under section 17.

(3) Motor carrier noise emission standards under section 18.

(c) *Atomic Energy Act* (42 U.S.C. 2011 et seq.)—Generally applicable radiation standards under the Atomic Energy Act.

(d) *Marine Protection, Research, and Sanctuaries Act* (33 U.S.C. 1401 et seq.)—

(1) Criteria for the evaluation of permit applications under section 102(a).

(2) Designation of sites for dumping under section 102(c).

(e) *Federal Insecticide, Rodenticide, and Fungicide Act* (7 U.S.C. 135 et seq., as amended by 7 U.S.C. 136 et seq.)—

(1) Cancellation of pesticide registrations after an adjudicatory hearing under section 6(b).

(2) Pesticide disposal regulations under section 19.

SEC. 2. *Procedures.* Detailed procedures for preparation of environmental impact statements in connection with the actions listed in section 1 will be prepared in general accordance with the principles set forth in sections 1500.7 through 1500.11 of the Council on Environmental Quality Guidelines (38 FR 20550). Such procedures shall be published in the near future.

SEC. 3. *Effective Date.* Environmental impact statements shall be prepared in connection with standards, regulations, and criteria listed in section 1 proposed after October 15, 1974. Environmental impact statements shall also be prepared in connection with ocean dumping site designations proposed after October 15, 1974, and in connection with any adjudicatory hearing held pursuant to section 6 of the Federal Insecticide, Rodenticide, and Fungicide Act (7 U.S.C. 136d), where notice of intent to cancel under section 6(b)(1) or notice of intent to hold a hearing under section 6(b)(2) is published after October 15, 1974.

SEC. 4. *Repeal of Environmental Explanations.* The Environmental Protection Agency's procedures for the preparation and issuance of environmental explanations, published in the FEDERAL REGISTER on June 14, 1973 (38 FR 15653), will be repealed as of October 15, 1974. Standards, regulations, and guidelines proposed after October 15, 1974, will not require environmental explanations.

Dated: April 30, 1974.

RUSSELL E. TRAIN,
Administrator.

[FR Doc.74-10444 Filed 5-6-74;8:45 am]

[OPP-32000/53]

RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 979), and its procedures for implementation. This policy provides that EPA will, upon receipt of every application, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available for examination at the Environmental Protection Agency, Room EB-37, East Tower, 401 M Street, S.W., Washington, D.C. 20460.

Any person who (a) is or has been an applicant, (b) desires to assert a claim for compensation under section 3(c)(1)(D) against another applicant proposing to use supportive data previously submitted and approved, and (c) wishes to preserve his opportunity for determination of reasonable compensation by the Administrator must, on or before July 8, 1974, notify the Administrator and the applicant named in the FEDERAL REGISTER of his claim by certified mail. Every such claimant must include, at a minimum, the information listed in this interim policy published on November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy in regard to usage of existing supportive data for registration will be processed in accordance with existing procedures. Applications submitted under 2(c) will be held for the 60-day period before commencing processing. If claims are not received, the application will be processed in normal procedure. However, if claims are received within 60 days, the applicants against whom the particular claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after July 8, 1974.

APPLICATIONS RECEIVED

EPA File Symbol 14651-A. Agricultural Enterprises, Inc., 933 West 6th Street, Fremont, Nebraska 68025. *Agri-Bon 50% Wettable Powder Insecticide with Rabon.* Active Ingredients: 2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate 50.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 33862-R. Amore Chemicals, Inc., 2418 East Pettigrew Street, Durham, North Carolina 27703. *Amore Tower Algaecide.* Active Ingredients: Poly[oxyethylene (dimethylimino)ethylene (dimethylimino) ethylene dichloride] 15.0%, Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 33862-E. Amore Chemicals, Inc., 2418 East Pettigrew Street, Durham, North Carolina 27703. *Amore Pool Algaecide.* Active Ingredients: Poly[oxyethylene (dimethylimino) ethylene (dimethylimino)ethylene dichloride] 15.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA Reg. No. 7969-12. BASF Wyandotte Corporation, 100 Cherry Hill Road, Parsippany, New Jersey 07054. *BASF Zineb Technical Grade.* Active Ingredients: Zineb 85%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 4-EGG. Bonide Chemical Co., Inc., 382 Gennessee Street, Yorkville, New York 13495. *Bonide 10% Chlordane Granules.* Active Ingredients: Technical Chlordane 0.10%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 33660-O. Miss Rose Caputo, 229 Park Avenue, South, New York, New York 10003. Authorized Agent for I.PI.CI., Industria Prodotti Chimici S.p.A. Novate Milanese, Italy. *Tetradifon Technical.* Active ingredients: 2,4,5,4'-tetrachlorodiphenylsulphone 97.00%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 33660-A. Miss Rose Caputo, 229 Park Avenue, South, New York, New York 10003. Authorized Agent for I.PI.CI., Industria Prodotti Chimici S.p.A., Novate Milanese, Italy. *Ethion Technical 95.* Active Ingredients: O,O,O',O', - tetraethyl - SS'-methylene-bis-phosphorodithioate 95.00%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 33660-T. Miss Rose Caputo, 229 Park Avenue South, New York, New York 10003. Authorized Agent for I.PI.CI., Industria Prodotti Chimici S.p.A., Novate Milanese, Italy. *Ethion Technical 85.* Active Ingredients: O,O,O',O', - tetraethyl - SS'-methylene-bis-phosphorodithioate 85.00%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 31971-G. Cut Heal, Inc., 206 Garvon, Garland, Texas 75040. *A Big Texas House and Garden Insect Killer.* Active Ingredients: (5-Benzyl-3-furyl) methyl 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate 0.200%; Related compounds 0.027%; d-trans Allethrin (allyl homolog of Cinerin I) 0.125%; Related compounds 0.009%; Aromatic petroleum hydrocarbons 0.265%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 31971-L. Cut Heal, Inc., 206 Garvon, Garland, Texas 75040. *Cut-Heal Brand Horse Shampoo.* Active Ingredients: Pyrethrins 0.10%; Piperonyl butoxide technical 1.00%; Rotenone 0.12%; Other cube extractives 0.28%; Petroleum distillate 0.40%; Methylated naphthalene 0.50%; Hexachlorphene 0.50%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 31971-U. Cut Heal, Inc., 206 Garvon, Garland, Texas 75040. *Big Tex Insecticide Concentrate.* Active Ingredients: Pyrethrins 1.20%; Piperonyl butoxide, technical 12.00%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 7364-EU. Great Lakes Biochemical Co., Inc., 6120 West Douglas Avenue, Milwaukee, Wisconsin 53218. *Liquid Algicide.* Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio)ethylene dichloride] 20%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 31964-E. Gessco Sales Division, Gulf Engineering Co., Inc., 1000 South Peters, New Orleans, Louisiana 70130. *Gesscocide 15.* Active Ingredients: Poly-[oxyethylene (dimethyliminio) ethylene-(dimethyliminio)ethylene dichloride] 15.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA Reg. No. 5905-293. Helena Chemical Company, 5100 Poplar Avenue, Memphis, Tennessee 38137. *Helena Cythion 25 WP.* Active Ingredients: Malathion 25%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 5905-289. Helena Chemical Company, 5100 Poplar Avenue, Memphis, Tennessee 38137. *Helena Wettable Sulphur.* Active Ingredients: Sulphur 90.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 5905–97. Helena Chemical Company, 5100 Poplar Avenue, Memphis, Tennessee 38137. *Helena Chlordane 8–E–An Emulsifiable Insecticide Liquid.* Active Ingredients: Technical Chlordane 71.9%; Xylene 22.5%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 7455–EE. Agricultural Products Division, International Multifoods Corporation, 1200 Multifoods Building, Minneapolis, Minnesota 55402. *Supersweet Ban-A-Sect II House and Garden Insect Spray.* Active Ingredients: (5-Benzyl-3-furyl)methyl 2,2-dimenthyl-3-(2-methylpropenyl) cyclopropanecarboxylate 0.200%; Related compounds 0.028%; d-trans Allethrin (allyl homolog of Cinerin I) 0.150%; Related compounds 0.012%; Aromatic petroleum hydrocarbons 0.272%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 1148–17. Leffingwell Chemical Company, P.O. Box 188, Brea, California 92621. *Leffingwell L Hi-Par.* Active Ingredients: Petroleum Oil 98.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 11746–G. Louisiana Chemical Company, 9978 West Tams Drive, Baton Rouge, Louisiana 70805. *Davis Kill-A-Bug for Pest Control.* Active Ingredients: O,O-diethyl O-(2-isopropyl-6-methyl-4 pyrimidinyl) phosphorothioate 24.77%; Aromatic petroleum derivative solvent 13.72%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 3624–RAR. Nova Products, Inc., P.O. Box 5086, Packers Station, Kansas City, Kansas 66119. *Nova Contact Spray SBP–1382 Liquid Spray 0.25%.* Active Ingredients: (5-Benzyl-3-furyl) methyl 2,2-dimethyl - 3 - (2-methylpropenyl) cyclopropane carboxylate 0.350%; Pyrethrins 0.400%; Piperonyl butoxide technical 0.800%; Aromatic petroleum hydrocarbons 0.463%; Petroleum distillate 97.925%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 3635–ROE. Oxford Chemicals, P.O. Box 80202, Atlanta, Georgia 30341. *Oxford 514 Insecticide.* Active Ingredients: (5-Benzyl-3-furyl) methyl 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate 4.000%; Related compounds 0.545%; Pyrethrins 1.000%; Piperonyl butoxide technical 5.000%; Aromatic petroleum hydrocarbons 5.295%; Petroleum distillate 84.000%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 9852–GA. Rite-Off Corporation, 163 Dupont Street, Plainview, New York 11803. *Rite-Off Kennel & Canine Insecticide.* Active Ingredients: Pyrethrins 0.3%; Piperonyl Butoxide, Technical 2.4%; Petroleum Distillate 1.5%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 3509–RNO. Safe-Way Farm Products Co., 2519 East 5th Street, Austin, Texas 78762. *Safe-Way Brand Ear Tick Remedy.* Active Ingredients: Gamma Isomer of Benzene Hexachloride 3.5 Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 3509–RRN. Safe-Way Farm Products Co., 2519 East 5th Street, Austin, Texas 78762. *Safe-Way Brand Malathion W–25.* Active Ingredients: Malthion 25%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 11682–RO. Sim-Chem, Minerals and Chemicals Division, J. R. Simplot Company, P.O. Box 810, Mountain Home, Idaho 83647. *Sim-Chem Cynthion Insecticide—The Premium Grade Malathion.* Active Ingredients: Malathion O,O-dimethyl phosphorodithioate of diethyl mercaptosuccinate 95.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 11682–RA. Sim-Chem, Minerals and Chemicals Division, J. R. Simplot Company, P.O. Box 810, Mountain Home, Idaho 83647. *Sim-Chem Toxaphene 8–E, An Emulsifiable Liquid—An Agricultural Insecticide.* Active Ingredients: Toxaphene 79.06%; Xylene 15.94%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 876–ENO. Velsicol Chemical Corporation, 341 East Ohio Street, Chicago, Illinois 60611. *Gold Crest Promar Bait Packs Containing Fish Flavored Bait Pellets.* Active Ingredients: Diphacinone (2-Diphenylacetyl-1,3-Indandione) 0.005%. Method of support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 876–ENA. Velsicol Chemical Corporation, 341 East Ohio Street, Chicago, Illinois 60611. *Velsicol Ramik Bait Packs Rodenticide for Control of Commensal Mice and Rats.* Active Ingredients: Diphacinone (2-Diphenylacetyl-1,3-Indandione) 0.005%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 876–ENI. Velsicol Chemical Corporation, 341 East Ohio Street, Chicago, Illinois 60611. *Velsicol Ramik Green Bait Packs.* Active Ingredients: Diphacinone (2-Diphenylacetyl-1,3-Indandione) 0.005%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 876–ENT. Velsicol Chemical Corporation, 341 East Ohio Street, Chicago, Illinois 60611. *Velsicol Ramik Red Bait Packs.* Active Ingredients: Diphacinone (2-Diphenylacetyl-1,3-Indandione) 0.005%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 876–ERR. Velsicol Chemical Corporation, 341 East Ohio Street, Chicago, Illinois 60611. *Gold Crest Promar Bait Packs Rodenticide for Control of Commensal Mice and Rats.* Active Ingredients: Diphacinone (2-Diphenylactyl-1,3-Indandione) 0.005%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 876–ERN. Velsicol Chemical Corporation, 341 East Ohio Street, Chicago, Illinois 60611. *Gold Crest Promar Bait Packs Rodenticide Containing Meat Flavored Bait Pellets.* Active Ingredients: Diphacinone (2-Diphenylacetyl-1,3- Indandione) 0.005%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 33912–R. Wagnol, Inc., 2037 Desire Street, New Orleans, Louisiana 70117. *Wagnol 40 Pest Control Spray Concentrate.* Active Ingredients: O,O-Diethyl-O-(2-isopropyl-4-methyl-6-pyrimidinyl) Phosphorothioate 25%; Aromatic Petroleum Derivative Solvent 57%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 33912–E. Wagnol, Inc., 2037 Desire Street, New Orleans, Louisiana 70117. *Wagnol 40 57% Malathion Lawn and Garden Spray Concentrate.* Active Ingredients: Malathion 57.00%; Aromatic Petroleum Derivative Solvent 33.09%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 1748–REL. York Chemical Co., Inc., 195 Atlantic Avenue, Garden City Park, New York 11040. *Certox PDQ Roach and Insect Killer.* Active Ingredients: Pyrethrins 0.052%; Piperonyl Butoxide, Technical 0.260%; Chlorpyrifos [O,O-diethyl O-(3,5,6-trichloro-2 pyridyl) phosphorothioate] 0.500%; Petroleum Distillate 98.736%. Method of Support: Application proceeds under 2(c) of interim policy.

Dated: April 30, 1974.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.74–10446 Filed 5–6–74;8:45 am]

ATOMIC ENERGY COMMISSION

[Dockets No. 50–335, 50–389]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS—SUBCOMMITTEE 18 ON ST. LUCIE PLANT, UNITS 1 AND 2

Notice of meeting

Correction

In FR Doc. 74–10119 appearing on page 15152 of the issue for Wednesday, May 1, 1974, in the fourth line of paragraph (a), the date which now reads "July 9, 1974", should read "May 9, 1974".

FEDERAL MARITIME COMMISSION

BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS AND UNITED BRANDS CO.

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 28, 1974. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. Cyrus C. Guidry
Port Counsel
Board of Commissioners of the Port of New Orleans
P.O. Box 60046
New Orleans, Louisiana 70160

Agreement No. T–2925, between the Board of Commissioners of the Port of New Orleans (Port) and United Brands Company (United), provides for the construction and lease (with renewal options) to United of a roll-on/roll-off platform, together with a 10.16 acre tract of land and all improvements located thereon, at New Orleans, Louisiana. The facility is to be used for the berthing of vessels and for the marshalling, receipt, and delivery of containers and breakbulk cargoes. The roll-on/roll-off platform is

to be designed by United and constructed and financed by Port at a cost not to exceed $450,000.00. As compensation, United will pay Port $87,000.00 annually, plus 12% annually of the construction cost of the roll-on/roll-off platform. Compensation for the use of the facility is in lieu of Port tariff charges, with the exception of Harbor Fee and Wharfage Charge on fresh bananas. Upon United's request, the Port may assign other vessels to the berthing facilities, the use of which shall be subject to Port's tariff.

Dated: May 2, 1974.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-10461 Filed 5-6-74;8:45 am]

FOSS LAUNCH AND TUG CO. AND FOSS ALASKA LINE, INC.

Application for Exemption

Notice is hereby given that the following application for exemption has been filed with the Commission for approval pursuant to Section 35 of the Shipping Act, 1916, as amended (80 Stat. 1358, 46 U.S.C. 833a).

Interested parties may inspect and obtain a copy of this application at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, Room 11413; or may inspect a copy of the application at the Field Offices, New York, New York; New Orleans, Louisiana; San Francisco, California; and San Juan, Puerto Rico. Comments with reference to the application, including a request for hearing if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 on or before May 28, 1974. A copy of any such statement shall also be forwarded to the party filing the application (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of application filed by:

Edward G. Lowry, III
Bogle, Gates, Dobrin, Wakefield & Long
14th Floor, Norton Building
Seattle, Washington 98104

in behalf of

Foss Launch & Tug Co.
and
Foss Alaska Line, Inc.

Application designated Exemption No. 17 by Foss Launch & Tug Co. and Foss Alaska Line, Inc. has been made pursuant to Section 35 of the Shipping Act, 1916, for exemption from the Intercoastal Shipping Act, 1933 and the Shipping Act, 1916, and regulations applicable thereunder, to (a) amend the currently effective exemption authorized in Title 46 Code of Federal Regulations, Section 531.26(c), scheduled to expire December 31, 1974, to apply to direct service by water of miscellaneous cargoes, including liquid in bulk, between Portland, Oregon, Houston, Texas, San Francisco, California and Los Angeles, California, on the one hand, and Prudhoe Bay, Alaska, on the other, in addition to such service between Seattle, Washington and Prudhoe Bay, Alaska; and (b) extend said exemption for a three-year period beginning January 1, 1975 and ending December 31, 1977.

After innumerable delays and uncertainties, the construction of the Trans Alaska Pipeline from Prudhoe Bay to Valdez, Alaska now appears to be a certainty. The energy crisis in general, and the shortage of gasoline and other petroleum products in particular, has demonstrated the urgency of expediting the construction and operation of the Trans Alaska Pipeline. Accordingly, it appears that numerous shipments of supplies and materials will take place from Portland, San Francisco, Los Angeles, and Houston, as well as from Seattle, to Prudhoe Bay and shippers in the former areas will require the service of numerous experienced water carriers. Houston appears to be a particularly important port for shipments to and from Prudhoe Bay as that city is a major headquarters for members of the petroleum industry.

The effect of the exemption will be to permit movements by barge to the area involved with freedom from tariff filing requirements and regulations with respect to the reasonableness of rates.

The proposed operations are radically different from that usually associated with common carriage. No sailing schedules can be maintained because of the timing operations dictated by the ice conditions in Prudhoe Bay. Much of the operation will be in the nature of proprietary carriage since in most instances the full capacity of a given barge will be chartered by a single company.

The specialized outfit of the vessels designated for certain cargoes will make it impractical for the carriers to provide uniform service for all shippers. Finally, special contracts as to the risk of loss and damage will be required due to the extraordinary hazards involved. The conditions under which the operation is conducted make rate and tariff regulation an unnecessary and undue burden.

Applicants state that the grant of this application will not increase the number of ocean voyages to take place; it will merely expedite them. The exemptions from the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933, do not involve exemptions from legislation and laws for the protection of the environment. All such laws will remain fully applicable to the Foss applicants. The exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commence.

This exception from the tariff filing requirements and regulations of the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933, will become effective upon approval of the Commission, pursuant to Section 35, Shipping Act, 1916.

Dated: May 2, 1974.

By order of the Federal Maritime Commission.

JOSEPH C. POLKING,
Assistant Secretary.

[FR Doc.74-10459 Filed 5-6-74;8:45 am]

RYAN STEVEDORING CO., INC. AND WALSH STEVEDORING CO. INC

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, N.W., 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 28, 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:

E. B. Peebles, III
Armbrecht, Jackson & DeMory
Merchants National Bank Building
Post Office Box 290
Mobile, Alabama 36601

Agreement No. FF 74-6 between Ryan Stevedoring Co., Inc., the parent company of Southern Steamship Agency, Inc. (FMC-672) and Walsh Stevedoring Company, Inc. (FMC-236) provides among other things, that Ryan would acquire Walsh and the concern would thence operate as Ryan-Walsh Stevedoring Company, Inc.

The Agreement provides that the outstanding capital stock of the Walsh group will be exchanged for, converted into and become capital stock of Ryan.

The Walsh Stevedoring Company, Inc. License (FMC-236) will be revoked upon approval of the agreement.

Dated: May 2, 1974.

By order of the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-10460 Filed 5-6-74;8:45 am]

FEDERAL POWER COMMISSION

[Docket Nos. E-7674, E-8126, E-8143]

ALABAMA POWER CO.

Notice of Filing

APRIL 30, 1974.

On January 7, 1974, Alabama Power Company filed revisions to its FPC Electric Rate Tariff, Original Volume 1, filed with the Commission on November 1, 1971. The modifications incorporate revised provisions with respect to system reliability and planning and a revised term provision. Rate Schedules REA-1 and MUN-1 as modified incorporate revised provisions relating to "Availability" "Character of Service" and "Determination of Billing Demand." In addition, there are revised provisions with respect to membership corporations, cooperative corporations and municipalities.

On February 13, 1974 Alabama Power filed with the Commission reports specifying the amounts found by the Commission to be subject to refund in Docket Nos. E-7674, E-8126, E-8143.

On February 19, 1974, in Docket E-7674 Alabama Power filed 5th Revised Sheet No. 37 superseding 4th Revised Sheet No. 37 of the Index Purchasers Section of FPC Electric Tariff Original Volume No. 1, filed with the Commission on November 1, 1973. The 5th Revised Sheet No. 37 indicates the in service date of delivery point No. 14 of the Central Alabama Electrical Cooperative, as of December 5, 1973 and the in service date of delivery point No. 5 of the Clarke-Washington Electric Membership Cooperation as of December 6, 1973.

Any person desiring to be heard or to make any protest with reference to these filings should on or before May 15, 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 a party 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 referred to in this notice are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10386 Filed 5-6-74;8:45 am]

[Docket No. RP71-106 (1973 Phase)]

CITIES SERVICE GAS CO.

Filing of Stipulation and Agreement

APRIL 30, 1974.

Take notice that on April 24, 1974, Cities Service Gas Company (Cities) filed a Stipulation and Agreement dated April 24, 1974 (Stipulation) in the above-entitled proceeding. The Stipulation recites that the parties to the proceeding, including the Commission's staff, have reached the settlement agreement set forth therein for the purpose of complete settlement and final disposition of all of the issues in the 1973 phase of this proceeding relating to the temporary rate increase of 0.59 cents per Mcf filed on January 2, 1973.

Cities states that copies of the Stipulation were served on all parties to the above-entitled proceeding.

Copies of the Stipulation are on file with the Commission and are available for public inspection. Any person desiring to comment upon the Stipulation should file such comments with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before May 7, 1974.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10387 Filed 5-6-74;8:45 am]

[Docket No. CI74-549]

CITIES SERVICE OIL CO.

Application and Request for Waiver

APRIL 29, 1974.

Take notice that on April 5, 1974, Cities Service Gas Company (Applicant), P.O. Box 300, Tulsa, Oklahoma 74102 filed in Docket No. CI74-549 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), from Grand Isle Block 45, offshore Jefferson and LaFourche Parishes, Louisiana, at an initial base rate in excess of the Southern Louisiana area ceiling rate for said sale set forth in § 154.105 of the Commission's regulations under the Natural Gas Act (18 CFR 154.105), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell natural gas to Tennessee from Applicant's 25 percent working interest in approximately 5,000 acres of offshore properties located in Grand Isle Block 45 at an initial price of 47.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment,[1] pursuant to a contract dated March 19, 1974. Said contract provides for reimbursement by Tennessee to Applicant of 100 percent of any new or additional taxes. Applicant estimates monthly sales of gas from the subject acreage at 32,000 Mcf.

Applicant states that it has not heretofore developed the subject lease and that the USGS has extended the lease's term to July 1, 1974. Applicant states further that in an effort to retain the lease with the intent to develop it, Applicant has negotiated the March 19, 1974, gas sales contract with Tennessee and by the filing of the instant application is indicating the USGS its good faith effort to retain and develop the lease. Applicant contends that such good faith on Applicant's part must be supported by prompt and favorable consideration of this application by the Federal Power Commission.

Applicant asserts that it cannot economically justify its share of the cost of drilling a well on the dedicated lease based on the current area rate. Applicant, therefore, requests a waiver of § 154.105 of the Commission's regulations under the Natural Gas Act (18 CFR 154.105) which limits Applicant to a 26.0-cent per Mcf rate for the subject gas.

In support of its proposed price of 47.0 cents per Mcf Applicant states that it intends to adopt the economic data presented by Continental Oil Company (Continental), operator of the subject lease, in its application filed March 25, 1974, in Docket No. CI74-526. Applicant states that by said application Continental and the other owners of interests propose to drill one well which appears to be sufficient to deplete the gross estimated gas reserves of 12,000,000 Mcf over a projected 12-year period. Gross well costs are stated as $5,889,049, of which $3,556,249 is attributed to net leasehold investment as of January 1, 1974, and $2,332,800 is attributed to additional projected investment costs. Projected gross operating expenses are estimated at $585,416 and regulatory expenses is estimated at 0.2 cent per Mcf.

Applicant states that it is willing to undertake its portion of the additional projected investment in the drilling and equipping of a well provided the Commission authorizes an initial rate of 47.0 cents per Mcf. Applicant states further that it is not prepared to engage in lengthy and expensive hearings in order to pursue this certificate application.

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

[1] Downward adjustment from a base of 1,000 Btu per cubic foot and upward adjustment from a base of 1,015 Btu per cubic foot.

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.74-10388 Filed 5-6-74;8:45 am]

[Docket No. E-8650]

COLUMBUS AND SOUTHERN OHIO ELECTRIC CO.

Order Accepting for Filing and Suspending Proposed Rate Increase, Establishing Hearing Procedures, Approving Fuel Cost Adjustment Clause, Granting Petitions To Intervene and Granting Waiver

APRIL 30, 1974.

Columbus and Southern Ohio Electric Company (C&S) on March 4, 1974, tendered for filing a proposed tariff [1] and unexecuted service agreement for service to the Cities of Westerville and Jackson and the Village of Glouster, all in Ohio.[2] C&S states that the proposed tariff is similar to the present rate schedules except that the maximum capacity demand charge and the energy charge have been increased and a fuel cost adjustment clause has been added. The proposed rates would increase revenues from jurisdictional sales by $363,754 based on a test year of calendar year 1973. The existing contracts expire on May 1, 1974, for Westerville and June 30, 1974, for Glouster and Jackson.

Notice of the filing was issued on March 13, 1974, with protests and petitions to intervene due on or before March 26, 1974. Timely petitions to intervene were filed by the Cities of Jackson (Jackson) and Westerville (Westerville, collectively Cities). Cities state that they purchase electricity at wholesale from C&S and therefore have a substantial interest in the proceeding. The City of Westerville further states that the fuel cost adjustment clause does not meet the requirements of § 35.14 of the Commission's regulations and requests that the proposed changes be suspended for five months from the time they would otherwise become effective. Westerville also states that C&S should be required to furnish it with a comparison of the proposed to the existing rate showing the additional revenues which will be produced and requests a hearing. Westerville states additionally that the rates may be excessive. The City of Jackson states that the rates may be unjust, unreasonable and unduly preferential and discriminatory as to it.

Westerville's allegation that the fuel adjustment clause does not conform to § 35.14 of the Commission's regulations is unfounded. It recovers the sellers cost of fuel consumed to generate the power which it sells and is consistent with the regulations.

The statement that C&S should be required to furnish Westerville with a comparison of the proposed to existing rates is valid, and the permission for these rates to become effective, subject to refund, will be so conditioned as hereinafter ordered.

C&S requests waiver of the regulations in § 35.3 of the Commission's regulations pertaining to notice and filing more than 90 days prior to the proposed effective date for the proposed change with respect to Jackson and Glouster. Good cause exists to grant such waiver.

Our review of the filing indicates that the proposed rates may not be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we shall order a suspension of the rates proposed herein and establish hearing procedures.

The Commission finds:

(1) Participation by the petitioners for intervention in this proceeding may be in the public interest.

(2) It is necessary and appropriate in the public interest and to aid in the enforcement of the Federal Power Act that C&S's rate increase filing should be accepted for filing, suspended, and set for hearing as hereinafter ordered.

(3) Good cause exists to permit the proposed fuel cost adjustment clause to become effective on the proposed effective date of May 1, 1974, with respect to Westerville and June 30, 1974, with respect to Glouster and Jackson.

The Commission orders:

(A) Pursuant to the authority of the Federal Power Act, particularly section 205, thereof, the Commission's rules of practice and procedure, and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held on June 25, 1974, in a hearing room of the Federal Power Commission, 825 North Capital Street NE., Washington, D.C. 20426, to determine if the rates, charges, classifications, and services contained in C&S's proposed rate schedules are in the public interest.

(B) Within 15 days of the issuance of this order, C&S shall: (1) provide affected jurisdictional customers and appropriate State Commissions a comparison of the proposed to the current effective rates in accordance with the provisions of §§ 35.1 and 35.2(d) of the Commission's regulations; and (2) provide the Commission with notice of compliance with this requirement.

(C) Waiver of the requirement that a filing be made not prior to 90 days before the proposed effective date is hereby granted.

(D) The proposed fuel cost adjustment clause is accepted for filing, to become effective on the proposed effective date of May 1, 1974, with respect to Westerville and June 30, 1974, with respect to Glouster and Jackson.

(E) The proposed rate increase is accepted for filing suspended for one day to become effective, subject to refund on May 2, 1974, with respect to Westerville and July 1, 1974, with respect to Glouster and Jackson, subject to the terms and conditions of this order.

(F) On or before May 14, 1974, the Commission Staff shall serve its prepared testimony and exhibits. The prepared testimony of intervenors shall be served on or before June 4, 1974. Any rebuttal evidence by C&S shall be served on or before June 18, 1974.

(G) 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.

(H) Petitioners City of Jackson and City of Westerville are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting rights and interests specifically set forth in their petitions to intervene, and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(I) Nothing contained herein should be construed as limiting the rights of the 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.

(J) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10389 Filed 5-6-74;8:45 am]

[Docket No. E-8105]

CONNECTICUT LIGHT AND POWER CO.

Filing of Amendment To Purchase Agreement

APRIL 30, 1974.

Take notice that Connecticut Light and Power Company (CL&P) on April 19, 1974, tendered for filing an amendment to their purchase agreement with New Bedford Gas and Edison Light Company (NBG&E). The amendment would

[1] Designated as FPC Electric Tariff, Original Volume No. 1.

[2] These Cities are not served under FPC Rate Schedule No. 14 and Supplement No. 1 thereto and Nos. 19 and 20.

increase NBG&E's entitlements in the Cos Cob, South Meadow, and Silver Lake Gas Turbine Units from 19.163 percent to 25.059 percent for the period March 1, 1974, through April 30, 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. All such petitions and protests should be filed on or before May 13, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10390 Filed 5-6-74;8:45 am]

[Docket No. E-8196]

DETROIT EDISON CO.

Revised Exhibits to Electric Coordination Agreement

APRIL 30, 1974.

Take notice that on March 3, 1974, Detroit Edison Company (Applicant) filed with the Federal Power Commission certain revisions to Exhibit A and C, attached to Supplement No. 1 of the Electric Coordination Agreement between Applicant and Consumers Power Company, designated as Applicant's Rate Schedule FPC No. 17. The application states that these revisions reflect changes in the list of generating units and their capabilities, but do not result in any change to the capacity rates for the winter peak load season 1973–1974.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 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.74-10391 Filed 5-6-74;8:45 am]

[Docket No. E-8634]

KANSAS GAS AND ELECTRIC CO.

Notice of Letter Agreement

APRIL 30, 1974.

Take notice that on February 22, 1974, Kansas Gas and Electric Company (Applicant), pursuant to § 35.13 of the Commission's regulations, filed a Letter Agreement between itself and Oklahoma Gas & Electric Company, dated May 24, 1973. The Letter Agreement provides for the sale by Applicant of 150 MW of La Cygne Unit No. 1 Participation Power for a six month period effective May 15, 1974 through November 15, 1974.

The application states that Applicant desires to sell the stated capacity to reduce its excess reserves and that Oklahoma Gas & Electric Company desires to purchase said capacity for resale to Middle South Services, Inc. (Cf. FPC Docket No. E-8635).

Oklahoma Gas and Electric Company has filed a Certificate of Concurrence in this matter.

Any person desiring to be heard or to make any protest with reference to said application, should on or before May 16, 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 a party 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.74-10392 Filed 5-6-74;8:45 am]

[Docket No. E-8707]

LOUISVILLE GAS AND ELECTRIC CO.

Interconnection Agreement

APRIL 30, 1974.

Take notice that on March 29, 1974, Louisville Gas and Electric Company (Applicant) filed with the Federal Power Commission, pursuant to § 35.12 of the regulations under the Federal Power Act, a negotiated Interconnection Agreement between itself and Big Rivers Electric Cooperative (Big Rivers). Applicant requests that the Commission accept said Agreement as an initial rate schedule and assign to it an Agreement designation. The application states that the Agreement was approved by the Rural Electrification Administration on February 21, 1974.

The Agreement provides for the physical interconnection of the parties' systems and, upon completion of some necessary construction, that the two parties will be connected for synchronous operation and services as set forth in the service schedules which are attached to and part of the Agreement.

Pursuant to the Agreement, Big Rivers will construct a 138 Kw transmission line to Applicant's Cloverport, Substation, and Applicant will construct terminal facilities at such substation to accommodate the connection. The agreement recognizes that the primary benefit of the transaction belongs to Big Rivers and, therefore, Service Schedule D provides for payment by Big Rivers of a rental on the facilities constructed, used and maintained by Applicant at the substation.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 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.74-10393 Filed 5-6-74;8:45 am]

[Docket No. E-8635]

OKLAHOMA GAS & ELECTRIC CO.

Letter Agreement for Sale of Power and Interconnected Operations

APRIL 30, 1974.

Take notice that on February 22, 1974, Oklahoma Gas & Electric Company (Applicant) filed with the Federal Power Commission a Letter Agreement, dated July 12, 1973, between itself and Middle South Services, Inc. (Middle South), providing that Applicant will sell and deliver 150 MW of Participation Power to Middle South for a six month period effective May 15, 1974 through November 15, 1974. The Applicant states that Middle South is acting as agent in this transaction for Arkansas Power & Light Company. The Participation Power being sold in this transaction will be purchased by Applicant from Kansas Gas and Electric Company's LaCygne No. 1 Unit, pursuant to an Agreement dated May 24, 1973.

Applicant states that the sale price to Middle South will be the same as Applicant's purchase price from Kansas Gas and Electric Company, except that Applicant will add a charge of 1 mill per kWh. Middle South has filed a Certificate of Concurrence in the transaction.

Any person desiring to be heard or to make any protest with reference to said

application should on or before May 15, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become a party 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.74-10394 Filed 5-6-74;8:45 am]

[Docket No. E-8570]

SOUTHERN CALIFORNIA EDISON CO.

Order Suspending Proposed Fuel Clause

APRIL 30, 1974.

On January 2, 1974, Southern California Edison Company (Edison) tendered for filing proposed rate schedule changes and a proposed fuel cost adjustment provision applicable to its R-1 and R-2 resale customers. By our order issued March 1, 1974, we suspended the proposed rates until August 4, 1974, set the matter for hearing, permitted various interventions, and rejected the proposed fuel clause because it failed to conform to the Commission's regulations. Such rejection was without prejudice to Edison refiling a fuel clause conforming with the Commission's regulations.

On April 1, 1974, Edison tendered for filing a revised fuel adjustment clause applicable to resale service under Schedules R-1 and R-2 providing for billing adjustments based on increases or decreases in fossil fuel costs. Edison also petition for: (1) permission pursuant to §§ 35.17(b) and 35.17(c) of the Commission's rules and regulations to file the revised fuel cost adjustment clause; (2) for waiver of §§ 1.7(b), 35.13(b)(4) and 35.13(b)(5) of the Commission's rules and regulations, to the extent that waiver is required; (3) the acceptance for filing as of April 1, 1974, of the fuel cost adjustment clause; and (4) the establishment of May 1, 1974, as the effective date for the revised fuel clause.

Notice of the filing was issued on April 4, 1974, providing for all comments and petitions to intervene to be filed on or before April 18, 1974.

On April 18, 1974, the Cities of Anaheim, Riverside, Banning, Colton, and Azusa, California (Cities) filed a protest and motion to reject Edison's revised fuel cost adjustment clause. Cities also requested that if the fuel adjustment clause is not rejected, the Commission suspend the operation of the fuel clause for five months and order a hearing to determine the lawfulness of the proposed fuel adjustment. In their filing, Cities stated that the proposed fuel adjustment clause should be rejected because it fails to accurately reflect changes in fuel costs. Anza Electric Cooperative, Inc. concurred and joined in this motion. On April 18, 1974, the City of Vernon (Vernon) protested the fuel clause adjustment filed by Edison and further protested the request by Edison for waiver of the Commission's rules permitting an effective date 30 days from filing. On April 22, 1974, Edison filed an answer to Cities' protest and motion to reject in which it claimed that many of their complaints were matters to be considered in an evidentiary hearing.

Our review of Edison's proposed fuel clause indicates that it conforms with the Commission's regulations and we shall therefore permit the proposed fuel clause to become effective. We shall, however, order a one day suspension because the proposed fuel clause depends in part on the base rates which were suspended until August 4, 1974, in our March 1, 1974 order. The sole issue left to be resolved relating to the fuel clause is whether these base rates are just and reasonable, and that issue will be explored in the hearing we scheduled for July 9, 1974 in our March 1, 1974 order.

As to Edison's request for waiver of §§ 1.7(b), 35.13(b)(4) and 35.13(b)(5), we believe good cause exists for such waiver, and we shall grant Edison's request that the proposed fuel clause be accepted for filing as of April 1, 1974.

The Commission finds:

(1) The motion to reject filed by Cities should be denied.

(2) The proposed fuel clause tendered by Edison on April 1, 1974, should be accepted for filing as of that date, and suspended for one day to become effective May 2, 1974, subject to refund.

The Commission orders:

(A) The motion to reject filed by Cities on April 18, 1974, is hereby denied.

(B) The proposed fuel clause tendered by Edison on April 1, 1974, is accepted for filing as of that date, suspended for one day, and the use thereof deferred until May 2, 1974, at which time it may be placed in effect subject to refund pending final determination of the issues in Docket No. E-8570.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10395 Filed 5-6-74;8:45 am]

[Docket No. RP72-98]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FPC Gas Tariff

APRIL 30, 1974.

Take notice that Texas Eastern Transmission Corporation (TETC) on April 15, 1974, tendered for filing proposed changes in its FPC Gas Tariff, Third Revised Volume No. 1, the following sheets:

Seventh Revised Sheet No. 13
Seventh Revised Sheet No. 13A
Seventh Revised Sheet No. 13B
Seventh Revised Sheet No. 13C
Seventh Revised Sheet No. 13D

These sheets are issued pursuant to the purchased gas cost adjustment provision contained in section 23 of the General Terms and Conditions of Texas Eastern's FPC Gas Tariff, Third Revised Volume No. 1. The change in Texas Eastern's rates proposed by this filing reflects a cost of gas adjustment to track rate increases filed by two of Texas Eastern's pipeline suppliers.

Texas Eastern proposes an effective date of May 1, 1974.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 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 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 became 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.74-10396 Filed 5-6-74;8:45 am]

[Docket No. CP73-21]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Extension of Time and Postponement of Hearing

APRIL 29, 1974.

On April 8, 1974, Transcontinental Gas Pipe Line Corporation filed a motion for an extension of the procedural dates fixed by Order issued March 25, 1974, in the above-designated matter. The motion states that staff counsel has no objection to the requested postponement.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of direct case of Transcontinental and all interveners in support of application, June 28, 1974.

Hearing, July 30, 1974 (10:00 a.m. e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10398 Filed 5-6-74;8:45 am]

[Docket No. CP74-266]

WALLINGFORD, CONNECTICUT AND TENNESSEE GAS PIPELINE COMPANY

Notice of Application

APRIL 30, 1974.

Take notice that on April 15, 1974, the Town of Wallingford, Connecticut, Department of Public Utilities (Applicant), 100 John Street, Wallingford, Connecticut 06492, filed in Docket No. CP74-266 an application pursuant to section 7(a)

of the Natural Gas Act for an order of the Commission directing Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Respondent), to sell and deliver natural gas to Applicant, as a successor to the Connecticut Gas Company (Conn Gas), for resale and distribution, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has proposed to acquire the gas properties of Conn Gas located in the Town of Wallingford, identified as the Wallingford District of the Connecticut Light and Power Company (CL&P) Central Division and the transmission facilities related thereto, all being offered for sale by Northeast Utilities Service Company (NUSCO), sales agent for CL&P. Applicant further states that a special act has been prepared for the General Assembly of the States of Connecticut to enable the Town of Wallingford to purchase said properties and that NUSCO has pledged its active support for the act. Applicant expects the date of sale to be on or shortly after July 1, 1974.

The Town of Wallingford has been informed that the depreciated book value of the Conn Gas properties was $3,000,000 as of December 31, 1972, and that the actual selling price will be subject to confidential negotiations. The Town intends to finance the purchase of said properties through issuance of general obligation bonds and to continue in effect the present rate schedules and policies of Conn Gas.

Applicant requests that the Commission order Respondent, currently obligated under contract with Conn Gas dated May 1, 1967, which contract requires delivery of a maximum daily quantity of 4,502 Mcf of gas at 14.73 psia until November 1, 1987, to deliver gas to the Town of Wallingford for service in the applicable service area.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 21, 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.74-10397 Filed 5-6-74;8:45 am]

[Docket No. E-8157]

WISCONSIN PUBLIC SERVICE CORP.

Order Approving Rate Settlement

APRIL 30, 1974.

On April 27, 1973, Wisconsin Public Service Corporation (WPSC) tendered for filing a proposed rate increase affecting eight wholesale customers served under wholesale Rate Schedule W-1.[1] The proposed increase would result in additional revenue at $300,427 (9.87%) based on a 1972 test year. By order issued June 26, 1973, we suspended the proposed increase for sixty days until August 27, 1973, and permitted interventions. We also required WPSC to file a revised fuel clause to conform with Section 35.14 of the Commission's Regulations under the Federal Power Act as interpreted in Opinion No. 633. WPSC filed a revised fuel clause on July 20, 1973, which was accepted for filing by letter dated February 15, 1974.

On February 11, 1974, the Presiding Administrative Law Judge certified to this Commission a proposed settlement agreement which would reduce the amount of the increase as originally filed to $226,002 based on the 1972 test year. If approved, this settlement agreement would resolve all outstanding issues in this proceeding. The following statistics summarize the significant features of the proposed settlement.

Revenue at proposed settlement rate	[2] $3,269,209
Revenue under prior rate	3,043,207
Proposed increase	226,002
Percent increase	7.43
Earned rate of return (percent)	8.57

Notice of the proposed settlement was issued on March 4, 1974, with protests or comments due on or before March 18, 1974. No comments have been received in response to the notice.

The main issues in this proceeding concerned the proper rate of return and the correct amount of hydro normalization expense permissible in the Company's cost of service. By letter dated November 12, 1973, WPSC accepted staff's normalization figures, and by letter dated December 6, 1973, WPSC accepted staff's revised capitalization showing a return on equity of 11.80 percent.[3] After WPSC accepted these changes, the proposed settlement was filed which would terminate the proceeding in this docket. The proposed settlement agreement provides as follows: (1) No aspect of the settlement agreement should be construed as acceptance of any ratemaking principle or cost of service method; (2) the effective date will be August 27, 1973; and (3) WPSC will refund to its customers the difference between the suspended rate and the settlement rate with interest at 7 percent per annum.

Upon our review of the record in this proceeding, including the settlement agreement itself, the filings, documents and pleadings submitted by the parties, and the evidence and the transcript from the prehearing conference which has been held, we conclude that the settlement agreement represents a reasonable resolution of the issues in this proceeding and will be in the public interest, and accordingly, the settlement should be approved.

The Commission finds:

The settlement agreement as certified by the Presiding Administrative Law Judge to this Commission in this docket on February 11, 1974, should be approved and made effective.

The Commission orders:

(A) The settlement agreement as certified by the Presiding Administrative Law Judge to this Commission in this docket on February 11, 1974, is hereby approved and made effective.

(B) Within 30 days from the date of this order, WPSC shall file with this Commission a revised rate schedule W-1 conforming to the rate appended to the Company's offer of settlement dated February 6, 1974, and such schedule shall be effective as of August 27, 1973.

(C) Upon the filing by WPSC of the revised schedule indicated in ordering paragraph (B) above, WPSC shall refund to the customers the difference between the suspended rate and the settlement rate with interest at 7 percent per annum.

(D) This order is without prejudice to any findings or orders which have been made or which will hereafter be made by this Commission, and is without prejudice to any claims or contentions which may be made by this Commission, its staff, or any party or person affected by this order, in any proceeding now pending or hereinafter instituted by or against WPSC or any person or party.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

APPENDIX A—WISCONSIN PUBLIC SERVICE CORP.

Summary of sales and revenues for 8 municipal customers for the test year 1972

Customer	Present rate	Proposed rate	Increase
Algoma, Wis.	$441,419.11	$473,775.20	$32,356.09
Daggett, Mich.	23,803.68	25,538.14	1,734.46
Eagle River, Wis.	189,064.27	202,788.94	13,724.67
New Holstein, Wis.	565,528.97	607,908.55	42,379.58
Stephenson, Mich.	75,270.76	80,728.87	5,458.11
Stratford, Wis.	112,939.74	121,249.57	8,309.83
Sturgeon Bay, Wis.	812,925.91	873,115.83	60,189.92
Two Rivers, Wis.	822,254.71	884,103.96	61,849.25
Totals	3,043,207.15	3,269,209.06	226,001.91

[1] Municipalities of Algoma, Eagle River, New Holstein, Stratford, Sturgeon Bay, and Two Rivers, Wisconsin, and the Cities of Stephenson and Daggett, Michigan.

[2] See Appendix A.

[3] See Appendix C.

APPENDIX B—WISCONSIN PUBLIC SERVICE CORP.

Cost of service, 1972

Line No.		Total	Production	Transmission	Distribution
1	Expenses:				
2	PRODUCTION				
3	Fuel	$21,899,295			
4	Other	6,038,311			
5	Total	27,937,606			
6	Purchased power	4,135,600			
7	Total	32,073,206	$32,073,206		
8	Transmission	1,314,368		$1,314,368	
9	Distribution	5,403,390			$5,403,390
10	Customer accounts	1,440,753			1,440,753
11	Sales	1,171,814			1,171,814
12	Administrative and general [1]	4,468,514	1,688,102	319,825	2,460,587
13	Total O. & M. expenses	45,872,045	33,761,308	1,634,193	10,476,544
14	Depreciation	10,681,490	3,959,026	2,235,975	4,486,489
15	Taxes—other than income taxes	7,182,143	2,438,872	1,683,569	3,059,702
16	Total expenses	63,735,678	40,159,206	5,553,737	18,022,735
17					
18	Energy component		26,202,322		
19	Demand component	19,510,621	13,956,884	5,553,737	
20	Demand allocation factor	5.559%	5.559%	5.559%	
21	Demand allocation	1,084,595	775,863	308,732	
22	Energy allocation (4.885 percent of line 19)	1,279,983			
23	Distribution O. & M. expenses	13,570			
24	Distribution, department expenses	20,341			
25	Distribution A. & G. and taxes (on net plant ratio —0.6311 percent)	34,838			
26	Sales and customer accounts	4,477			
27	Total expenses—wholesale for resale customers	2,437,804			
28	INCOME TAXES				
29	Federal (2.234796 percent of rate base per statement J)	163,582			
30	State (0.403713 percent of rate base per statement J)	29,551			
31	Return—8.57 percent	627,303			
32	Cost of service—wholesale for resale customers	3,258,240			
33	Revenue at present rates per exhibit A	3,046,861			
34	Revenue deficiency (unadjusted)	211,379			
35	Hydro normalization	14,616			
36	Revenue deficiency	225,995			

[1] Allocated on the basis of salaries and wages.

APPENDIX C

Capitalization and rate of return, November 1973

	Amount	Ratio	Cost	Weighted component
	In thousands	*Percent*	*Percent*	*Percent*
Long-term debt	$199,440	51.91	6.97	3.62
Preferred stock	51,200	13.33	6.38	.85
Common equity	133,552	34.76	11.80	4.10
Total	384,192	100.00		8.57

[FR Doc.74-10275 Filed 5-6-74;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST NATIONAL CITY CORP.

Proposed Acquisition of Amfac Credit Corp.

First National City Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Amfac Credit Corporation, Los Angeles, California. Notice of the application was published on December 19, 1973, in The Los Angeles Times and on either the 18th or 19th of December, 1973, in other newspapers circulated in Los Angeles County and other counties in the southern part of California.

Applicant states that the proposed subsidiary would engage in the activities of making consumer installment personal loans, purchasing consumer installment sales finance contracts, making commercial loans, accepting consumer time "deposits", and acting as agent for the sale of consumer credit life and credit accident and health insurance and consumer credit property and casualty insurance, related to the extensions of credit by the applicant. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than 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.74-10379 Filed 5-6-74;8:45 am]

FOURTH NATIONAL CORP.

Order Approving Acquisition of Diversified Mortgage & Investment Co.

Fourth National Corporation, Tulsa, Oklahoma, 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 80 percent of the voting shares of Diversified Mortgage & Investment Company, Tulsa, Oklahoma, ("Company"), a company that engages in the activities of origination, sale and service of one-to-four family residential mortgage loans and origination of interim construction loans. Such activities have been determined by the Board to be closely related to the banking (12 CFR 225.4(a)(1) and (3)).

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 7997). The time for filing comments and views has expired, and none has been timely received. The Board has considered this application in light of the factors set forth in section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)).

Applicant, a one-bank holding company, controls The Fourth National Bank of Tulsa, Tulsa, Oklahoma ("Bank"), the seventh largest bank in Oklahoma with deposits of $115.5 million, which represents 1.5 percent of aggregate deposits in commercial banks in the State.[1] Applicant also engages in mortgage banking activities through Bank.

Bank and Company confine their mortgage lending activities largely to the Tulsa SMSA which is approximated by Tulsa County. In 1973, Bank accounted for $11.6 million in mortgage recordings, representing 1.6 percent of the total mortgages recorded in the market and ranking as the 11th largest in terms of recordings. During the same period, Company accounted for $3.8 million, representing 0.5 percent of such mortgage

[1] All banking data are as of June 30, 1973.

recordings and ranking as the 22nd largest in terms of recordings. Bank concentrates its efforts on construction loans and conventional loans on multi-family and non-residential properties. Company emphasizes FHA and VA guaranteed loans which account for 87 percent of its lending activities. Some insignificant existing competition would be eliminated between Bank and Company, particularly with respect to construction loans. Similarly, Applicant's acquisition of Company would eliminate some potential competition between Bank and Company. In view of the large number of mortgage lenders in the market and the number of remaining independent mortgage banking firms, the Board concludes that Applicant's acquisition of Company would not have significant adverse effects on existing or potential competition nor raise significant barriers to entry.

It appears that consummation of this proposed transaction would not result in any undue concentration of resources, conflicts of interests, unsound banking practices, or any other adverse effects on the public interest. Applicant proposes to expand the types of lending services offered by Company to include a full service mortgage banking company by offering conventional residential and commercial loans. The expanded lending services to be made available through Company upon its acquisition by Applicant, as well as its increased lending capabilities resulting from the availability of Applicant's resources, should enable Company to become a more effective competitor.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. The determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City pursuant to authority delegated hereby.

By order of the Board of Governors,[2] effective April 30, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-10380 Filed 5-6-74;8:45 am]

[2] Voting for this action: Chairman Burns and Governors Mitchell, Sheehan, Holland, and Wallich. Absent and not voting: Governors Brimmer and Bucher.

GENERAL SERVICES ADMINISTRATION

PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES FOR CONSTRUCTION MANAGEMENT DIVISION

Notice of Meeting

APRIL 30, 1974.

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Public Advisory Panel on Architectural and Engineering Services for the Construction Management Division, May 7, 1974, from 10 a.m. to 3 p.m., Room 1128, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois. This meeting will be for the purpose of considering Architect-Engineer firms to provide design services for the proposed conversion of space at the Federal Building, 1819 Pershing Road, Chicago, Illinois, and for the proposed conversion of space at the GSA Depot, Dayton, Ohio.

The meeting will be closed to the public in accordance with provisions set forth in section 10(d) of Public Law 92-463.

ARTHUR LEE SCHLANGER,
Acting Regional Director, Construction Management Division, Public Buildings Service—Region 5.

[FR Doc.74-10468 Filed 5-6-74;8:45 am]

[Federal Property Management Regs., Temporary Reg. G-16, Supplement 2]

ENERGY CONSERVATION

Reduction in Fuel Consumed by Certain Types of Motor Vehicles in the Interagency Motor Pool System

1. *Purpose.* This supplement revises from monthly to quarterly the reporting requirements for the reduction in miles operated by certain types of motor vehicles in the Interagency Motor Pool System.

2. *Effective date.* This supplement is effective on May 7, 1974.

3. *Expiration date.* This supplement expires December 31, 1974, unless sooner revised or superseded.

4. *Applicability.* The provisions of this regulation apply to all executive agencies.

5. *Background.* Certain actions have collectively contributed to an increase in the supply of oil over that which was available at the onset of the Nation's energy crisis, permitting the motor vehicle fuel use restrictions imposed on Federal agencies to be modified somewhat. Consequently, reporting requirements are changed from monthly to quarterly.

6. *Changes.* Federal Property Management Regulations ,Ttmporary Regulation G-16, is revised by making pen and ink changes to show "quarterly" in lieu of "monthly" in paragraph 9a; to delete the sentence, "However, agency mileage reductions wil lbe monitored on a monthly basis," in the lead paragraph of attachment B; and to add new paragraph e to attachment A as follows:

e. GSA will make any adjustments in this attachment which are required to conform to the newly established quarterly reporting periods.

DWIGHT A. INK,
Acting Administration of General Services.

MAY 3, 1974.

[FR Doc.74-10626 Filed 5-6-74;10:56 am]

[Federal Property Management Regs., Temporary Reg. G-15, Supplement 2]

ENERGY CONSERVATION

Reduction in Motor Vehicle Fuel Consumption

1. *Purpose.* This supplement revises from monthly to quarterly the reporting requirements for reduction in fuel consumed by Government-owned, commercially leased or rented, and privately owned vehicles authorized for use on official Government business.

2. *Effective date.* This supplement is effective on May 7, 1974.

3. *Expiration date.* This supplement expires December 31, 1974, unless sooner revised or superseded.

4. *Applicability.* The provisions of this regulation apply to all executive agencies.

5. *Background.* Certain actions have collectively contributed to an increase in the supply of oil over that which was available at the onset of the Nation's energy crisis, permitting the motor vehicle fuel use restrictions imposed on Federal agencies to be modified somewhat. Consequently, the reporting requirements are modified as provided in this supplement.

6. *Changes.* Federal Property Management Regulations, Temporary Regulation G-15, is revised by making pen and ink changes to show "quarter" or "quarterly", as appropriate, in lieu of "month" or "monthly" wherever the latter appears in paragraphs 8a(1) and (2) and in the report formats and paragraphs 1a and 2 of attachments B and C. Also paragraphs 8a(1) and (2) are changed to show June 30, 1974 in lieu of January 31, 1974, and attachment C is changed by modifying the second formula in paragraph 3b to read as follows:

$$\frac{3 \times \text{Average Mileage—Mileage Current Period (col. 3)}}{3 \times \text{Average Mileage}} \times 100\% = \text{Percent Reduction (col. 4)}$$

DWIGHT A. INK,
Acting Administrator of General Services.

MAY 3, 1974.

[FR Doc.74-10625 Filed 5-6-74;10:56 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (74-29)]

NASA RESEARCH AND TECHNOLOGY ADVISORY COUNCIL, COMMITTEE ON AERONAUTICAL OPERATING SYSTEMS AD HOC PANEL ON TERMINAL CONFIGURED VEHICLES

Notice of Meeting

The NASA Research and Technology Advisory Council Committee on Aero-

nautical Operating Systems, Ad Hoc Panel on Terminal Configured Vehicles will meet on May 30–31, 1974, at the NASA Langley Research Center, Hampton, Virginia 23665. The meeting will be held in Conference Room 225 of Building 1219. Members of the public will be admitted on a first-come, first-served basis, up to the seating capacity of the room, which is about 50 persons. All visitors must report to the Langley Research Center main gate and thence to the receptionist in Building 1219.

The NASA Research and Technology Advisory Council Committee on Aeronautical Operating Systems, Ad Hoc Panel on Terminal Configured Vehicles, serves in an advisory capacity only. The Chairman is Mr. Ralph L. Erwin, Jr. There are nine members. The following list sets forth the approved agenda and schedule for the May 30–31, 1974, meeting of the Ad Hoc Panel on Terminal Configured Vehicles. For further information, please contact Mr. Kenneth E. Hodge, Area Code 202, 755–2360.

MAY 30, 1974

Time	*Topic*
8:30 a.m.	Welcoming Remarks and Introductory Statements (Purpose: To provide guidance to the Panel on the extent and significance of its future activities.)
9:00 a.m.	Chairman's Remarks and Introduction of Members (Purpose: To identify the special branch of activity in the areonautical community to which each member has devoted himself.)
9:30 a.m.	Overview of the Terminal Configured Vehicles Operating Experiments Program (Purpose: To provide the basis for subsequent discussions of specific technical elements.)
10:30 a.m.	Description of the Research Support Flight System (Purpose: To describe the primary facility to be used in the flight research program. The system consists of a B–737 aircraft uniquely equipped with advanced digital integrated navigation, guidance, control, and display systems.)
11:15 a.m.	Discussion of Flight Experiments (Purpose: To obtain Panel comments on the content and priority of simulation and flight experiments which have been defined by the Flight Experiments Working Group.)
1:15 p.m.	Panel Comments on Transport Aircraft Terminal Area Compatibility Study (Purpose: To obtain Panel comments on this study which identified the research and technology required to support development of a terminal-area-compatible airplane.)

MAY 30, 1974—Continued

Time	*Topic*
2:15 p.m.	Tour of the Research Support Flight System and Simulation Facilities.

MAY 31, 1974

8:00 a.m.	Summary of Systems Analysis of Approach and Landing Accidents (Purpose: To inform the Panel of the status and plans for a system study of landing accidents to identify where mistakes are likely to occur and how they may be prevented.)
9:00 a.m.	Summary Review of Flight Tests of An Advanced Electronic Display System, Aft Flight Deck, and Automatic Guidance and Control System (Purpose: To establish for the Panel the baseline performance of the Research Support Flight System.)
10:15 a.m.	Panel Members' Reports (Purpose: Panel members will have the opportunity to report on research or other activity being pursued within their company or agency which is of interest to NASA and relates to the responsibilities of this Panel.)
1:00 p.m.	Panel Members' Recommendations (Purpose: The Panel will discuss information from preceding agenda items and will develop recommendations and position statements.)
2:30 p.m.	Adjournment.

BOYD C. MYERS, II,
Assistant Associate Administrator for Organization and Management, National Aeronautics and Space Administration.

MAY 1, 1974.

[FR Doc.74–10406 Filed 5–6–74;8:45 am]

NATIONAL CREDIT UNION ADMINISTRATION

NATIONAL CREDIT UNION BOARD

Notice and Agenda 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 National Credit Union Board will hold its quarterly meeting on June 4–5, 1974, at the offices of the National Credit Union Administration, 2025 M Street, NW., Washington, D.C. 20456. The meetings will commence at 9 a.m. daily in Room 4210.

The agenda for this meeting will consist of an update briefing regarding the activities of the several offices of the National Credit Union Administration, a briefing on the progress of the Administration's library project, a briefing on share insurance activities, a briefing on two-year insured Federal credit unions, and other aspects of the Administration.

On June 4, 1974, there will be two presentations, one each by two different firms, on the subject of electronic means of making currency available to selected financial institutions. One presentation will be held at 10 a.m. and one at 2 p.m.

Matters for discussion will include legislative activities.

This meeting of the National Credit Union Board will be open to the public. Members of the public may file written statements with the Board either before or after the meeting. To the extent that time permits, interested persons may be permitted to present oral statements to the Board only on items listed in the aforementioned agenda. Requests to present such oral statements must be approved in advance by the Chairman of the Board. Such requests should be directed to the Chairman, National Credit Union Board, National Credit Union Administration, Washington, D.C. 20456.

HERMAN NICKERSON, JR.,
Administrator.

APRIL 30, 1974.

[FR Doc.74–10463 Filed 5–6–74;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR DEVELOPMENTAL BIOLOGY

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (P.L. 92–463), notice is hereby given of a meeting of the Advisory Panel for Developmental Biology to be held at 9 a.m. on May 30 and 31, 1974, in Room 517 at 1800 G Street, NW., Washington, D.C. 20550.

The purpose of the Panel is to provide advice and recommendations as part of the review and evaluation process for specific proposals and projects. The agenda will be devoted to the review and evaluation of research proposals.

This meeting is concerned with matters which are within the exemptions of 5 U.S.C. 552(b) and will not be open to the public in accordance with the determination by the Director of the National Science Foundation dated December 17, 1973, pursuant to the provisions of section 10(d) of P.L. 92–463.

Individuals requiring further information about this Panel may contact Dr. William A. Jensen, Program Director, Developmental Biology Program, Room 326, 1800 G Street, NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director for Administration.

APRIL 25, 1974.

[FR Doc.74–10462 Filed 5–6–74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–6426]

RUPP INDUSTRIES, INC.

Notice of Application To Withdraw From Listing and Registration

APRIL 30, 1974.

In the matter of Rupp Industries, Inc., Common stock, no par value.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration are set forth in the application to withdraw on file at the Commission.

The American Stock Exchange does not object to this application to withdraw, and the Company states that it will be registered under Section 12(g) of the Securities Exchange Act of 1934 and that it will continue to file periodic reports as required.

Any interested person may, on or before May 13, 1974 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–10469 Filed 5–6–74;8:45 am]

SELECTIVE SERVICE SYSTEM

REGISTRANTS PROCESSING MANUAL

Classification of Registrants Separated From the Armed Forces

The Registrants Processing Manual is an internal manual of the Selective Service System. The following portion of that Manual is considered to be of sufficient interest to warrant publication in the FEDERAL REGISTER.

Temporary Instruction No. 622–6. Subject: Classification of Registrants Separated from the Armed Forces.

BYRON V. PEPITONE,
Director.

APRIL 30, 1974.

[Temporary Instruction No. 622–6]

CLASSIFICATION OF REGISTRANTS SEPARATED FROM THE ARMED FORCES

Issued: April 26, 1974.

1. Effective March 27, 1974, the various armed forces discontinued listing separation and reenlistment codes on the DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge). In lieu thereof, the Selective Service copy of the DD Form 214 will show the reason for discharge in plain language in the "Remarks" section (Item 27) of the form. The armed forces will furnish the reason for discharge to the separatee upon his request.

2. The separation and reenlistment codes, or reason for separation, will be completely obliterated from any DD Form 214 which is to be donated to a state agency.

3. The reason for discharge will usually provide adequate information to local boards to enable them to properly classify registrants who have been separated. In some cases (conscientious objector, sole surviving son) further information from the registrant may be required.

4. Any registrant who may request an explanation or definition of a separation or reenlistment code appearing on a previously issued DD Form 214 shall be advised to direct his request to the armed force which issued the form.

5. Any existing state operational issuances containing a list of separation and reenlistment codes are to be rescinded and destroyed immediately, and any lists of codes or code definitions remaining in local boards are to be destroyed.

6. This Temporary Instruction will terminate upon rescission or amendment.

JOHN D. DEWHURST,
Deputy Director.

[FR Doc.74–10449 Filed 5–6–74;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–73–11]

CHEMICO METALS CORP.

Grant of Variance

I. *Background.* Chemico Metals Corporation, P.O. Box 187, Alton, Illinois 62002 made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), and 29 CFR 1905.11 for a variance from the safety standards prescribed in 29 CFR 1910.23(c)(3). The standard requires that open sided floors adjacent to dangerous equipment, pickling or galvanizing tanks, degreasing units and similar hazards be guarded by standard railings and toeboards. The facility affected by this application is Chemico Metals Plant, Illinois Route 3, Aldenburg Road, Madison County, Illinois. Notice of the application for variance was published in the FEDERAL REGISTER on March 16, 1973 (38 FR 7156). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employers and employees were notified of their right to request a hearing on the application for a variance. No written comments and no request for a hearing have been received.

II. *Facts.* The applicant's operations involve the production of pure copper through the process of electrolytic refining. In the course of this process, employees normally stand and walk on anodes and cathodes suspended in concrete tanks (cells) which contain an electrolytic solution. During this process, standard railings are not required. However, for a period of approximately 3 hours every 28 days, the anodes and cathodes are removed from the cell. Section 1910.23(c)(3) requires that this opening be guarded by standard railings and toeboards. The work procedures involve employees hooking and unhooking the crane and helping guide the anodes and cathodes while they are being removed and replaced. These employees are protected by the load from falling into the cell. During the time the tank is empty, an employee enters it at ground level to clean it. The only employees exposed to the hazard of the open tank are those working on nearby cells, and these employees do not work closer than 4 feet to the empty cell.

During the hours the cell is open, the applicant places red flags on standard safety cones around the area where the empty cells are located. These flags are visible from any point in the cell room. In addition, tripod-mounted signs reading "Danger-Open Cells" are placed in the passageways leading to the cell room.

The cell room is isolated from the rest of the facility, is accessible only via two stairways marked "Authorized Personnel Only," and only two to four employees work in the area at any time.

III. *Decision.* 29 CFR 1910.23(c)(3) requires that regardless of height, open-sided floors, walkways, platforms or runways above or adjacent to dangerous equipment, pickling or galvanizing tanks, degreasing units, and similar hazards shall be guarded with a standard railing and toeboard. This is intended to protect the worker against a fall into these particularly hazardous areas.

While it is recognized that there is an inherent danger in having open cells, it is also recognized that a standard guardrail would seriously interfere with the performance of necessary work. In this instance the hazard exists for only 3 hours every 28 days, and the few employees exposed are familiar with the location of the empty cells. Administrative controls in the form of warning flags mounted on safety cones, tripod-mounted danger signs, and restriction of access to authorized employees have been instituted.

Considering the brief duration of the hazard, the controls in effect, the few employees exposed and their direct knowledge of the situation, it is determined that the applicant is providing employment and a place of employment as safe as that required by 29 CFR 1910.23(c)(3).

IV. *Order.* Pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, 29 CFR Part 1905, and in Secretary of Labor's Order No. 12–71 (36 FR 8754), it is ordered, that Chemico Metals Corporation be, and it is hereby, authorized to continue to use its present methods of administrative control in the form of warning flags and signs to guard empty tanks, in lieu of complying with the requirements of § 1910.23(c)(3); provided that the tanks remain open only for short periods of about 3 hours for about once every 28 days, and provided further that if employees working on other cells may reasonably be expected to come within 4 feet of the empty cell, physical awareness, such as roping off the area, shall be used.

As soon as possible, Chemico Metals Corporation shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for variance.

Effective date. This order shall become effective on May 7, 1974, and shall remain in effect until modified or revoked in accordance with section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. this 29th day of April, 1974.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.74-10418 Filed 5-6-74;8:45 am]

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TUESDAY, MAY 7, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 89

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Notification Regulations and Request for Comments on Utah area

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 101—PROFESSIONAL STANDARDS REVIEW

Subpart B—Notification and Polling of Physicians

On April 16, 1974, there was published in the FEDERAL REGISTER (38 FR 34944–34951) a notice of proposed rulemaking proposing to add a new Subpart B, entitled "Notification and Polling of Physicians," to Part 101 of Title 42, Code of Federal Regulations. The purpose of the new Subpart B of Part 101 is to establish regulations governing notification and polling of physicians in any Professional Standards Review Organization area prior to entering into an agreement under which any organization is designated as the Professional Standards Review Organization for such an area. Interested individuals and organizations were given until May 1, 1974, to submit comments and suggestions on the proposed regulations.

Since no comments and suggestions were received with regard to this notice of proposed rulemaking, the final Notification and Polling Regulations remain essentially as proposed, the one change being the substitution of "postage paid" envelope for "franked" envelope under § 101.106(a)(2).

Effective date. These regulations are effective on May 7, 1974.

Dated: May 1, 1974.

CHARLES C. EDWARDS,
Assistant Secretary for Health.

Approved: May 2, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Subpart B—Notification and Polling of Physicians

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AUTHORITY: Secs. 1102, 1152(f), Social Security Act (42 U.S.C. 1302, 1352(f)).

Subpart B—Notification and Polling of Physicians

§ 101.101 Policy and applicability.

(a) Section 1152(f) of the Social Security Act (42 U.S.C. 1352(f) provides that in the case of agreements entered into prior to January 1, 1976 under Part B of Title XI of the Social Security Act under which any organization is designated by the Secretary of Health, Education, and Welfare as the Professional Standards Review Organization for any area, the Secretary shall, prior to entering into any such agreement with any organization for any area, inform the doctors of medicine or osteopathy who are in active practice in such area of the Secretary's intention to enter into such an agreement with such organization.

(b) Section 1152(f) further provides that if, within a reasonable time following the service of such notice, more than 10 percentum of such doctors object to the Secretary's entering into such an agreement with such organization on the ground that such organization is not representative of doctors in such area, the Secretary shall conduct a poll of such doctors to determine whether or not such organization is representative of such doctors in such area. If more than 50 percentum of the doctors responding to such poll indicate that such organization is not representative of such doctors in such area the Secretary may not enter into such an agreement with such organization. The regulations of this subpart are applicable to the notification and polling by the Secretary of doctors pursuant to such section 1152(f).

§ 101.102 Definitions.

As used in this subpart:

(a) "Act" means the Social Security Act, as amended (42 U.S.C. Chap. 7).

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved may be delegated.

(c) "Doctor" means a doctor of medicine or osteopathy engaged in the active practice of medicine or osteopathy.

§ 101.103 Determination of number of doctors in PSRO area.

For the purposes of this subpart, the Secretary will determine, on the basis of the latest available information which he deems appropriate for such purposes, the names, current mailing addresses, and total number of doctors in any area, designated in Subpart A of this part as a Professional Standards Review Organization area, with respect to which the Secretary proposes to enter into an agreement with an organization designating such organization as the Professional Standards Review Organization for such area. The information on the basis of which the total number of doctors in such area is determined by the Secretary will be available for public inspection.

§ 101.104 Notification of doctors.

In the case of any agreement entered into prior to January 1, 1976, under Part B of Title XI of the Act, whereby any organization is designated as the Professional Standards Review Organization for any area, the Secretary, prior to entering into such agreement with any such organization, will, in accordance with the provisions of this section, notify the doctors in such area of the Secretary's intention to enter into such an agreement with such organization.

(a) *Method of notice.* The notice described in this section will be published in the FEDERAL REGISTER and at least one newspaper of general circulation in the Professional Standards Review Organization area. Notice in any newspaper of general circulation will be published in not less than three consecutive issues of such newspaper. In addition, copies of the notice will, not later than the date of publication in the FEDERAL REGISTER, be mailed to organizations of practicing doctors of medicine and osteopathy, including the appropriate state and county medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society and facility inform those doctors in its membership or on its staff who are engaged in active practice in the Professional Standards Review Organization area concerned of the contents of such notice.

(b) *Content of notice.* The notice required by this section will include the following:

(1) The date of publication in the FEDERAL REGISTER.

(2) A statement that the Secretary proposes to enter into an agreement with a named organization, designating such organization as the Professional Standards Review Organization for the area;

(3) A description of such organization, including its name, address, and the names of its principal officers;

(4) A statement that if any doctor in the area objects to the Secretary's entering into such an agreement with such organization on the ground that such organization is not representative of doctors in the Professional Standards Review Organization area, he may, within 30 days of the date of publication of the notice in the FEDERAL REGISTER, mail such objection in writing addressed to the Department of Health, Education, and Welfare to the mailing address set forth in the Notice; and

(5) A statement that if more than 10 percentum of the number of doctors determined by the Secretary pursuant to § 101.103 to be in the Professional Standards Review Organization area express timely objection as described in paragraph (b)(4) of this section (which number shall be set out in the Notice), the Secretary will conduct a poll of all such doctors in accordance with § 101.106 to determine whether or not such organization is representative of such doctors in such area.

§ 101.105 Action by the Secretary pursuant to objections.

After the expiration of 30 days following the date of publication in the FEDERAL REGISTER of the Notice described in § 101.104, the Secretary will tabulate the objections described § 101.104(b)(4) which have been received and which are postmarked prior to the end of such 30-day period. The Secretary will then publish a Notice in the FEDERAL REGISTER and in at least one newspaper of general circulation serving the Professional Standards Review Organization area, and will notify by letter the appropriate State and County medical societies. as follows: either

(a) That not more than 10 per centum of the total number of doctors determined by the Secretary, pursuant to

§ 101.103, to be engaged in active practice of medicine or osteopathy in a Professional Standards Review Organization area have expressed timely objection, as described in § 101.104(b)(4), to the Secretary's entering into an agreement with the organization, and that the Secretary may proceed to enter into such agreement designating such organization as the Professional Standards Review Organization for such area; or

(b) That more than 10 per centum of the total number of doctors determined by the Secretary, pursuant to § 101.103, to be engaged in the active practice of medicine or osteopathy in a Professional Standards Review Organization area have expressed timely objection, as described in § 101.104(b)(4), to the Secretary's entering into an agreement with the organization, and that the Secretary will conduct a poll of such doctors in accordance with § 101.106. A notice published in the FEDERAL REGISTER pursuant to this paragraph will set forth the date on which such poll will be initiated, and will state that doctors in such area who have not received a ballot within 5 days after such date may reguest a ballot from the Secretary at an address specified in the notice.

§ 101.106 Polling of doctors.

(a) Conduct of poll. In any case in which the Secretary determines that more than 10 per centum of the total number of doctors in a Professional Standards Review Organization area have expressed timely objection as described in § 101.104(b)(4), to the Secretary's entering into an agreement with an organization, the Secretary will, at such time as he may select, conduct a poll of such doctors to determine whether or not such organization is representative of such doctors in such area. Such poll shall be conducted as follows: The Secretary will mail, by regular mail, to each individual doctor of medicine or osteopathy whom the Secretary determines, pursuant to § 101.103, to be engaged in the active practice of medicine or osteopathy in the Professional Standards Review Organization area, the following:

(1) A ballot in which the doctor is requested to check one of two boxes indicating that, in his opinion, the organization with which the Secretary proposes to enter into the agreement (i) is or (ii) is not representative of the doctors in such area;

(2) A preaddressed postage paid envelope; and

(3) A cover letter describing the purpose of the poll, and specifically including

(i) The date of initiation of the poll, which will be not more than two days prior to the date on which the polling material is mailed;

(ii) A request that the doctor complete the ballot and mail it by regular mail in the enclosed envelope;

(iii) A statement that if more than 50 per centum of the doctors responding to the poll indicate that the organization with which the Secretary proposes to enter into the agreement is not representative of the doctors in the area, the Secretary will not enter into such agreement with such organization; and

(iv) A statement that all completed ballots received which are postmarked within 30 days of the date of initiation of the poll by the Department of Health, Education, and Welfare officer, whose address appears on the enclosed envelope will be counted in determining the result of the poll.

(b) *Tabulation of ballots.* After the expiration of 30 days following the date of initiation of the poll as described in paragraph (a)(3)(i) of this section, the Secretary will tabulate the ballots which have been received and which are postmarked prior to the end of such 30-day period.

(1) The ballots will be tabulated in such fashion as to assure that the vote of each individual doctor responding to the poll will be secret.

(2) The tabulation proceeding will be publicly announced and will be open to the public.

(c) *Retention of ballots.* All ballots received by the Secretary will be retained for such period as may be necessary to assure their availability for a recount in accordance with § 101.107(c) and will be available for public inspection during such period at a place announced in the Notice published pursuant to § 101.107.

§ 101.107 Action by the Secretary following poll.

After tabulating the ballots received under § 101.106, the Secretary will publish a Notice in the FEDERAL REGISTER and in at least one newspaper of general circulation serving the Professional Standards Review Organization area, and will notify by letter the appropriate State and County medical societies, as follows:

(a) That not more than 50 percentum of the doctors responding to the poll indicated, by checking the appropriate box on the ballot, that the organization with which the Secretary had proposed to enter into an agreement is not representative of the doctors in the area, and that the Secretary may proceed to enter into such agreement designating such organization as the Professional Standards Review Organization for such area; or

(b) That more than 50 percentum of the doctors responding to the poll indicated, by checking the appropriate box on the ballot, that the organization with which the Secretary has proposed to enter into an agreement is not representative of the doctors in the area, and accordingly that the Secretary will not enter into such an agreement with such organization; and

(c) Such count will be final, except that the Secretary will conduct a recount if at least 5 doctors in the area so request in writing, postmarked within 10 days following the date of publication of such Notice in the FEDERAL REGISTER. Such recount will be conducted in a public proceeding, and the result of the recount will be final.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

UTAH PSRO AREA

Notice to Physicians Regarding Intention To Enter Into Agreement Designating Professional Standards Review Organization

Notice is hereby given, in accordance with section 1152(f) of the Social Security Act and 42 CFR 100.104, that the Secretary of Health, Education, and Welfare proposes to enter into an agreement with the Utah Professional Standards Review Organization designating it the Professional Standards Review Organization for the State of Utah.

The Secretary has determined that the Utah Professional Standards Review Organization is qualified to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Utah, as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percentum of the licensed doctors of medicine or osteopathy engaged in active practice in the State of Utah. As stipulated in its Articles of Incorporation, the principal officers of Utah Professional Standards Review Organization are:

Name	*Office Held*
1. Louis Shricker, Jr., M.D.	Vice Chairman.
2. Alan R. Nelson, M.D.	Chairman.
3. Homer E. Smith, M.D.	Secretary.
4. Harold B. Liddle, M.D.	Treasurer.

The official address of the corporation is 555 East 2nd South, Salt Lake City, Utah 84102.

Any licensed doctor of medicine or osteopathy engaged in active practice in the State of Utah who objects to the Secretary entering into an agreement with the Utah Professional Standards Review Organization on the grounds that this organization is not representative of doctors in such area may, within thirty days of the date that this Notice was published in the FEDERAL REGISTER, mail such objection in writing to the Director, Office of Professional Standards Review, Department of Health, Education, and Welfare, P.O. Box #2111, Rockville, Maryland 20852. All such objections must include the physician's address, the location(s) of his office, his signature, and a certification that such physician is engaged in the active practice of medicine or osteopathy (i.e.) direct patient care and related clinical activities, administrative duties in a medical facility or other health related institution and/or medical or osteopathic teaching or research activity.

Pursuant to 42 CFR 101.103, the Secretary has determined that 1,570 doctors of medicine and osteopathy are engaged in active practice in the State of Utah. In the event that more than 10 percentum of such doctors express objections as described in the preceding chapter, the Secretary will, in accordance with 42 CFR 101.106, conduct a poll of all such doctors of medicine or osteopathy in such area to determine whether the Utah Professional Standards Review Organization is representative of such doctors in such area.

Comment closing date: June 6, 1974.

Dated: May 1, 1974.

HENRY E. SIMMONS,
Deputy Assistant Secretary for Health, Director, Office of Professional Standards Review.

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PART III

CONSUMER PRODUCT SAFETY COMMISSION

■

CONSUMER SAFETY STANDARDS

Requirements and Procedures

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER B—CONSUMER PRODUCT SAFETY ACT REGULATIONS

PART 1105—SUBMISSION OF EXISTING STANDARDS; OFFERS TO DEVELOP STANDARDS; AND THE DEVELOPMENT OF STANDARDS

Consumer Product Safety Standards; Requirements and Procedures

In the FEDERAL REGISTER of January 4, 1974 (30 FR 1152), and pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056), the Consumer Product Safety Commission proposed regulations (16 CFR Part 1105) covering (1) the submission of existing standards to CPSC, (2) the submission to CPSC of offers to develop consumer product safety standards, and (3) the actual development of consumer product safety standards by organizations or individuals whose offers have been accepted by CPSC. Also proposed were requirements for cost contributions by CPSC toward the development of standards. The proposal invited interested persons to submit comments on or before February 4, 1974.

In response to the proposal, comments were received from the Air-Conditioning and Refrigeration Institute; Amercan Institute of Architects; American National Standards Institute; American Society of Association Executives; American Society for Testing and Materials; Association of Home Appliance Manufacturers; Mr. Bruce I. Bertelsen, Prof. Joseph A. Page, and Ms. Nancy Southard of the Georgetown University Law Center; Borden, Inc.; Carpet and Rug Institute; Consumers Union of United States, Inc.; Mr. John T. Crandall; Mr. Arnold B. Elkind; Gas Appliance Manufacturers Association; Glass Container Manufacturers Institute, Inc.; Lehn & Fink Products Co., Division of Sterling Drug, Inc.; Massachusetts Public Interest Research Group; Montgomery Ward; Representative John E. Moss; National Association of Manufacturers; National Electrical Manufacturers Association; National LP-Gas Association; National Retail Merchants Association; National Swimming Pool Institute; Ohio Match Co., Subsidiary of Hunt-Wesson Foods, Inc.; Personal Safety Systems; Power Tool Institute; RCA Corp.; Sears, Roebuck & Co.; Mr. C. A. Swanson; Underwriters' Laboratories, Inc.; and Wheel Estates.

The principal issues raised by the comments and the Commission's conclusions thereon are as follows: Significant changes resulting from comments received and/or from Commission evaluations are discussed.

1. *Objectives of the act.* Proposed § 1105.1(b), regarding general policy considerations, states in part, "One of the major objectives of the Consumer Product Safety Act is to reduce unreasonable risks of injury associated with the use of consumer products by developing 'consumer product safety standards' for those products."

A comment notes that consumer product safety standards are only one of the tools available to the Commission in reducing unreasonable risk of injury and suggests adding at the end of the first sentence of proposed § 1105.1(b) the phrase "where necessary to eliminate or reduce the risk of injury."

The Commission agrees that promulgating mandatory standards is not the only means provided by the act for reducing or eliminating unreasonable risks of injury. To better express this fact, sec. 1105.1(b) has been revised to provide that the objectives of the act may be achieved through the development and promulgation of mandatory standards where they are considered necessary to eliminate or reduce the risk of injury.

2. *Description of consumer product safety standard.* A comment suggests that the description of "consumer product safety standard" in proposed § 1105.1 (b) is not consistent with the act and with the description in proposed § 1105.8 (b).

The Commission agrees that the description of "consumer product safety standard" should be consistent whenever it is used in these procedures and that the description should follow the congressionally established description. The Commission has therefore conformed the description of "consumer product safety standard" in §§ 1105.1(b) and 1105.8(b).

3. *Participation by the public.* a. A number of comments are directed toward the practicality and reasonableness of the Commission's policy of providing for the participation of any and all interested persons in the development of standards.

The Commission provided in proposed § 1105.5(a) that interested persons could participate in one of two levels of activity, "either in person or through correspondence." To clarify more fully the position of the Commission on participation by all interested persons, the Commission has, in § 1105.5(b)(1), provided for the identification by the offeror of the number and experience of the individuals the offeror intends to be directly involved (in person) in the development of standards. Others, including all of those persons who have requested the opportunity to participate in the development of the standard, will be able to contribute by corresponding directly with the offeror and conveying any information relating to hazardous product experiences or any suggestions relating to the scope and coverage of the standard. Additionally, § 1105.7(b) provides that the offeror shall send to all participants a copy of the draft standard developed by the offeror so they may review the draft standard and provide any comments on it with respect to its adequacy or effectiveness in reducing the unreasonable risks of injury.

b. Two comments question the offeror's being responsible for giving notice to individual consumers to participate in the standards development process. One addresses the need for the Commission to provide adequate notice. While the Commission accepts some of this responsibility, it recognizes that the act specifically charges the offeror with the responsibility for providing notice and opportunity for interested persons to participate in the development of standards. The Commission, in § 1105.5(a)(2), requires the offeror to develop and implement a specific plan to provide such participation.

c. In order to encourage and facilitate the participation of the public in the standards development process, the Commission, in response to another comment, has provided in § 1105.6(e) for the maintenance of a list of all persons and organizations expressing an interest in participating in the development of standards. Further, the Commission has provided in § 1105.6(e) for the transmission of a copy of the FEDERAL REGISTER notice of proceeding as well as the FEDERAL REGISTER notice of acceptance of any offer to appropriate persons and organizations on that list.

4. *Ultimate consumers.* Proposed § 1105.1(d) expresses the general policy that all interested persons, including the general public and especially ultimate consumers, are encouraged to become involved in the development of standards as offerors and participants.

Several comments object to the stress placed upon the involvement of ultimate consumers. One suggests removing this stress by placing emphasis on the involvement of qualified representatives of affected industries as well as ultimate consumers. Another suggests eliminating the word "especially" and adding the words "technical groups" after the words "interested persons".

The Commission reaffirms its policy that ultimate consumers are to be especially encouraged to become involved in the development of standards. This does not mean, however, that other persons and groups with experience and expertise are not needed or are not encouraged to participate. Accordingly, no change has been made in § 1105.1(d) regarding the importance of ultimate consumers in standards development proceedings.

5. *Ad hoc associations.* Proposed § 1105.5(c) provides for the submission of an offer by an individual member on behalf of the members of an ad hoc association which may be accepted after the Commission receives a notarized copy of a power of attorney from each member of the association authorizing the individual member to submit an offer.

Several comments express concern that ad hoc associations may not be technically competent or sufficiently well organized to develop a standard. Several of these comments suggest strengthening the requirements for ad hoc associations by emphasizing that the technical competency requirements apply to them or by requiring that ad hoc associations provide organizational documents and assurances that the association will be capable of completing the development of a standard.

One comment suggests that the procedures for power of attorney appear more onerous than is necessary and

questions whether a power of attorney is also necessary to enable an association to participate in the development of a standard by another offeror.

The concept of ad hoc associations has been introduced in these regulations to facilitate the development of standards by new or loosely formed groups. Although such groups must be capable of demonstrating competence prior to the acceptance of an offer, the Commission concludes that the procedures as proposed relating to ad hoc associations should not be made either more or less restrictive. The power of attorney requirements apply only to the submission of offers and not to participation in the development of a standard by another offeror. The power of attorney is necessary to help ensure that the person with whom the Commission is dealing is authorized to act for the other persons in the association. This requirement would become especially important in the event the Commission agrees to make a contribution toward the cost of the standards development.

In response to a comment, § 1105.5(c) has been clarified by deleting the phrase "Prior to acceptance of an offer from an ad hoc association," from the last sentence.

6. *Existing standards.* a. Several comments object to the requirement of proposed sec. 1105.4(b)(1) that existing standards submitted for consideration as proposed consumer product safety standards meet all of the requirements for standards developed by offerors.

The Commission agrees that this requirement is too broad and has revised § 1105.4(b)(1) to state that each notice of proceeding will establish the specific requirements for existing standards.

b. Several comments object to the requirement in proposed § 1105.4(b)(2) that the submission of an existing standard be accompanied by a description of the procedures used to develop the standard and a listing of the persons and organizations that participated in the development and approval of the standard.

The regulation (now § 1105.4(b)(3)) has been changed by adding the phrase "to the extent that such information is available" after the word "accompanied."

c. One comment suggests that § 1105.4 be changed to permit the submission of portions of existing standards.

In the Commission's view, existing standards should be submitted in their entirety. A provision has been added (now § 1105.4(b)(2)) to require the person submitting the existing standard to identify the portions that are appropriate for inclusion in the consumer product safety standard.

d. One comment suggests requiring that an existing standard be submitted with an evaluation of all comments received during its development.

The Commission concludes that such information would be of questionable usefulness and therefore declines to adopt the suggestion.

e. Regarding proposed § 1105.3(a)(3), one comment suggests that when the Commission publishes information with respect to an existing standard that it include an evaluation of the existing standard.

Section 1105.3(a)(3) has been changed to state that the Commission will include information respecting any deficiencies in the existing standard that would make it not totally acceptable as a mandatory standard.

f. One comment suggests deleting the reference to "foreign" standards from proposed § 1105.3(a)(3). The commentor fears that foreign standards will not be suitable for domestic producers. The commentor suggests that while they may be studied during development, they should not be made mandatory unless great care is exercised.

The Commission concludes that since foreign standards will be subject to the same scrutiny and evaluation as other standards, no change is necessary.

g. In response to a comment noting that the Commission may decide both to publish an existing standard and accept an offer to develop a standard for the same consumer product, proposed § 1105.6(a) (now § 1105.6(a)(1)) has been changed to state that the Commission may accept one or more offers to develop a standard if the Commission "(i) does not decide to publish an existing standard as a proposed consumer product safety standard, or (ii) decides to publish an existing standard as a proposed consumer product safety standard which does not address all of the specified unreasonable risks of injury associated with the product."

Additionally, for completeness, paragraph (c) has been added to § 1105.4 to prescribe the conditions under which the Commission may publish an existing standard as a proposed consumer product safety standard in lieu of accepting an offer to develop a standard.

h. In response to a comment noting that an existing standard may be submitted by anyone, the third sentence of proposed § 1105.2 has been changed by deletion of the word "their" between the words "submit" and "existing." The purpose of this change is to indicate that persons do not need to have a proprietary interest in the existing standard in order to submit it.

i. In response to a comment which notes that the Commission is not required to find that there is no acceptable existing standard before it can accept an offer to develop a standard, proposed § 1105.1(c) has been changed by deleting the phrase "if the Commission determines that there is no acceptable existing standard" from the third sentence. This change is consistent with the change indicated for § 1105.6(a) (mentioned in "g" above) and also reflects the fact that the Commission may decide to both publish an existing standard and accept an offer to develop a standard for different risks associated with the product. The third sentence of proposed § 1105.1(c) has also been amended by deleting the word "new" between the words "a" and "standard" to indicate that the standard developed by the offeror may be a modification of an existing standard and may not be entirely "new."

7. *Development period.* a. Several comments object to the sentence contained in proposed § 1105.1(h) which reads "The Commission believes, however, that as a general rule, the public interest is best served by the development of standards in the shortest possible time." The comments contend that this phrase places an undue emphasis on speed as opposed to the development of an effective and workable standard.

The Commission did not intend to imply that speed was the single most important factor in the development of a standard. The sentence (now contained in § 1105.1(i)) has been revised to reflect this policy as follows: "The Commission believes, however, that as a general rule, the public interest is best served by the development of standards in the shortest possible time commensurate with the objectives of the act and in conformance with the requirements contained in this Part 1105."

b. Proposed §§ 1105.2 and 1105.6(a) provide that the Commission will normally accept one or more offers to develop a standard within 60 days after publication of the notice of proceeding. Several comments object to this provision because it encroaches on the already short 150-day statutory period for the development of standards and could leave as few as 90 days to develop a standard.

Section 7(b) of the act states in part that "An invitation [to offer to develop the proposed consumer product safety standard] shall specify a period of time during which the standard is to be developed which shall be a period ending 150 days after the publication of the notice, unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate." Section 7(b)(4) of the act provides that the offer to develop a standard shall be submitted to the Commission within 30 days after the date of publication of the notice.

The Commission will certainly do all within its power to evaluate and accept offers within or soon after the 30-day period. The Commission concludes, however, that up to 30 additional days may be necessary to properly evaluate and accept offers. Since the act stipulates that the 150-day period shall begin when the notice of proceeding is published, the Commission is not free to change the starting date to the day offers are accepted. To compensate for the fact that this may leave as few as 90 days for the actual development of the standard (as opposed to the 120 days Congress apparently anticipated), the Commission provided in proposed § 1105.3(a)(6) (now (a)(7)) that the notice of proceeding shall specify the period of time during which the standard is to be developed and submitted to the Commission. Section 1105.1(i) states that the Commission will adopt a reasonable approach in determining the amount of time necessary to develop standards. If

necessary, the Commission may change the length of time for the development of the standard. This may be accomplished in accepting an offer as provided for in proposed § 1105.6(e)(2) (now § 1105.6 (d)(2)), or by later extending the period for development if good cause is shown and the reasons for such extension are published in the FEDERAL REGISTER. To more accurately reflect the intent of the Commission, it is concluded that the regulations as proposed should not be changed in response to the comments received on this issue, except that §§ 1105.2 and 1105.6(a) have been changed to provide that the Commission will as soon as possible, usually within 60 days, accept one or more offers to develop a standard.

c. One comment suggests that proposed § 1105.2 be changed to state that extensions of time will not be granted except in extraordinary circumstances, that 60 days shall be the maximum time for the extension of a development period, and that the general public and participants in the standards development proceeding be given the opportunity to comment on the desirability of granting an extension.

While the Commission agress that extensions should only be granted when necessary and desirable, the Commission does not agree that an arbitrary maximum is in the best interest of the public. There may be occasions when the granting of an extension of longer than 60 days would result in the completion of a standard in a shorter period of time than if the Commission were required to begin the process over or to proceed to develop a standard independently. After receiving a request for an extension, the Commission will certainly consider the views of persons having information pertinent to making the decision. However, the Commission does not agree that soliciting the views of the general public on this issue would be very helpful. Additionally, as a practical matter, the solicitation and evaluation of public comments could cause an undue delay in the development process since such solicitation of comments would, almost of necessity, require publication of the proposed extension and invitation for public comment in the FEDERAL REGISTER.

8. *Technical competence.* To implement section 7(d)(1) of the act, which provides for the acceptance of offers from technically competent offerors, several sections of these regulations were proposed to aid the Commission in determining whether offerors are technically competent to develop standards. Proposed § 1105.5 (a) and (b), regarding the submission of offers, would require that certain information be provided the Commission by the offeror in submitting an offer. Proposed §1105.6(a) established the factors the Commission would utilize in determining technical competence.

a. Several comments recommend changes in these sections which would specify the factors necessary for evaluating the offeror's technical competence in greater detail and would set forth minimum requirements, especially in the area of actual technical experience with the product to be regulated.

Although the factors to be utilized in determining technical competence might be specified in greater detail, the Commission considers the regulations as proposed to be sufficient in this respect until such time as the Commission gains sufficient experience to know which factors should be specified. Specific product experience need not be emphasized in these regulations since an offeror, in developing a plan for the participation of interested persons, should be able to overcome any personal lack of product experience by demonstrating managerial ability to obtain participants with appropriate product experience. Also, the Commission intentionally established evaluation criteria without providing minimum requirements in order to provide a degree of flexibility which would not otherwise be possible.

b. Regarding proposed § 1105.5(b)(1), which requires a statement listing the number and occupations of the personnel the offeror intends to utilize in developing the standard, several comments suggest that the phrase "personnel the offeror intends to utilize" be expanded and broken down into specific types of individual groups.

The Commission agrees and this section has been revised to require that the offeror distinguish and specify the status of the individuals the offeror plans to directly involve in the development process. Further, the term "occupations" has been replaced with the term "experience" in this section to provide the Commission with more relevant information.

c. Regarding proposed § 1105.6(a), which states that one of the factors to be considered by the Commission in determining technical competence is that the offeror has provided a rational approach to the solution of that problem, one comment suggests the deletion of this provision and the addition of the following: "that the offeror has described a rational procedure for solving that problem." The comment argues that as written, this provision would require that the offeror indicate the substance of the standard to be developed, rather than simply the procedures for developing the standard.

The Commission concludes that the suggested change should not be made since an indication of the type of standard the offeror plans to develop may be as relevant to the issue of technical competence as the procedures to be utilized in developing a standard.

9. *Commission requirements for the development of standards.* Proposed § 1105.6(a), dealing with the acceptance of offers, provides in part that the Commission will accept one or more offers if it determines that the offeror will comply with all of the requirements of the Commission for the development of a standard.

One comment contends that this section fails to specify with sufficient detail the requirements for the development of standards in general. The comment also contends that by using the word "standard" in the singular in this portion of the regulations, the Commission is stating that the development of each standard will be subject to a different set of requirements and that this is not in line with the statutory provisions of section 7 of the act.

The Commission, having considered the comment, concludes that a change in the regulations on this issue is unwarranted. The regulations in this part for the development of standards will apply to the development of all standards and are as detailed as is presently possible and desirable. The Commission chooses not to specify more detail at this time in order to provide a degree of flexibility and to gain experience in working with these regulations.

Regarding the issue of whether any Commission requirements for the development of a specific standard should be prescribed other than in these regulations, the Commission concludes that this may be necessary because of the diverse nature of the products under the Commission's jurisdiction and the different types of standards to be developed. Any additional requirements will, however, be stated in each notice of proceeding.

10. *Acceptance of more than one offer.* Proposed § 1105.6(a) states that the Commission will accept one or more offers to develop a standard. One comment suggests that more than one offer should be accepted only in unusual and urgent circumstances since some of the participants in the standards development process, particularly manufacturers, would then be forced to participate with two or more offerors and that this would waste time and money.

The Commission recognizes that it has no statutory duty to accept offers from more than one offeror and that in many instances, active participants representing the same entity would be present during the development by each of the several offerors. Where the Commission determines, however, that a better standard would be developed if there are multiple offerors, it will accept more than one offer. This may occur, for example, where multiple offerors are deemed necessary to cover all of the identified risks; to permit development with diverse and unique approaches; or to expand the probability of success. The Commission will not accept multiple offerors simply because it has received offers from more than one technically competent offeror.

11. *Notification of nonacceptance.* When the Commission has determined that an offer to develop a standard should not be accepted, the Commission shall, as provided by proposed § 1105.6 (g), notify the offeror in writing of the fact that the offer has not been accepted.

Several comments suggest that this section be changed to provide for the Commission to also inform the offeror of the reasons for nonacceptance. One comment suggests that in addition to notifying individual offerors of the reasons for the nonacceptance of their offers, that the section be changed to provide for the notification to include a general description of the types of defects encountered in other unacceptable offers. This com-

ment contends that the adoption of this suggestion would encourage unsuccessful offerors to continue to submit offers in the future.

The Commission concludes that unsuccessful offerors should, when they so request, be informed of the reasons for the nonacceptance of their offers and has changed the regulation (now § 1105.6(f)) accordingly. However, the Commission does not view the requirement that it include a discussion of the reasons for the nonacceptance of other offers as serving a useful purpose and therefore does not adopt this suggestion. Copies of letters to unsuccessful offerors will be available under the Freedom of Information Act to anyone requesting access to such information.

12. *Modification of offers.* Proposed § 1105.6(b), regarding the acceptance of offers, states as follows: "In accepting an offer to develop a standard, the Commission may require a modification of the offer as a condition of acceptance." The purpose of this provision is to permit an offeror to modify an offer which would be acceptable only if certain changes were made first.

Several comments express the concern that this provision would permit the Commission to change the offer after it had been accepted.

To more accurately reflect the Commission's intent, this provision has been changed by deleting the word "in" and replacing it with words "prior to" and adding the word "minor" to qualify "modifications."

13. *Amending standards.* Several comments express concern over the fact that the proposed regulations fail to provide procedures for updating or amending standards once they have been issued and suggest that the final regulations include such procedures. Two comments suggest the establishment of a procedure whereby the offeror who developed the standard would be appointed on a continuing basis to monitor and update the standard.

The Commission concludes that the changes suggested should not be adopted in the final regulations since section 9(e) of the act provides that where an amendment to a standard involves a material change, sections 7 and 9 of the act apply. Therefore, where the Commission believes a material change is required, it will initiate a proceeding in the same manner as it would initiate a proceeding for the development of a new standard. Where the required change is not considered material, it will amend the standard by rule in accordance with the procedure specified in section 9(a)(2) of the act.

14. *Consumer complaint letters.* One comment suggests that the regulations be changed to require all manufacturers and distributors of consumer products to file with the Commission a copy of each letter received by the company alleging a safety defect in one of its products. The purpose of this suggested requirement would be to provide the developer of a standard with information relating to consumer experiences with the product.

In response to this comment, the Commission concludes that this requirement is not appropriate for inclusion in these rules. The notice of proceeding should adequately define the risks of injury to be regulated and the Commission will make information relevant to the analysis of the hazard available to the offeror. Additionally, a Commission press release will indicate that any interested person may communicate directly with the offeror.

15. *Testing programs.* Proposed § 1105.8(a) states that recommended standards submitted by the offeror shall, where the Commission considers it to be appropriate, contain testing programs and that testing programs, where the Commission considers it to be appropriate, shall include sampling plans.

Several comments object to the requirement that sampling plans be included with the standards for one or more of the following reasons: (1) because the requirement would dilute the incentive for an offeror to develop a reasonable and technologically practicable standard; (2) because it would be better to require testing programs under section 14 of the act which deals with product certification rather than under section 7; (3) because mandatory test programs would increase compliance costs for the manufacturer without materially improving the condition causing the defect; (4) because no one testing program can be appropriately used by all manufacturers of a product; (5) because the propriety of including testing programs and sampling plans is questionable under the act; (6) because the penalties in the act for non-compliance provide all the incentives necessary to assure that products conform to Commission standards; (7) because manufacturers should have a choice of methods to determine quality control; (8) because the development of sampling plans is beyond the expertise of many would-be offerors; and (9) because sampling plans can only be developed after a standard is completed and would require an undue amount of time. Several comments endorse the concept of requiring testing programs with sampling plans. One comment suggests adding a requirement that sampling plans be based on standard acceptable quality control levels as established by the American Society for Quality Control.

The Commission concludes that it is neither necessary nor appropriate to resolve the issue of the correctness of requiring offerors to develop testing programs, including sampling plans, in these regulations. Therefore, § 1105.8(a) now provides that recommended standards shall, if the Commission considers it to be appropriate, contain reasonable testing programs, including sampling plans. This section has, however, been changed to delete the definition of the term "sampling plans." The meaning of the term will be made clear if and when the Commission determines that a sampling plan should be part of a particular standard.

16. *Test methods.* Proposed § 1105.8(a) provides that recommended standards shall be submitted, where the Commission considers it appropriate, with suitable test methods for the measurement of compliance with proposed standards which are reasonably capable of being performed by persons subject to the act or by private testing facilities.

Several comments endorse the inclusion of the requirement for test methods. One comment suggests that, except in cases where a standard is written in terms of a specific test, the requirement be changed to provide that manufacturers shall not be precluded from using other suitable test methods.

17. *Test instruments or devices.* Proposed § 1105.7(g) provides that if the Commission determines that test instruments or devices are necessary for the evaluation of the standard, the Commission may require the offeror to sell the instrument or device to the Commission at the offeror's cost.

Three comments object to this provision as being an unreasonable forced sale and suggest that the submission of plans and specifications should be sufficient.

The Commission concludes that there may be occasions where prompt evaluation of the standard requires immediate access to the use of the test instrument or device. In such a case, the mere receipt of plans and specifications may not be sufficient. The regulation has been changed, however, to provide that where the offeror does not wish to sell the instrument or device to the Commission, it may loan the instrument or device to the Commission for use during the evaluation. It has also been changed to provide that in any circumstance, detailed descriptions or plans and specifications shall be submitted.

18. *Economic and environmental impact information.* Proposed § 1105.7(c)(4) would require the offeror to maintain and submit to the Commission records consisting of a statement of the economic and environmental factors considered during the development of the standard. Proposed § 1105.8(e) would require the offeror to submit to the Commission information demonstrating that compliance with the standard would be technologically practicable as well as information, where it can reasonably be obtained, on the potential economic and environmental impact of the standard.

One comment contends that the regulations should be revised to require the offeror to take into account the economic impact of a proposed standard. Several other comments argue that offerors should not be required to prove technological practicability or to prepare economic and environmental impact statements since this responsibility properly belongs to the Commission.

The Commission recognizes that it has the responsibility for ultimately determining the technological practicability in addition to the economic and environmental reasonableness of consumer product safety standards. However, in order for the recommended standard to

be one which would be promulgated, it is necessary for offerors to at least consider these factors and keep a record of the issues discussed. Therefore, the Commission concludes that the proposed sections of the regulations relating to these issues strike the proper balance and should not be changed.

19. *Circulation of draft standards for comment.* Regarding proposed § 1105.7, dealing with the development of recommended consumer product safety standards, subsection (b) states in part as follows: "The offeror, after considering all suggestions and contributions, shall draft a standard. The draft standard shall be sent to all participants and to other appropriate persons (including a representative number of manufacturers or wholesalers and importers of the product proposed to be regulated and consumers) for their review and concurrence. Unanimity among all participants and appropriate persons shall not be a prerequisite to the submission by the offeror to the Commisison of a standard which, in the offeror's judgment, optimally meets the terms of the offer accepted by the Commission."

a. A comment suggests that since the cost of reproducing and distributing draft standards may be quite large, the regulations should be changd to specifically provide that the Commission will bear the cost of reproducing and distributing draft standards.

The Commission concludes that since § 1105.9 already provides the mechanism for making requests for cost contributions, a special provision in these regulations is not necessary.

b. A comment notes that the phrase "for their concurrence" (as used in proposed § 1105.7(b)) is inconsistent with the sentence following since the phrase implies that agreement is necessary.

The Commission agrees and has revised § 1105.7(b) to state "for their review and concurrence or nonconcurrence."

c. One comment contends that the language of proposed § 1105.7(b) implies that the offeror may not begin drafting a standard until all suggestions and contributions have been received and suggests that the language be revised to state that the offeror shall draft the standard prior to or concurrent with the receipt of comments and suggestions.

The Commission concludes that the suggested revision should not be made since prior unilateral drafting by the offeror could vitiate the impact of the participation procedures. However, the Commission does not view the language as proposed as preventing the offeror from proceeding through a series of early drafts.

d. Several comments concern the language of proposed § 1105.7(b) referring to the persons and organizations to whom the draft standard shall be sent for comment.

One comment suggests that the offeror only be required to submit the draft to proper representatives of all participants, not to all participants. Another comment makes a similar suggestion to transmit the draft to representatives of the necessary interests as opposed to individuals.

The Commission concludes that the Congress intended all interested persons to have the opportunity to participate in the development of standards and that reviewing the draft standard is one opportunity to whi h they are entitled. Therefore, the proposed requirement for transmitting the draft standard to all participants is unchanged.

In response to the comments concerning review by representatives of the necessary interests including persons and organizations other than participants, the Commission concludes that the draft standard should be transmitted only to persons and organizations who have previously become participants. All other interested persons will have ample opportunity to express their views concerning the standard during the rulemaking procedures under section 9 of the act. The portion of § 1105.7(b) dealing with this has therefore been revised to read "The draft standard shall be sent to all participants for their review and concurrence or nonconcurrence."

20. *Evaluation of comments.* Proposed § 1105.7(c)(3) provides that each offeror must maintain written records of an evaluation by the offeror of all of the comments received by the offeror during the development of the standard.

Two comments suggest that this requirement is overly burdensome and would be counterproductive. One of the comments suggests deleting § 1105.7(c)(3) as proposed and rewriting it to state as follows: "A statement or evidence by the offeror that all of the comments received by the offeror during the development of the standard received fair and responsible consideration."

The Commission concludes that the statutory requirement for the opportunity for public participation in the development of standards requires that substantive issues raised in the comments be considered by the offeror and that the best evidence of offeror consideration is a record of the offeror's evaluation. Section 1105.7(c)(3) has, however, been changed to require that a record be maintained of "a discussion describing the basis for resolution by the offeror of all of the substantive issues raised during the development of the standard."

21. *Independent evaluations.* One comment expresses the opinion that while participation in the development of standards is to be expected by those having a monetary interest in the outcome, it may be difficult to achieve consumer participation. This comment suggests that until such time as an act is passed which provides an official consumer advocate, these regulations should contain a requirement for an independent evaluation by a private testing laboratory of each standard submitted by an offeror.

While the Commission recognizes that an independent evaluation may be necessary under certain circumstances, it sees no need to impose this obligation on itself in evaluating each and every standard submitted. Where deemed necessary, however, the Commission certainly will seek independent evaluations.

22. *Analysis of standard by the offeror.* Proposed § 1105.8(c) provides that "Each requirement of a standard [developed by an offeror] shall be supported by: (1) An analysis demonstrating that the requirement is reasonably necessary to prevent or reduce the unreasonable risks of injury identified in the notice of proceeding; and (2) a statement explaining why the requirement is in the public interest."

a. Two comments contend that references throughout these regulations and specifically in this section should not be made to "unreasonable risks of injury." It is argued that this determination requires a balancing of various factors and should not be made prior to the promulgation of the standard.

The Commission agrees that the final determination of whether the risks are unreasonable must be reserved until the promulgation proceedings when the Commission will have all the necessary facts before it. Since section 7 of the act directs that any requirement of a standard be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with a product, and also directs that the notice of proceeding state the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury, the Commission must preliminarily identify what it believes at the time to be unreasonable risks in order that the offeror's efforts will be directed only to risks which may be unreasonable. However, neither the Commission's initial identification of unreasonable risks of injury, nor the offeror's analysis referring to the risks as being unreasonable binds the Commission to the determination in instituting its promulgation proceedings. Ample opportunity will be afforded in these proceedings for interested persons to comment on and object to the Commission's determinations.

b. One comment suggests that proposed § 1105.8(c) be changed to provide that the offeror must present an "analysis" demonstrating that each requirement is in the public interest rather than a "statement." Another comment recommends that the public interest statement be required only for the entire standard and not for each requirement of the standard.

The Commission agrees with both comments and has revised § 1105.8(c) accordingly.

c. One comment questions whether the Commission will provide offerors with a hazard analysis demonstrating that the requirements are necessary.

The Commission cannot provide the offeror with an analysis demonstrating that the requirements are necessary since the Commission will not know what requirements will be developed by the offeror. The Commission will, however, make material available to the offeror relating to the risks of injury, the need for a standard, and any other information which may be helpful to the offeror.

This is provided for in § 1105.3(a)(4) of the final regulations.

23. *Proprietary information.* Proposed § 1105.7(c) provides for the maintenance by the offeror of certain records concerning the development of the standard.

One comment suggests that this section be changed to require the offeror to carefully identify confidential information. Another comment suggests adding a sentence to the end of paragraph (c) as follows: "Except that nothing in this subsection (c) shall be considered to require or permit the disclosure of trade secrets or other proprietary or private data otherwise prohibited by the Product Safety Act." The comment argues that this sentence is necessary since the act prohibits the disclosure of proprietary data.

The Commission recognizes its duty not to disclose trade secrets and other confidential information. However, certain material may be necessary for the Commission to properly evaluate the standard. Where the Commission receives such information which is legitimately entitled not be disclosed, the Commission will not disclose it. A change in these regulations is not necessary since the closing text of proposed § 1105.7(c) (now part of § 1105.7(c)(5)) provides that the availability of information is subject to the restrictions contained in the Freedom of Information Act and the Consumer Product Safety Act. A change to require that all confidential information be carefully identified is also not necessary since the Commission's regulations under the Freedom of Information Act will set forth provisions relating to the submission of confidential information to the Commission.

24. *Monitoring by Commission employees; technical assistance by the Commission.* Proposed § 1105.7(a) provides that offerors whose offers have been accepted shall cooperate with Commission liaison personnel assigned to monitor the development of the standard.

One comment asks how the Commission plans to monitor the development process. Another comment suggests that the Commission provide technical assistance to offerors in developing standards, particularly those lacking technical expertise.

The degree of Commission participation in the developmental process, especially through the device of "monitoring," has been intentionally left unspecified in these regulations. This matter is such that only experience will enable the Commission to reach the proper balance between what could be termed interference and what could be termed lack of cooperation.

25. *Satisfactory progress.* a. Regarding proposed § 1105.7(d), which provides for the submission of progress reports to the Commission for the purpose of determining whether the offeror is making satisfactory progress, two comments suggest that requirements for the submission of progress reports be more clearly specified.

The Commission agrees and has revised § 1105.7(d) to specify monthly progress reports containing certain information.

b. One comment objects to the inclusion in proposed § 1105.7(d) of a provision for Commission inspection of the offeror's facilities and developmental activities.

In the Commission's view, this authority is necessary as an aid to the Commission in determining whether the offeror is making satisfactory progress in the development of the standard.

c. Two comments suggest that satisfactory progress should not, as stated in proposed § 1105.7(d), be measured solely by completion of the development of the standard by the end of the development period. One of these comments suggests that the regulations be changed to permit the Commission to extend the development period as an alternative to terminating the offeror's role in the development process (as provided for in proposed § 1105.7(e)) when the offeror is found not to be making satisfactory progress.

The Commission agrees that there may be circumstances where extending the development period would be preferable to terminating the offeror's role in the development process and has revised § 1105.7(e) accordingly.

26. *Termination of the development proceeding.* Proposed § 1105.7(f) provides that the development proceeding may be terminated if no offeror is making satisfactory progress and that the Commission may then independently develop a proposed standard or contract with third parties for the development of a proposed standard.

Several comments address the topic of Commission policies and procedures following termination of the development proceeding. The Commission concludes that a discussion of the course of action to be taken following termination is not an appropriate subject for coverage in these regulations. Section 1105.7(f) has therefore been changed to eliminate the phrase "or contract with third parties for the development of a proposed standard," since this option would remain available to the Commission irrespective of the fact that it is not specified in these regulations.

27. *Development of standards by the Commission.* Section 7(e) of the Act provides that, except under certain circumstances, the Commission may not independently develop a proposed consumer product safety rule. These circumstances are essentially as follows: (1) that having published a notice of proceeding, the Commission has not accepted an offer to develop a standard within 30 days of the date of publication of the notice; (2) that the sole offeror whose offer has been accepted is the manufacturer, distributor, or retailer of the consumer product proposed to be regulated; or (3) that the Commission has determined that no offeror whose offer was accepted is making satisfactory progress in the development of the standard. These circumstances are restated in proposed §§ 1105.6(d) and (f) and 1105.7(f).

a. One comment suggests that proposed § 1105.6(f) be changed to state as follows: "In any case in which the sole offeror whose offer is accepted is the manufacturer, distributor, or retailer of the consumer product proposed to be regulated by the consumer product safety standard, the Commission *shall* independently proceed to develop a proposed standard during the development period." (emphasis added)

The Commission concludes that the addition of this requirement is not desirable since it could force duplicative efforts in situations not requiring independent development by the Commission. Had Congress believed that the development of a standard by the manufacturer, distributor, or retailer of a product to be regulated was inherently not in the public interest, it could have required independent development by the Commission.

b. One comment suggests that a phrase be added to proposed § 1105.6(f) as follows: "and shall independently proceed to develop or acquire the technical capability necessary to properly evaluate the standards recommended to it."

The Commission concludes that the addition of this phrase is unnecessary since it implies that the Commission will only acquire the technical capability necessary to properly evaluate standards recommended to it when the sole offeror whose offer has been accepted is the manufacturer, distributor, or retailer of the product proposed to be regulated. The Commission will always prepare itself to evaluate recommended standards irrespective of the type of offeror developing the standard.

c. A comment recommends that proposed § 1105.6(f) be changed to add a statement to the effect that when the sole offer accepted is that of a trade association the Commission may not proceed to develop a proposed standard.

The Commission concludes that the suggested change is not appropriate.

d. Several comments suggest that when the Commission proceeds to independently develop standards, it should provide for public participation in the same manner as offerors are required to provide for public participation.

Since these rules are intended to prescribe the manner in which standards will be developed by offerors, and are not intended to regulate the independent development of standards by the Commission, the Commission concludes that it is not appropriate for these rules to address the procedures for the independent development of standards by the Commission itself. Proposed § 1105.1(a) has been changed to eliminate the implication that these rules will govern the independent development of standards by the Commission.

28. *Format of recommended standards.* Proposed § 1105.8(a) provides that recommended standards shall be submitted in the format prescribed by the Commission. Proposed § 1105.8(b) provides that a standard shall be written in a manner appropriate for use as a federal mandatory standard as specified in the format established by the Commission.

Two formats have been submitted to the Commission with the comments for consideration for use as the Commission's format. One comment notes that the offeror will need the format before undertaking the development work and suggests that the regulations be changed to require that the Commission format be published in the FEDERAL REGISTER with the notice of the acceptance of an offer.

The Commission agrees that an offeror should have the format before commencing the development of the standard and has changed § 1105.8(a) to provide that the format for each standard will be made available to the offeror on or before the acceptance of an offer.

29. *Contributions to the offeror's cost.* a. Proposed § 1105.9(h)(1) provides that the Commission will not contribute toward "Costs for the acquisition of any interest in land or buildings; however, the Commission may contribute toward the lease or rental of land or buildings."

One comment objects to Commission contributions toward the lease or rental of land or buildings as a violation of the prohibitions established in section 7(d)(2) of the act.

No change in the regulations (now § 1105.9(g)(1)) is considered necessary with respect to this comment since the Commission interprets the statutory prohibition of contributions for the acquisition of land or buildings not to include payments for leases or rentals during the period of development. It is the view of the Commission that to construe the word "acquisition" to exclude contributions toward leases or rentals would not be consistent with the congressional intent for the Commission to provide assistance to consumer organizations or groups which are less likely to be able to bear the costs of standards development than are industrial trade organizations.

b. Another comment suggests that a provision be added to proposed § 1105.9(a) that the Commission may agree to contribute to the offeror's cost only in those cases in which the Commission determines that the offeror "has the technical competence and other capabilities provided in the statute and defined in these regulations." This comment contends that the criteria for contributions does not include the test of competence and will therefore not adequately protect the Commission, the public, or competing offerors.

The Commission concludes that no change in the regulations is warranted by this suggestion since Commission contributions are already subject to the acceptance of an offer from a technically competent offeror. This is provided for in § 1105.9(a), which states in part: "The Commission may, in accepting an offer, agree to contribute to the offeror's cost * * *."

c. One comment contends that the requirements for the submission of offers (§ 1105.5) are so formal that it would require considerable time and money to prepare an offer. The comment suggests that to encourage the submission of offers by consumer groups, the Commission should enter into agreements to reimburse the offeror for standards development costs based upon a "brief prospectus" rather than a formal offer.

The Commission concludes that the regulations should not be changed in response to this comment. The requirements established for the submission of offers are minimal. They contain only what the Commission believes to be essential for the proper evaluation of submitted offers.

d. One comment recommends that the regulations be revised to provide that offerors whose offers have been accepted as well as "good faith offerors" whose offers have not been accepted, be reimbursed for their costs in preparing offers. The purpose of this change would be to encourage the preparation of offers by those who might otherwise hesitate to do so.

The Commission is authorized by section 7(d)(2) of the act to contribute only to the offeror's cost in developing proposed consumer product safety standards. Since the act does not expressly authorize the Commission to reimburse offerors for the cost of preparing offers, the suggested change is not warranted.

e. One comment recommends that the regulations be revised to state that the amount of contribution requested shall have no bearing on the acceptability of an offer. The argument presented in support of this recommendation is that otherwise acceptable offers should not be rejected on the basis of the contribution requested and that the act does not authorize rejection on this basis.

The Commission agrees that the evaluation of an offer should not be affected by the amount of contribution requested by the offerors. However, the Commission does not feel it necessary to revise the proposed regulations to eliminate any consideration of the amount of the contribution requested from the decision to accept an offer.

f. Proposed § 1105.9(g) and (h) (now § 1105.9(f) and (g)) sets forth statements of items of cost toward which the Commission may contribute and items of cost toward which the Commission will not contribute. Included is a reference to the Federal Procurement Regulations, 41 CFR Part 1–15.

One comment suggests that since these regulations extend over 60 pages, the Commission should either specifically refer to the applicable sections or delete the reference to the procurement regulations.

The Commission gave consideration to developing a set of principles for determining allowable costs for which it would reimburse offerors developing standards. However, it is not known what costs can be anticipated in the course of developing a standard. Accordingly, it was decided to adopt an established set of cost principles. Although the cost principles in 41 CFR Part 1–15 are extensive, only a subpart of those principles will apply to any one development agreement, depending on the type of organization that is developing the offer. For example, if a university is developing a standard, the subpart principles governing educational institutions would apply. The Commission therefore declines to adopt the suggestion.

g. Proposed § 1105.9(h)(2) (now § 1105.9(g)(2)) provides that the Commission will not contribute toward "costs for the payment of salaries in excess of the salaries paid by the offeror to individuals at the time immediately preceding the offer."

A comment suggests amending this section by adding that "the Commission will contribute toward the salary costs of an offeror at the time that the offer is made, to pay longevity, overtime, or other routine increases to its personnel during the course of development of the standard, and will contribute toward the salaries of new employees or consultants hired by the offer to aid in the development of the standard."

The Commission agrees that part of the suggestion has merit and has revised the subsection to provide an exception for the payment of longevity and other routine increases to individuals which may acrue during the development of the standard. The Commission does not agree to include contributions toward overtime since the offeror should schedule the development of the standard without planning on overtime. Any work during overtime hours will normally be the offeror's responsibility. It is not considered necessary to revise the subsection to allow for the payment of the salaries of new employees or consultants since the language of the subsection does not now prohibit this.

h. A comment suggests that the regulations be revised to specifically provide for the Commission to contribute toward the offeror's costs when the offeror is a trade association or business corporation. The reason given is that often these groups have small budgets and could not otherwise afford to develop standards.

Although the legislative history of the act indicates that Congress intended cost contributions to be used as an aid to permit consumer organizations to engage in standards development or to participate in the development of a standard by another offeror, neither the act nor these regulations preclude contributions to other types of groups. Since the Commission has not prescribed a list of those organizations to which it might contribute, the Commission concludes that the suggested revision should not be made.

i. Proposed § 1105.9(c) states as follows: "The offeror should normally finance at least 5 percent of the total project cost. If the offeror, however, has little or no nonfederal sources of funds from which to make a cost contribution, the requirement for cost sharing may be waived by the Commission."

The Commission, having considered comments relevant to the issue of the 5-percent financing requirement, concludes that proposed § 1105.9(c) should be deleted. Although the Commission does expect offerors to commit as much of their own resources toward the development of standards as is reasonably possible, a requirement for a specific per-

centage contribution does not appear to be necessary.

30. *Miscellaneous.* a. One comment recommends that before a press release is issued relating to the initiation of a proceeding for the development of a standard that the press release be circulated for comment to affected manufacturers. The purpose of this would be to prevent misrepresentation and unwarranted inferences by the press. The comment contends that this procedure would be consistent with section 6(b) and (c) of the act.

Since press releases relating to the initiation of a proceeding to develop a standard will generally not identify a product by manufacturer or brand name, the Commission concludes that this recommendation need not be adopted.

b. For the purpose of achieving consistency with the act, one comment suggests changing the word "risks" in proposed §§ 1105.3(a) (1) and (2) to the word "risk."

The Commission declines to make this change since it would be impractical in most cases to proceed with the development of a standard on the basis of a single risk where more than one risk can be identified with a single consumer product.

c. In response to a comment regarding proposed § 1105.3(a) (4), professional societies have been added to the list (now § 1105.3(a)(5)) of persons invited to submit an existing standard or offer to develop a proposed standard.

d. In response to several comments regarding proposed § 1105.3(a)(5), the regulations have been changed (now § 1105.3(a) (6)) to provide that a requirement for any additional information to be submitted to the Commission, either with an existing standard or with a standard developed by an offeror, will be included in the FEDERAL REGISTER notice of proceeding to the extent the need for such additional information is known at the time the notice of proceeding is published.

e. One comment suggests addition of the word "domestic" to the list of persons in proposed § 1105.5(a) who may submit offers to develop standards. The Commission declines to adopt this suggestion since the act itself neither makes nor implies this restriction. It is noted, however, that the Commission is of the view that it can only accept offers from those fully capable of providing the opportunity for public participation within the United States.

f. Several comments suggest including the terms "trade associations" "professional or technical societies," and "retailers" in the list of organizations contained in proposed § 1105.5(a)(1) of persons to receive notice of the right to participate in the development of the standard. The Commission agrees and has made the change.

g. In response to a comment suggesting that offers may be accepted from organizations as well as from persons, proposed § 1105.6 (c) and (d)(1) has been changed to provide for the identification of the organizational affiliation of the person whose offer is accepted.

h. In response to a comment, proposed § 1105.8(e) has been changed by adding the phrase "by the offeror" between the words "obtained" and "concerning" in the last sentence and between the words "obtained" and "data" in the second sentence. This change is to indicate that potential economic and environmental effect information is to be submitted to the Commission with the standard developed by the offeror only to the extent it can reasonably be obtained by the offeror.

i. Proposed § 1105.8(e) has been changed in response to a comment by the addition of the words "small business" between the words "on" and "and" in the second sentence. This change was made in recognition of the fact that in submitting economic effect information, small business should not be overlooked.

Therefore, having evaluated the comments received, the Commission concludes that the proposed regulations, with changes, should be adopted as set forth below.

Accordingly, pursuant to provisions of the Consumer Product Safety Act (sec. 7, Pub. Law 92–573, 86 Stat. 1212–15; 15 U.S.C. 2056), a new Part 1105 is added to Title 16, Chapter II, Subchapter B, as follows:

Sec.

AUTHORITY: Sec. 7, Pub. Law 92–573, 86 Stat. 1212–15; 15 U.S.C. 2056.

§ 1105.1 General policy considerations.

(a) The general policy under which the procedures in this Part 1105 are issued is that the interest and participation of the public is vital for carrying out the functions of the Consumer Product Safety Commission. Commission activities and deliberations are open to the public and afford any interested person the opportunity to participate and be heard. Accordingly, standards development activities by offerors will be open to the public and will afford the opportunity for any interested person to participate in the development of standards.

(b) The major objective of the Consumer Product Safety Act ("act") is to reduce unreasonable risks of injury associated with the use of consumer products. This objective may be achieved through the development and promulgation of mandatory "consumer product safety standards" where they are considered necessary to eliminate or reduce the risk of injury. A consumer product safety standard is a standard which will consist of (1) requirements as to performance, composition, contents, design, construction, finish, or packaging, or (2) requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions, or (3) any combination of (1) and (2). Requirements other than those relating to labeling, warnings, or instructions, shall whenever feasible be expressed in terms of performance requirements.

(c) Under the act, consumer product safety standards may originate in three ways. First, the Commission, after publishing a "notice of proceeding" in the FEDERAL REGISTER, is authorized to publish as a proposed standard an existing standard which has been previously issued or adopted by a qualified public or private agency or organization. Second, the Commission is authorized to accept offers from one or more persons or organizations to develop a standard. Third, the Commission may under certain circumstances independently develop a standard.

(d) Since safety standards are intended to eliminate or reduce unreasonable risks of injury associated with consumer products, the Commission, in issuing this Part 1105, seeks the involvement of all interested persons, the general public, and especially ultimate consumers. Ultimate consumers and their representatives, as well as all other interested persons, are invited and encouraged to become involved by submitting offers to develop standards and by participating in the development of standards by other offerors.

(e) Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing standards; such groups are referred to in these rules as "ad hoc associations."

(f) Public involvement will be encouraged through the use of extensive public notice. In addition to providing notice in the FEDERAL REGISTER, the Commission will issue a press release at the initiation of a proceeding. This release will invite any person to either submit an existing standard or offer to develop a standard. A press release will also be issued at the time an offer is accepted. This second press release will invite all interested persons to participate in the development of a standard and will describe the method by which interested persons, including ultimate consumers, may participate.

(g) The Commission will maintain a list of all persons and organizations that have expressed an interest in either being offerors or in participating in the development of standards. Copies of the FEDERAL REGISTER notice of proceeding, press release, and/or other relevant documents will be transmitted by the Commission to appropriate persons and organizations on the list that have expressed an interest in being offerors. Copies of the FEDERAL REGISTER notice of proceeding and the notice of acceptance of any offers will be transmitted by the Commission to appropriate persons and

organizations on the list that have expressed an interest in participating in the development of standards.

(h) The act enables the Commission to contribute to the offeror's cost in developing a standard in any case in which the Commission determines that a contribution is likely to result in a more satisfactory standard. The Commission views this provision of the act as a means by which a variety of organizations will be able to develop standards. The Commission also views this provision as a means by which the Commission can assist a cross section of interested persons, including consumers, to participate in the development of standards.

(i) The act provides that the invitation for the submission of offers to develop a standard shall state the period of time during which the standard is to be developed. Congress anticipated that this period would normally end 150 days after the publication of the invitation. The act also provides that the Commission may extend or shorten the period for development if it finds for good cause that a different period of time is appropriate either at the time of the invitation or at a later time. The Commission expects to receive standards that will, if adopted, appropriately reduce the unreasonable risks of injury to the public. The Commission will adopt a reasonable approach to determining the amount of time necessary to develop standards. The Commission believes, however, that as a general rule the public interest is best served by the development of standards in the shortest possible time commensurate with the objectives of the act and in conformance with the requirements contained in this Part 1105.

§ 1105.2 Summary of time sequence for the development of standards.

The notice of proceeding inviting the submission of existing standards and the submission of offers to develop standards will specify a period of time during which the standard is to be developed and submitted to the Commission. The act specifies that this period will end 150 days after the publication of the notice in the FEDERAL REGISTER, unless the Commission for good cause finds, and includes such finding in the notice, that a different period is appropriate. Under the act, persons must submit existing standards or offers to develop standards to the Commission within 30 days after the date of publication of the notice of proceeding in the FEDERAL REGISTER. The Commission will evaluate the submissions and publish a summary of the terms of any accepted offer or offers as soon as possible, usually within 60 days after the date of publication of the notice of proceeding. In submitting an offer to develop a standard, each offeror is required to include a realistic estimate of the time required to develop the standard, including a detailed schedule for each phase of the development period. In accepting an offer and publishing a notice of the summary of the terms of each accepted offer, the Commission will either reaffirm the original period of time for the development of the standard, or, for good cause stated, establish and publicize a new period of time for the development of the standard. The standard, with all required accompanying information, must then be submitted to the Commission within the specified time, unless the Commission grants an extension and publishes a notice in the FEDERAL REGISTER stating its reasons for the extension.

§ 1105.3 Commencement of proceedings.

(a) A proceeding for the development of a consumer product safety standard shall be commenced by the publication of a "notice of proceeding" in the FEDERAL REGISTER which shall:

(1) Identify the product and clearly describe the nature of the risks of injury associated with the product;

(2) State the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the specified unreasonable risks of injury associated with the product;

(3) Include information with respect to any existing domestic, foreign, or international standard known to the Commission which may be relevant to the proceeding, including information as to any deficiencies that the Commission recognizes in each identified standard that may make it not totally acceptable as a proposed rule;

(4) Provide information concerning the availability of Commission material relating to: (i) The specific nature of the risks of injury associated with the product, (ii) the basis for the Commission's determination concerning the need for a mandatory standard, and (iii) additional information relating to the development of a mandatory standard which may be helpful to potential offerors;

(5) Include an invitation for any standards-writing organization, trade association, consumer organization, professional or technical society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person, within 30 days after the date of FEDERAL REGISTER publication of the notice:

(i) To submit to the Commission an existing standard as the proposed consumer product safety standard; or

(ii) To offer to develop a proposed consumer product safety standard;

(6) Include, to the extent known at the time the notice of proceeding is published, any requirement for additional information which is to be submitted to the Commission with either an existing standard or a standard to be developed by an offeror; and

(7) Specify the period of time during which the standard is to be developed and submitted to the Commission.

(b) The Commission will, for the purpose of providing greater public awareness of its actions, issue a press release concerning the initiation of the proceeding. The press release will summarize the information contained in the FEDERAL REGISTER notice, including the invitation to any interested organization or person to submit an existing standard or to offer to develop a proposed consumer product safety standard.

(c) The Commission will transmit a copy of the FEDERAL REGISTER notice, press release, and/or other relevant documents to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in being offerors for one or more standards.

§ 1105.4 Submission of existing standards.

(a) Any standards-writing organization, trade association, consumer organization, professional or technical society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person may submit a standard previously issued or adopted by any private or public organization or agency, domestic or foreign, or any international standards organization, that contains safety-related requirements which the person believes would be adequate to prevent or reduce the unreasonable risks of injury associated with the product identified by the Commission.

(b) Any submission of an existing standard should:

(1) To the extent possible, meet the requirements for standards developed by offerors contained in section 1105.8 as specified in each notice of proceeding;

(2) Identify the specific portions which are appropriate for inclusion in the proposed rule; and

(3) Be accompanied, to the extent that such information is available, by a description of the procedures used to develop the standard and a listing of the persons and organizations that participated in the development and approval of the standard.

(c) If the Commission determines that (1) there exists a standard which has been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution, and (2) such standard if promulgated under the act would eliminate or reduce the unreasonable risks of injury associated with the product, then the Commission may, in lieu of accepting an offer to develop a standard under section 1105.6, publish the existing standard as a proposed consumer product safety standard.

§ 1105.5 Submission of offers.

(a) Any standards-writing organization, trade association, consumer organization, technical or professional society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person may submit an offer to develop a proposed consumer product safety standard.

Each offer shall include a detailed description of the procedure the offeror will utilize in developing the standard. Each offer shall also include:

(1) A description of the plan the offeror will use to give adequate and reasonable notice to interested persons (including individual consumers, manufacturers, distributors, retailers, importers, trade associations, professional and technical societies, testing laboratories, Federal and State agencies, educational institutions, and consumer organizations) of their right and opportunity to participate in the development of the standard;

(2) A description of the method whereby interested persons who have responded to the notice may participate, either in person or through correspondence, in the development of the standard; and

(3) A realistic estimate of the time required to develop the standard, including a detailed schedule for each phase of the standard development period.

(b) Each offeror shall submit with the offer the following information to supplement the description of the standard development procedure:

(1) A statement listing the number and experience of the personnel, including voluntary participants, the offeror intends to utilize in developing the standard. This list should distinguish between (i) persons directly employed by the offeror, (ii) persons who have made a commitment to participate, (iii) organizations that have made commitments to provide a specific number of personnel and (iv) other persons to be utilized, although unidentified and uncommitted at the time of the submission. The educational end experience qualifications of these personnel relevant to the development of the standard should also be included in the statement. This list should include only those persons who will be directly involved in person in the development of the standard; and

(2) A statement describing the type of facilities or equipment which the offeror plans to utilize in developing the standard and how the offeror plans to gain access to the facilities or equipment.

(c) Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing standards. These groups are referred to as "ad hoc associations." An offer by an ad hoc association may be submitted by an individual member if the offer states that it is submitted on behalf of the members of the association. The individual member submitting the offer shall submit to the Commission a notarized copy of a power of attorney from each member of the association authorizing the individual member to submit an offer on behalf of each other member.

§ 1105.6 Acceptance of offers.

(a) (1) If the Commission (i) does not decide to publish an existing standard as a proposed consumer product safety standard or (ii) decides to publish an existing standard as a proposed consumer product safety standard which does not address all of the specified unreasonable risks of injury associated with the product, the Commission will as soon as possible, usually within 60 days of the date of publication of the notice of proceeding in the FEDERAL REGISTER, accept one or more offers to develop a proposed consumer product safety standard.

(2) Acceptance of an offer will be based on a determination by the Commission that an offeror is technically competent, is likely to develop an appropriate standard within the period specified in the notice of proceeding or within the period determined by the Commission to be necessary and appropriate for the development of the standard, and will comply with all of the requirements of the Commission for the development of the standard.

(3) An offeror will be considered to have technical competence if the offer submitted indicates to the satisfaction of the Commission (i) that the offeror has demonstrated a thorough understanding of the problem, (ii) that the offeror has provided a rational approach to the solution of that problem, and (iii) that persons with appropriate technical expertise or experience will be utilized in the development of the standard either as employees, consultants, or volunteers.

(b) Prior to accepting an offer to develop a standard, the Commission may require minor modifications of the offer as a condition of acceptance.

(c) The Commisison shall publish in the FEDERAL REGISTER the name, address, and organizational affiliation of each person whose offer it accepts and a summary of the terms of each accepted offer including the date established for the submission of the standard.

(d) The Commisison, at or near the time of the FEDERAL REGISTER acceptance notice, will issue a press release which:

(1) Identifies each person (name, address, and organizational affiliation) whose offer has been accepted;

(2) Summarizes the terms of each accepted offer including the date established for the submission of the standard; and

(3) Invites all interested persons to participate in the development of the standard and informs them of how they may participate.

(e) The Commission will transmit to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in participating in the development of one or more standards a copy of the FEDERAL REGISTER notice of proceeding as well as the notice of the acceptance of any offers.

(f) All persons submitting offers to develop standards whose offers have not been accepted will be notified in writing by the Commission. If requested by an offeror, the reasons for the nonacceptance of the offer will be supplied.

(g) If the Commission does not accept an offer to develop a proposed consumer product safety standard, the Commission may independently develop a proposed consumer product safety standard. Notice of this decision will be published in the FEDERAL REGISTER.

(h) In any case in which the sole offeror whose offer is accepted is a manufacturer, distributor, or retailer of the consumer product proposed to be regulated by the consumer product safety standard, the Commission may independently proceed to develop a proposed standard during the development period.

§ 1105.7 Development of recommended consumer product safety standards.

(a) The offeror shall comply with all Commission requirements for the development of standards and with all terms of the acceptance and shall cooperate with Commission liaison personnel assigned to monitor the development of the standard.

(b) In developing a standard, the offeror shall use the method agreed upon for interested persons to participate in the development of the standard and shall fully consider all of the suggestions and contributions of the respective participants. The offeror, after considering all suggestions and contributions, shall draft a standard. The draft standard shall be sent to all participants for their review and concurrence or nonconcurrence. Unanimity among all participants shall not be a prerequisite to the submission by the offeror to the Commission of a standard which, in the offeror's judgment, optimally meets the terms of the offer accepted by the Commission.

(c) The offeror shall maintain complete written records of the development of the standard. These records shall include:

(1) The names, addresses, and titles, if any, of all persons contacting the offeror for the purpose of participating in the development of the standard;

(2) All written comments and any other information submitted by any person in connection with the development of the standard, including the dissenting views of participants and comments and information with respect to the need for the standard;

(3) A discussion describing the bases for resolution by the offeror of all of the substantive issues raised during the development of the standard;

(4) A statement of the economic and environmental factors considered during the development of the standard; and

(5) Records of all other matters relevant to the development and evaluation of the standard. These records shall be submitted to the Commission at the termination of the development period. The Commission will make these records available for public inspection and will supply copies upon request, subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), section 6 of the Consumer Product Safety Act (15 U.S.C. 2055), and regulations relating to the availability of Commission records.

(d) The offeror shall provide monthly progress reports containing a summary of progress made, the work under way, the significant problems encountered,

and the work remaining to be accomplished. These reports shall be transmitted to the Technical Analysis Division, Office of Standards Coordination and Appraisal, Consumer Product Safety Commission, Washington, D.C., 20207. The offeror shall cooperate fully with the Commission and permit the inspection of its facilities and developmental activities by duly authorized representatives of the Commission for the purpose of determining whether satisfactory progress is being made toward the completion of the standard. The offeror shall be considered to be making satisfactory progress if the Commission concludes that the standard may reasonably be expected to be completed in accordance with the provisions of the accepted offer by the end of the development period.

(e) (1) If it appears to the Commission that an offeror is not making satisfactory progress, the offeror will be given the opportunity (i) to demonstrate ability and willingness to complete the development of the standard by the end of the development period, or (ii) to justify the need for an extension of the development period.

(2) The Commission, after consideration and due notice, may (i) terminate the offeror's role in the development process and require the offeror to submit to the Commission all information, records, and documents which pertain to the development of the standard, or (ii) extend the development period and publish notice of such extension in the FEDERAL REGISTER, with the justification for the extension. If the Commission terminates the offeror's role in the development process, the offeror shall remit all funds contributed by the Commission which have not been expended.

(f) If the Commission determines that no offeror whose offer was accepted is making satisfactory progress, the Commission may terminate the development proceeding, publish a notice of the decision to terminate in the FEDERAL REGISTER, and independently develop a proposed standard.

(g) The offeror shall submit with the standard, test instruments or devices constructed or acquired to perform compliance tests if the Commission determines that these instruments or devices are necessary for the evaluation of the standard. In such a case, the instrument or device shall be sold to the Commission at the offeror's cost or loaned to the Commission for the evaluation of the standard. Further, the offeror shall in any circumstance submit detailed descriptions or plans and specifications for the acquisition or construction of these instruments or devices.

§ 1105.8 Recommended consumer product safety standards developed by offerors.

(a) Recommended standards must be suitable for promulgation under the act. To be considered suitable, a standard shall be written in a manner appropriate for use as a Federal mandatory standard as specified in the format established by the Commission. The format for each standard will be made available by the Commission on or before the acceptance of an offer. Recommended standards shall be supported by test data or other documents or materials which the Commission requires. Recommended standards shall also, if the Commission considers it to be appropriate, contain suitable test methods and reasonable testing programs. Test methods for the measurement of compliance with proposed standards shall be reasonably capable of being performed by the Commission and by persons subject to the act or by private testing facilities. Testing programs shall, if the Commission considers it to be appropriate and so states in the FEDERAL REGISTER notice of the acceptance of the offer, include sampling plans.

(b) Recommended standards shall consist of:

(1) Requirements as to performance, composition, contents, design, construction, finish, or packaging; or

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions or requirements respecting the form of warnings or instructions; or

(3) Any combination of (1) and (2).

(c) A recommended standard shall be supported by:

(1) An analysis demonstrating that each of the requirements is reasonably necessary to prevent or reduce the unreasonable risks of injury identified in the notice of proceeding; and

(2) An analysis explaining why the recommended standard is in the public interest.

(d) Each requirement of a standard, other than requirements relating to labeling, warnings, or instructions, shall whenever feasible be expressed in terms of performance. Whenever the requirements are not expressed in terms of performance, an explanation shall be provided to support the use of the nonperformance requirements.

(e) The offeror shall, in submitting a recommended standard, include data and information to demonstrate that compliance with the standard would be technologically practicable. The offeror shall also submit, to the extent that it can reasonably be obtained by the offeror, data and information on the potential economic effect of the standard, including the potential effect on small business and international trade. The economic information should include data indicating (1) the types and classes as well as the approximate number of consumer products which would be subject to the standard; (2) the probable effect of the standard on the utility, cost, and availability of the products; (3) any potential adverse effects of the standard on competition; and (4) the standard's potential disruption or dislocation, if any, of manufacturing and other commercial practices. Further, the offeror shall include information, to the extent that it can reasonably be obtained by the offeror, concerning the potential environmental impact of the standard.

§ 1105.9 Contributions to the offeror's cost.

(a) The Commission may, in accepting an offer, agree to contribute to the offeror's cost in developing a proposed consumer product safety standard in any case in which the Commission determines:

(1) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

(2) That the offeror is financially responsible.

(b) In order to be eligible to receive a financial contribution, the offeror, in addition to furnishing the information required under § 1105.5, must submit:

(1) A request for a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution;

(2) A statement asserting that the offeror will employ an adequate accounting system (one in accordance with generally accepted accounting principles) to record standard development costs and expenditures; and

(3) A request for an advance payment of funds if necessary to enable the offeror to meet operating expenses during the development period.

(c) The Commission, in publishing the terms of the accepted offer, shall include a statement of the purpose and amount of the Commission's contribution.

(d) The offeror whose offer has been accepted shall, for a period of three years after final payment under the development agreement, maintain records which fully disclose the total cost and expenditures for the project and such other records which will facilitate an effective audit. The Commission and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records relevant to the development of the standard.

(e) The Commission, based upon a finding after an informal hearing that all or part of the Commission's contribution has been or is being misused, may seek reimbursement of that part of the contribution which has been or is being misused and shall have the right, after providing due notice, to terminate the development agreement and to discontinue payments towards the contribution. For the purpose of this Part 1105, "misuse of a contribution" means a use other than that agreed upon in writing by the parties.

(f) The items of cost toward which the Commission may contribute are those allowable direct and indirect costs allocable to the development project (as set forth in the applicable subparts of Part 1–15 of the Federal Procurement Regulations (41 CFR Part 1–15)). The Commission may contribute to the costs of assuring adequate consumer parti-

cipation in the development of the standard.

(g) The items of cost toward which the Commission will not contribute include:

(1) Costs for the acquisition of any interest in land or buildings; however, the Commission may contribute toward the lease or rental of land or buildings;

(2) Costs for the payment of salaries in excess of the salaries paid by the offeror to individuals at the time immediately preceding the offer, except for longevity and other routine increases which may accrue during the development of the standard;

(3) Costs for the payment of items in excess of the offeror's actual cost;

(4) Costs for items having a usable lifespan in excess of the development period, except that a contribution may be made toward the proportionate value of the item during the development period determined by subtracting the item's estimated market value at the termination of the development period from the actual acquisition cost (the cost of items purchased by the Commission under sec. 1105.7(g) cannot be included in the Commission's contribution); and

(5) Costs determined not to be allowable under generally accepted accounting principles and practices or Part 1–15, Federal Procurement Regulations (41 CFR Part 1–15).

(h) Offerors who have received contributions from the Commission shall submit to the Commission a full accounting of these contributions and shall remit all amounts not expended within 60 calendar days after the offeror submits the standard.

Since the regulations promulgated above, 16 CFR Part 1105, are procedural regulations and since their becoming effective will provide for commencement of proceedings to establish safety standards, delayed effective date is deemed inappropriate in this instance.

Effective date. The regulations promulgated above, 16 CFR Part 1105, shall become effective May 7, 1974.

(Sec. 7, Pub. Law 92–573, 86 Stat. 1212–15; 15 U.S.C. 2056)

Dated: May 1, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.74–10731 Filed 5–6–74;8:45 am]

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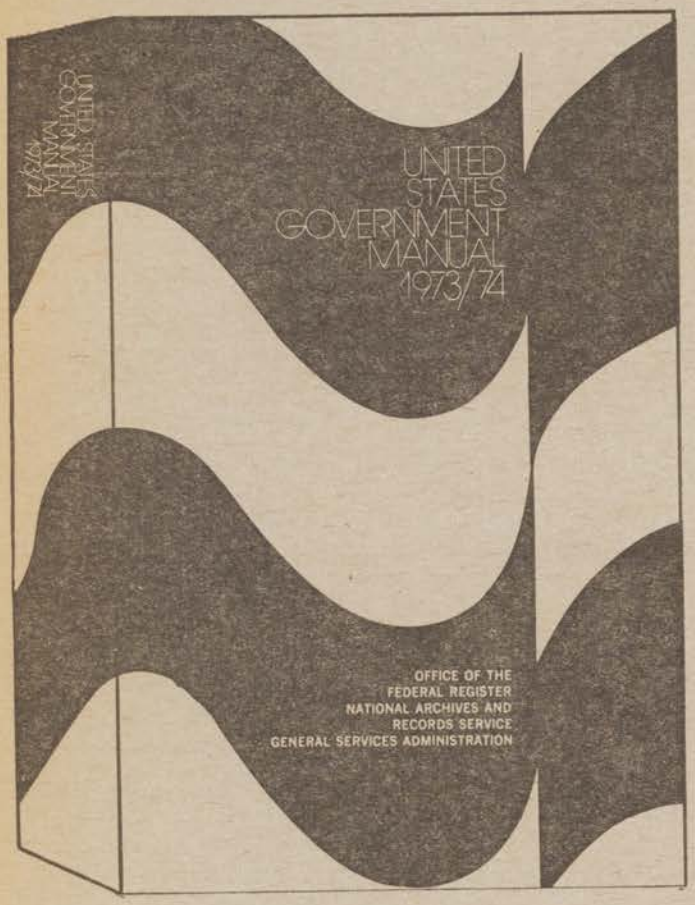

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